

GREGORIA TORRES VDA. DE NERY, PLAINTIFF AND APPELLANT, VS. JACINTO TOMACRUZ, DEFENDANT AND APPELLEE.*G.R. No. 26251. February 07, 1927*

Ponente: MALCOLM, J.

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Plaintiff appeals from a judgment of the Court of First Instance of Nueva Ecija dismissing her complaint, awarding the defendant the sum of P931.30 as damages on his counterclaim, and dissolving the injunction and levy previously ordered, with costs against the plaintiff.

Appellant first complains of the action of the trial judge in refusing to admit her second amended complaint. In this connection, the bill of exceptions fails to disclose when the original complaint and the first amended complaint were filed. However, we do know that on the first amended complaint, the answer, and the counterclaim, the cause, after various incidents, proceeded to trial. Subsequent to the ending of the hearing, but previous to the rendition of the judgment, the plaintiff again attempted to offer a second amended complaint, which was, however, denied by the trial judge.

Contrasting the first amended complaint with the second amended complaint, it will be noted that the first was principally intended as an action in reivindicacion for the recovery of land, with certain other subsidiary prayers, whereas the second amended complaint made the principal cause of action one for rescission of the contract. Under these conditions, the question arises if the trial judge abused his discretion in declining to admit the last amended complaint.

Sections 109 and 110 of the Philippine Code of Civil Procedure, relating to the subjects of Variance and Amendments in General, should be equitably applied to the end that cases may be favorably and fairly presented upon their merits, and that equal and exact justice may be done between the parties. Under code practice, amendments to pleadings are favored, and should be liberally allowed in furtherance of justice. This liberality, it has been said, is greatest in the early stages of a lawsuit, decreases as it progresses, and changes at times to a strictness amounting to a prohibition. The granting of leave to file amended pleadings is a matter peculiarly within the sound discretion of the trial court. This discretion will not be disturbed on appeal, except in case of an evident abuse thereof. But the rule allowing amendments to pleadings is subject to the general but not inflexible limitation that the cause of action or defence shall not be substantially changed, or that the theory of the case shall not be altered. (21 R. C. L., pp. 572, et seq.; 3 Kerr's Cyc. Codes of California, sections 469, 470, and 473; Ramirez vs. Murray [1855], 5 Cal., 222; Hayden vs. Hayden [1873], 46 Cal., 332; Hackett vs. Bank of California [1881], 57 Cal., 385; Hancock vs. Board of Education of City of Santa Barbara [1903], 140 Cal., 554; Dunphy vs. Dunphy [1911], 161 Cal., 87; 38 L. R. A. [N. S.], 818.)

Considering that the appellant initiated and tried his case under one theory and then switched to another theory subsequent to the trial; considering that the appellant attempted to change the nature of his cause of action entirely; and considering, finally, that a large discretion is vested in the trial judge, we are unable to say that

abuse of discretion on the part of the trial judge has been demonstrated, or that prejudicial error appears in the record. Nor, under such conditions, should we in this court allow an amendment which in effect constitutes an entirely new cause of action.

The remaining errors assigned by the appellant relate principally to the findings of fact. In synthesis, as found by the trial judge, these were the controlling facts: On April 21, 1917, the Director of Lands, with the approval of the Secretary of Agriculture and Natural Resources, leased a large tract of land to one Claude B. Guittard. Guittard transferred his right to the land to Pedro Nery y Gotangco, the husband of the appellant, on November 19, 1918. Nery in turn, on May 6, 1922, sold his right to Jacinto Tomacruz, the appellee. All these proceedings were taken with the sanction of the proper Government officials. The last transfer is evidenced by Exhibit 1-A reading in translation:

"Declaro que nosotros dos de D. Pedro Nery Gotangco nemos celebrado un contrato de compraventa sobre su arrendamiento No. 59 del Buro de Terrenos, y reconozco que en virtud de este contrato y en consideracion a los quince carabaos que me presto para labrar con ellos durante tres cosechas, y en el caso de que no hubiese ningun contratiempo y el Gobierno confirmase y aprobase dicho contrato, y dentro de los tres años a contar desde la aprobacion del repetido contrato, pagare al Sr. Pedro-Nery Gotangco la cantidad de diez mil pesos (P10,000).

"Boñgabon, N. Ecija, junio 14, 1922.

(Fdo.) "JACINTO TOMACRUZ"

B Under the above facts, the appellant obviously had no cause of action for the return of the land. The three years mentioned in the document Exhibit 1-A did not expire until March 21, 1927. Appellant's remedy, if any, was to ask for the rescission of the contract. (Llacer vs. Muñoz de Bustillo and Achaval [1908], 12 Phil., 328; Ullman vs. Hernaez [1915], 30 Phil., 69.)

The trial judge also allowed the defendant P931.30 on account of the improvident levy. Appellant argues that this finding is unjust. Appellee argues that he should be allowed a larger amount or P6,000. Everything considered, we incline to the view that the finding in question has support in the record, although His Honor may, if anything, have been overly strict with the appellee.

Two further observations are in order before the decision is closed. The first is that the appellant in her brief does not cite the pages of the stenographic record to support her statements, which is in violation of our rules (Rules of Court No. 19; Palarca vs. Baguisi [1918], 38 Phil., 177); nevertheless, we have been at pains to review the record. The second statement in order is that the instant decision will not bar another action for rescission of the contract.

Being shown no reversible or prejudicial error, the judgment appealed from is affirmed, with costs against the appellant. So ordered.

Johnson, Street, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

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