

SERAFIN DE LA RIVA, PLAINTIFF AND APPELLEE, VS. MARIA ESCOBAR VIUDA DE LIMJAP, DEFENDANT AND APPELLANT, AND THE BANK OF THE PHILIPPINE ISLANDS, DEFENDANT AND APPELLEE.

G.R. No. 27300. December 17, 1927

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

On May 4, 1917, the Bank of the Philippine Islands sold some parcels of land situated on the Island of Catanduanes, Province of Albay, together with the improvements thereon to Mariano Limjap. It was agreed between them that Limjap was to have the lands surveyed and apply for their registration. It was furthermore stipulated in the second clause that should the registration of any of these lands be denied after due diligence on the part of Limjap, the bank would return to him the price of the parcel of land the registration of which had been denied. Pursuant to this clause the price of parcel No. 10 was fixed in the contract at P7,500.

Limjap applied for the registration of these lands, and during the course of the proceeding, sold them to Serafin de la Riva on September 9, 1919 for the same price, and with the special stipulation that he subrogated Serafin de la Riva in all the other terms of the document executed with the Bank of the Philippine Islands regarding any sum which the said bank might have to return in accordance with these stipulations. From that time De la Riva took Limjap's place as applicant in the proceeding for the registration of these lands which was then pending. The court rendered judgment in that case denying the registration of lot marked No. 10 therein;

On February 17, 1925, Serafin de la Riva filed the complaint in the present case against the Bank of the Philippine Islands and Mariano Limjap praying that said defendants be ordered to pay the plaintiff jointly and severally the sum of P7,500, the price of the unregistered land, with legal interest from the time of the filing of the complaint.

The Bank of the Philippine Islands filed a demurrer, alleging that as it had not entered into any contract with the plaintiff, nor had taken any part in the execution of the contract between the plaintiff and Mariano Limjap, said plaintiff had no cause of action against it. The court below sustained this demurrer in its order of April 7, 1925. The plaintiff did not take any exception to this ruling nor amend his complaint.

On September 4, 1925, Mariano Limjap asked leave of the court to file a counterclaim against the Bank of the Philippine Islands. This petition was denied. On November 18th of the same year, in view of this adverse ruling, Mariano Limjap asked that the Bank of the Philippine Islands be included as a necessary party to this action. This petition also was denied. Exception was taken to both of these rulings.

On December 8th following, Mariano Limjap answered the complaint alleging, as special defense, that the plaintiff had no cause of action against him; that the Bank of the Philippine Islands was the only one liable to the plaintiff; that in the proceeding in which the registration of the land had been denied and to which the complaint made reference, this defendant was not made a party to the action for eviction. By way of counterclaim he prays

that the plaintiff be ordered to pay him P2,000—the amount of a promissory note copied in the answer.

At the hearing of this case and just before the introduction of the evidence, the court dismissed the complaint with respect to the bank, assigning as the basis of such ruling, the fact that the demurrer to the complaint filed by this defendant had been sustained. Counsel for Limjap excepted to this ruling. This was on April 22, 1926, according to the transcript of the stenographic notes, and not on April 22, 1925, as stated in the bill of exceptions, which must be only a typographical error.

The court ordered the counsel for Mariano Limjap to pay the plaintiff the sum of P7,500 with legal interest from December 3, 1924, until fully paid, and it also ordered the plaintiff to pay to the estate of Mariano Limjap, who had substituted the latter as a party to the action, the sum of P2,000 with legal interest from December 10, 1925, until fully paid. The administratrix of Mariano Limjap's estate appealed from this judgment.

Defendant's appeal refers to that part of the judgment of the lower court on the merit, ordering her to pay the plaintiff the sum of P7,500; to the court's ruling denying Mariano Limjap's petition to file a counterclaim against the bank; to the ruling denying Mariano Limjap's petition to include the Bank of the Philippine Islands as a necessary party to this case, and to the ruling dismissing the complaint as against the bank.

In view of the conclusion at which we have arrived in this case we deem it unnecessary to discuss the judgment on the merit, and we shall take up only the three last orders involved in this appeal.

