

FRANCISCA LAZO, PLAINTIFF-APPELLANT, VS. J.M. TUASON & CO., INC. AND SHERIFF OF QUEZON CITY, DEFENDANTS-APPELLEES.*G.R. No. 23817. December 11, 1967*

Ponente: BENGZON, J.P., J.

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On November 17, 1949, Francisca Lazo bought five hundred (500) square meters of land situated in Barrio Tata-lon, Quezon City for P1,500.00 from the late Agustin de Torres, husband of Rufina Guerrero. This land was part of the Tatalon Estate which was the subject of a compromise agreement on March 16, 1953, subsequently approved by the Court of First Instance, between the Deudors (one of whom was Rufina Guerrero as widow and successor of Agustin Torres) and J.M. Tuason & Co. The Deudors, in consideration of P1,201,063.00 gave up their claim over the estate, but in the agreement it was provided that J.M. Tuason & Co., will recognize the contracts of sale entered into by the Deudors over the said lands. The Deudor buyers (a list of them was furnished J.M. Tuason & Co.) may, it was stipulated, continue the contracts of sale by paying J.M. Tuason & Co., the current prices under conditions set up by the latter.

Later, on March 23, 1957, J.M. Tuason & Co. sought before the Court of First Instance of Quezon City, to eject Francisca Lazo from the land through an action for recovery based on alleged ownership.[1] As a result, the Court of First Instance rendered judgment on November 13, 1959, ordering Lazo to vacate the land, remove her constructions and pay P120.00 monthly rental from April 1948 until restoration of the land. Subsequently,* after the judgment became final, execution of the judgment was ordered. Lazo moved on March 7, 1961 to stay the execution but four days later her motion was denied. She appealed this order of denial but the Court of First Instance disallowed her appeal. After her motion for reconsideration was denied, Lazo filed in the Court of Appeals a petition for mandamus with preliminary injunction² to compel the Court of First Instance to approve her appeal. The Court of Appeals dismissed her petition on the ground that an order of execution of a final judgment is not appealable.

On January 27, 1962, upon motion of J.M. Tuason & Co., and after the finality of the Court of Appeals' decision, the Court of First Instance issued a writ of demolition against Lazo. She however moved to stay the enforcement of the writ and was given until April 1, 1962 to vacate the premises voluntarily - otherwise, the sheriff will demolish her house.

On February 20, 1962, Lazo, in a petition for prohibition with preliminary injunction before the Court of Appeals³ sought to enjoin the enforcement of the decision in Civil Case No. Q-4193 and the enforcement of the demolition order issued on January 27, 1962. Again the Court of Appeals denied her petition, holding that the decision in Civil Case No. Q-4193, having become final and executory, a writ of prohibition will not lie to restrain enforcement of the writ of execution issued pursuant to the decision. It also ruled that the order denying the motion to suspend the enforcement of the writ of execution and an order of demolition may not be reviewed by a writ of certiorari.

On March 27, 1962, Lazo filed a new suit before the same Court of First Instance⁴ for the annulment of the judgment in Civil Case No. Q-41930 on the ground of fraud, seeking to enjoin its execution and the declaration of the orders of execution and demolition as null and void. She also prayed for specific performance on the part of J.M. Tuason & Co., praying that the latter be ordered to execute a deed of sale of the land in her favor as per compromise agreement of March 16, 1953, at P7.00 per square meter.

In support of her allegations of fraud she alleged that: As a Deudor vendee she sought the execution of a new contract of sale in her favor in accordance with the agreement but was told to wait until the approval of the subdivision plan of the Tatalon Estate; that upon her receipt of the notice of the ejectment case, she went to the office of Gregorio Araneta, Inc., managing partner of J.M. Tuason & Co., and demanded an explanation; that the head of the Investigation Department told her not to worry and to just give the case to a lawyer, then forget it; that from then on she was assured that the case was a mere formality devised to drive out the squatters, and any decision therein would not really be executed against her. Thus, even when judgment was given she did not take any step to vacate or appeal the judgment. Later, she received a demolition order dated January 27, 1962.

J.M. Tuason & Co., opposed the petition and later moved for its dismissal on the grounds that the complaint stated no cause of action or that if there was a cause of action, the same was barred by prior judgment. The Court of First Instance dismissed the case despite Lazo's opposition to the motion to dismiss, for the reason that the complaint stated no cause of action because the plaintiff had lost her preferential right according to the case of J.M. Tuason & Co. v. Sanvictores, L-16836, January 30, 1962.⁵ Besides, plaintiff herself asked for extension up to April 1, 1962 to vacate the premises which the court interpreted as her admission that she was satisfied with the judgment against her.⁶

From this order of dismissal Lazo appealed to the Court of Appeals which in turn certified the case to Us on questions of law.

Anent the questions of sufficiency of cause of action and bar by prior judgment, it must first be determined whether the complaint to annul on ground of fraud should be allowed in the first place. While Francisca Lazo claimed she never took steps to vacate or appeal the judgment in Civil Case No. Q-4193 because she was assured it would not be executed against her anyway, yet, when execution of the judgment was ordered on Jan. 12, 1961, she never questioned the judgment on the grounds for which she now wants the same annulled. The execution order was indicative of the intent to ease her out of the land, in disregard of the alleged assurance to the contrary. If she still relied on such alleged assurance, the writ of demolition issued January 27, 1962 against her undoubtedly left no doubt about the intentions of J.M. Tuason & Co. Still, she sought only suspension of the enforcement of the writ of demolition. She asked, as found by the lower court, that she be given until April 1, 1962 to vacate the premises - a fact that plainly supports the conclusion that she acquiesced to the judgment sought to be executed. She unduly delayed too long before alleging fraud in the circumstances leading to the rendition of the judgment against her, when she could have asserted the same right after the order of execution was given. Such undue delay from at least Jan. 12, 1961 up to March 27, 1962, considering the continuous threat of her ejectment, militates against her case. And such circumstances of delay can be discerned from the face of the complaint, in the light of its reference to the records of Civil Case No. Q-4193. Laches or unreasonable delay on the part of the plaintiff in enforcing a right is persuasive of a want of merit, since it is human nature for one to assert his rights once threatened or invaded, and may according to the circumstances be destructive of the right itself.⁷ These considerations negate the need of any further discussion on the issues raised.

The same renders the complaint subject to dismissal for lack of cause of action (Sec. 1[f], Rule 8, old Rules of Court) or release, waiver and abandonment thereof (Sec. 1[g] Rule 8, old and Sec. 1 [a] Rule 16, new, Rules of Court), as regards that part seeking to annul the decision in Civil Case No. Q-4193 on the ground of fraud.

As to the portion of the complaint seeking to enforce an alleged preferential right to buy the land under the compromise agreement, the same is barred by res judicata, as it should have been interposed as a compulsory counterclaim in Civil Case No. Q-4193 (De Jesus v. J.M. Tuason & Co., L-22184, Oct. 20, 1966).

WHEREFORE, the order appealed from is hereby affirmed. No costs.

SO ORDERED.

Concepcion, Reyes, Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] Civil Case No. Q-4193.

* On January 12, 1961.

2 CA-G.R. No. 29369-R.

3 CA-G.R. No. 30550-R.

4 Civil Case No. Q-6315.

5 In this case We held that the preferential right claimed under the Compromise Agreement was in the nature of a compulsory counterclaim which should be raised in the ejectment suit itself (alleging ownership in the Court of First Instance), otherwise it is barred after finality of judgment in the ejectment suit.

6 Record on Appeal, p. 106.

7 Buenaventura v. David, 37 Phil. 435, 441.

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