

BEATRIZ G. VDA. DE DIOS, PLAINTIFF-APPELLEE, VS. LEANDRO BALAGOT, PETITIONER-APPELLANT, VS. J.M. TUASON & CO., INC., AND PEDRO DEUDOR, OPPOSITORS-APPELLEES.*G.R. No. 24103. August 10, 1967*

Ponente: BENGZON, J.P., J.

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An action for recovery of possession of land was filed on January 24, 1963 by Beatriz G. Vda. de Dios against Leandro Balagot, in the Court of First Instance of Rizal, Quezon City branch. Plaintiff alleged in her complaint that she is the registered owner of 1,296 square meters of land situated in Quezon City covered by Transfer Certificate of Title No. 52577 of the Registry of Deeds of said city, issued in her name on September 6, 1960; that she had purchased the same from J.M. Tua-son & Co., then the registered owner of the land under Transfer Certificate of Title No. 49235; that "prior to September 6, 1960 up to the present" defendant has been in possession of a portion of about 600 square meters of said parcel of land, without the knowledge and tolerance of J.M. Tuason & Co., and that in spite of demands on him by plaintiff and her predecessor-in-interest, defendant has failed and refused to vacate the land and re-move his house and other construction thereon.

The defendant, on February 12, 1963, filed an answer with a counterclaim. Alleged therein were that the portion of land occupied by defendant, an area of 700 square meters, was part of the 50 quiñones of land first owned by Telesforo Deudor in 1873; that from Pedro Deudor, successor-in-interest of Telesforo, he bought the portion of land in question for P4,900.00 on August 30, 1950; that right after the sale, he took possession of the land, subsequently constructing thereon a house worth P40,000.00; that pursuant to an agreement between J.M. Tuason & Co., and the Deudor heirs dated March 16, 1953, defendant's right to the land has preference over the sale in favor of plaintiff; that, therefore, plaintiff should reconvey the portion of the land involved herein to defendant or pay him P4,900.00 for the land, P40,000.00 for his house, and P5,000.00 for attorney's fees and damages.

Plaintiff, on February 19, 1963, answered defendant's counterclaim. On March 14, 1963 the court set the case for hearing on May 17, 1963. Prior to this scheduled date, however, on April 1, 1963, defendant filed a motion for leave to file a third-party complaint, attaching the same to the motion, against J.M. Tuason & Co. and Pedro Deudor, for payment of the value of the house and lot in case of eviction.

Plaintiff, served with notice of the motion, opposed it on April 6, 1963, stating that a third-party complaint to enforce the warranty of eviction should have been filed before the time for filing the answer, citing Article 1559, Civil Code; and that the Tuason-Deudor agreement defendant mentioned has been declared rescinded, citing this Court's ruling in *J.M. Tuason & Co. v. Sanvictores*, L-16836, January 30, 1962.

Said defendant's motion was denied on June 11, 1963, "for lack of merit". From the order denying his motion for leave to file a third-party complaint defendant appealed to the Court of Appeals. The appeal was certified to Us since the Court of Appeals found it to involve questions purely of law, namely:

(1) Is the third-party complaint admissible or not?

(2) May the order denying the admission of the third-party complaint be appealed from at this stage of the proceedings?

As a rule the admission of a third-party complaint is left to the discretion of the trial court. The pre-sent case, however, involves a third-party complaint seeking to enforce a vendor's warranty in case of eviction. And pursuant to express provision of Article 1558 of the Civil Code, a defendant-vendee in a suit for eviction must summon in said suit his vendor, otherwise the latter shall not be obliged to make good his aforesaid warranty:

"Art. 1558. The vendor shall not be obliged to make good the proper warranty, unless he is summoned in the suit for eviction at the instance of the vendee.

As stated, appellee's contention is that this summoning of the vendor should take place before the answer is filed, under Art. 1559 of the Civil Code:

"Art. 1559. The defendant vendor shall ask, within the time fixed in the Rules of Court for answering the complaint, that the vendor be made a co-defendant."

The act of summoning the vendor can be accomplished either under Article 1559 of the Civil Code, by asking that said vendor be made a co-defendant, in which case the request should be made within the time for answering the complaint; or thru the filing of a third-party complaint against said vendor, under Sec. 1, Rule 12, now Sec. 12 of Rule 6 of the Rules of Court, which provides:

"SEC. 12. Third-party complaint. - A third-party complaint is a claim that a defending party may, with leave of court, file against a person not a party to the action, called the third-party defendant, for contribution, indemnity, subrogation or any other relief, in respect of his opponent's claim."

In the first case, the vendor is summoned by being made a co-defendant; in the second, by being made a third-party defendant. From this it can be seen that a third-party complaint filed after the answer but before trial is not late; Article 1559's time-limit does not apply thereto. And Sec. 2 of Rule 12 of the old Rules of Court, then applicable, provided that after service of his answer, defendant may, with notice to plaintiff, move for leave as third-party plaintiff to file a complaint against a third-party defendant.

As adverted to above, in this case, the third-party complaint, as against Pedro Deudor, seeks enforcement of the warranty against eviction. The same is thus required by law to be resorted to instead of being left to be filed as a separate action. If not raised in the action for eviction, the same will not prosper and the vendor will be released from his warranty. Not only does the admission of the third-party complaint against Pedro Deudor, avoid multiplicity of suits; it is necessary for defendant to enforce said warranty against his vendor.

As regards J.M. Tuason & Co., and defendant, however, no relationship of vendor and vendee obtains and the third-party complaint does not partake of the nature of an enforcement of a warranty against eviction; rather, it seeks to enforce the Tuason-Deudor agreement. As such, the trial court properly disallowed the same. Article 1558 of the Civil Code requires defendant in eviction to summon to the suit his vendor, in this case Pedro Deudor; non-parties to the sale, such as J.M. Tuason & Co., do not have to be summoned therein; hence, there being no necessity for inclusion of J.M. Tuason & Co., the disallowance of the third-party complaint against it was not erroneous.

As to the appealability of the order disallowing the third-party complaint against Pedro Deudor, suffice it to reiterate that the same would finally dispose of defendant's right to enforce his warranty against eviction, since a separate action for the same, without having thus summoned to the suit the vendor, would not prosper (Art. 1558, Civil Code, *supra*). After said disallowance, nothing further was left to be done in the court *a quo*, as regards defendant's right to enforce against Deudor the warranty of eviction. Said denial was therefore appealable.

WHEREFORE, the order appealed from is modified, so as to allow the filing of the third-party complaint as against Pedro Deudor but not against J.M. Tuason & Co. Case remanded to the court a quo for further proceedings. No costs.

SO ORDERED.

Reyes, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.
Concepcion, C.J., and Dizon, J., on official leave.

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