

ROMAN OZAETA (AS EXECUTOR OF THE TESTATE ESTATE OF CARLOS PALANCA Y TANGUINLAY, SP. PROC. NO. 12126, COURT OF FIRST INSTANCE OF MANILA, PLAINTIFF AND APPELLEE, VS. SEBASTIAN C. ...

G.R. No. 17455. August 31, 1964

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This is an appeal from the order, dated 29 June 1959, of the Court of First Instance of Manila, Branch XI, in its Civil Case No. 39686, dismissing, for failure to state a cause of action, the first and second counterclaims of the defendant-counterclaimant, Sebastian C. Palanca, against the plaintiff, Roman Ozaeta, executor of the testate estate of Carlos Palanca y Tanguinlay. Appellant directed his appeal to the Court of Appeals, but the latter court certified the same to the Supreme Court as one which involves no question of fact but purely of law.

Predicating the counterclaims are admissions of Sebastian Palanca in his answer to the complaint that on 24 June 1956 he executed with, and in favor of, his other co-heirs a deed of assignment over his shares and participation in the estate of his father, Carlos Palanca y Tanguinlay, and in the estate of his late sister, Marciana Palanca de Santos, under certain terms and conditions, in consideration of the adjudication and transfer to him of certain properties in Sorsogon; that in Special Proceeding No. 12126 of the Court of First Instance of Manila, Branch IV, in which the estate of Carlos Palanca y Tanguinlay is under probate, the court, on 3 July 1956, approved the said deed of assignment and directed the executor, herein appellee, to deliver the properties to the appellant; and that the executor, on 31 July 1956, in pursuance of the court order, executed a deed of conveyance on the said properties in favor of the appellant.

The appellant's counterclaims are quoted hereunder:

"AS FIRST COUNTERCLAIM

"30. That the herein defendant, Sebastian C. Palanca, hereby reproduces each and every allegation above made, and makes them an integral part of this first counterclaim;

"31. That as a result of the plaintiff's failure to transfer and convey the properties mentioned and described in sub-paragraphs (a), (b), (c), (d), (e), (f), (j) and (k) of paragraph 19 of this Answer, free from all liens and encumbrances and the fact that those properties were not free from all liens and encumbrances as they are in fact in the name and actual possession of third parties, the herein defendant was consequently deprived of ownership and possession of said properties, as the said third-parties claim title over the said properties and refuse to surrender to the herein defendant the possession thereof, and consequently suffered damages in the amount of P1,000,000.00, representing the actual market value of those properties at the time of the filing of the complaint in this case.

"AS SECOND COUNTERCLAIM

"32. That the herein defendant hereby reproduces each and every allegation made and contained in each and every paragraph above made and makes them an integral part of this second counterclaim;

"33. That the properties mentioned in sub-paragraphs (a), (b), (c), (d), (e), (f), (j) and (k) of paragraph 19 above, which were not conveyed and delivered to the herein defendant have been planted to coconuts, abaca and rice, consisting of a total area of approximately 150 hectares;

"34. That by reason of the failure of the plaintiff to convey and deliver the title and possession of the said properties, the herein defendant was not able to collect the yearly harvest or income from said properties which is conservatively estimated at P75,000.00 annually from and after July 31, 1956 up to the time that plaintiff shall have effected a delivery of said properties free from all liens and encumbrances to the herein defendant."

In short, therefore, the appellant alleges that he has rights under the deed of assignment which have been violated and for which he seeks the alternative reliefs of performance or damages. Theoretically admitting the truth of the allegations in the counterclaim, there is no cause of action against Roman Ozaeta, in his capacity as executor in Special Proceeding No. 12126, since he was not a party to the deed of assignment—his participation in connection with the contract was merely to comply with the order of the probate court—a fact which is admitted in appellant's own allegations.

"On a sale of a decedent's property under order of Court, there is no implied warranty, either of title or quality" (34 C.J.S. 618; Nutt vs. Anderson, 87 S.W. 2d, 760).

"So, an order of the Court made by virtue of its lawful discretion, authorizing the representative to sell property will ordinarily protect the representative who acts in pursuance of the order" (34 C.J.S., p. 635; Goldsborough vs. De Witt, 189 Atl., 226, 171 Md., 225).

Thus, defendant Sebastian Palanca's remedy, if any, lies only against the persons with whom he has contracted by virtue of the Deed of Assignment (Annex "A" of the complaint), even assuming that he could still relitigate these same issues that he had already submitted to the probate court on 9 May 1957 and which were rejected by the order of the same court dated 20 June 1957, already final for non-appeal therefrom (Rec. on Appeals, pp. 85, 100).

Finally, it is well to note that an adverse possession by another is not an "incumbrance" in law, and does not contradict the condition that the property be free from encumbrance (Yuson, et al. vs. Diaz, 42 Phil., 22); nor is it a "lien", which connotes security for a claim (Shanghai Banking Corp. vs. Rafferty, 39 Phil., 145).

Therefore, the court below correctly declared that the first and second counterclaims state no cause of action against the plaintiff Executor.

Wherefore, the order appealed from is affirmed. Costs against appellant, Sebastian C. Palanca.

Bengzon, C. J., Bautista Angelo, Concepcion, Paredes, Regala and Makalintal, JJ., concur.

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