

ROBERTO TOMADO, PLAINTIFF AND APPELLANT, VS. JOAQUIN BILBAO, DEFENDANT AND APPELLEE.

G.R. No. 20112. May 25, 1966

Ponente: DIZON, J.

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DIZON, J.:

Appeal by Roberto Tornado from the order of the Court of First Instance of Negros Occidental in Civil Case No. 5953 dismissing his complaint against Joaquin Bilbao on the principal ground that the cause of action set forth therein was barred by prior judgment.

It appears that on November 16, 1959 appellee, as administrator of Hacienda Paz situated at Hinobaan, Occidental Negros, filed with the Justice of the Peace Court of said municipality a complaint for ejectment against appellant, alleging that the latter had occupied a portion of said hacienda and built his house thereon without his knowledge and consent. After trial, the court rendered judgment in favor of appellee. On appeal (Civil Case No. 5772) the Court of First Instance of Negros Occidental, upon motion of appellant, dismissed the action on the ground that appellee, being merely the administrator of the land in question, had no capacity to sue.

Subsequently, appellant filed a complaint with the Court of First Instance of Negros Occidental (Civil Case No. 5953) to recover from appellee actual, moral, exemplary damages and attorney's fees, for the alleged unwarranted and malicious filing of the ejectment case mentioned heretofore.

Appellee filed a motion to dismiss the complaint on the following grounds: (a) that the cause of action was barred, in accordance with the provisions of Section 6, Rule 10 of the Rules of Court, and (b) that the complaint stated no cause of action.

After due hearing on the motion to dismiss, the Court issued the appealed order.

We find no merit in the present appeal.

The damages which appellant sought to recover from appellee should have been interposed as a compulsory counterclaim in Civil Case No. 5772 of the lower court because it is obvious that they arose out of and were necessarily connected with the action for ejectment subject matter thereof. Not having been so interposed, action for their recovery is now barred (Rule 9, Section 4, Rules of Court; *Maclan vs. Garcia*, 97 Phil., 119; *Ocoa vs. Montano*, 47 Off. Gaz., No. 37 Sup. 382).

Wherefore, the appealed order is affirmed, with costs.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Regala, Makalintal, Bengzon, J.P., Zaldivar and Sanchez, JJ., concur.

Order affirmed.

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