The trial court denied in these two orders the petition of counsel for Mariano Limjap to file a counterclaim against the Bank of the Philippine Islands, and to have the latter included as a necessary party to this case on the ground that Limjap did not make the bank a party to the eviction proceeding at the opportune time, since he did not notify it that a complaint had been filed against him in this cause at the time of the filing of the complaint, nor during the time that elapsed from then until the court favorably ruled upon the bank's demurrer on April 7, 1926, nor within the period provided by articles 5 and 8 of the rules of the Courts of First Instance, from the said date of April 7, 1925, which is understood to be the shortest time possible as provided for in article 1482 of the Civil Code. From these facts the trial court found that the defendant had renounced its right to the warranty in regard to the thing sold. This shows that the view of the trial court is that, in order that Limjap might have a right to enforce against the bank the warranty in regard to the thing sold, it was necessary that Limjap should have notified the bank of the eviction in this action. This is erroneous.

The vendor is bound to deliver and warrant the thing sold (article 1461, Civil Code) and by this obligation he is responsible to the purchaser for its legal and peaceful possession (article 1474, Civil Code) and if, by final judgment and by virtue of a previous right to the purchase, the purchaser is deprived of this thing purchased, the vendor shall be obliged to return the price (article 1478, Civil Code). According to this, the purchaser's right to demand the return of the price implies two actions. First, an action brought by a third person against the purchaser, in which final judgment has been rendered, depriving the latter of the thing bought. Second, the purchaser's action against the vendor for the return of the price. But in order that the vendor be obliged to return the price because of the purchaser having been deprived of the thing bought by virtue of a final judgment, the law requires that said vendor be notified of the action in which that judgment was rendered in order that he might defend the purchaser's legal and peaceful possession, for which he is responsible (articles 1481, 1482, Civil Code). It is clear that this notification must be given in the action brought by the third party against the purchaser, because it is there that the vendor must defend the right he has transferred to the purchaser, to prevent the latter from being deprived of the peaceful possession of the thing sold. Consequently, this notification to the bank should have been given in this case during the registration proceeding in which judgment was rendered which, in accordance with the agreement between the parties, should give rise to the bank's obligation to return the price.

It is also clear that it was not necessary to notify the bank in the present action. This is an action on the warranty to recover the price of the thing sold, of the legal and peaceful possession of which the purchaser has been deprived by reason of the eviction. The purchaser's eviction is already a consummated fact by virtue of the judgment rendered in the registration proceeding. The present action is its result. Vendor's opportunity to defend the right to the thing which he transferred to the purchaser has already passed. For such purpose it was useless to notify him in this action in which he can no longer make such a defense. This is an action now brought by the purchaser against the vendor to enforce the warranty of the thing sold, taking the eviction for granted, as the cause and basis of the right claimed. What has here caused some confusion is the fact that the plaintiff in the present case is Fermin de la Riva and the defendant Limjap. But, if it is well considered, there is no reason for this confusion. De la Riva's action does not contemplate depriving Limjap of the land which he bought from the bank and there was no need to notify said bank of this action in order that it might defend that which is not attached. The action now brought by De la Riva against Limjap is the same as Limjap would have brought against the bank had he not transferred his rights to De la Riva.

Therefore, the trial court's ground for denying Limjap's petition to present a counterclaim against the bank and that the latter be included as a necessary party to this action is erroneous.

Counsel for the bank argues in this instance that the law (section 98, Code of Civil Procedure) allows the defendant to file a counterclaim only against one of the parties, and that Limjap could not file a counterclaim against the bank because the latter was not a party to the action. And it is claimed that the bank was not a party to this action, even if it was included as defendant, because, having filed a demurrer to the complaint, on the ground of lack of cause of action, this demurrer was sustained without any exception being made to this ruling, nor was the complaint amended, which was afterwards dismissed as regards the bank. This contention is untenable. When Limjap registered his petition to file a counterclaim against the bank, although the demurrer of the latter had already been sustained and the period for amending the complaint had passed without any amendment being made, it not only did not dismiss the bank from the action but did not terminate the action as against it, since section 102 of the Code of Civil Procedure requires that under these circumstances the court has yet to render judgment according to the law and the facts shown in the record. It is true that on April 22, 1926, the lower court dismissed the complaint as against the bank, but that was a long time after Limjap's petition to file a counterclaim was registered, and long after the court had denied this petition. Furthermore, even supposing that that dismissal was equivalent to the judgment which the court had to render, it is not yet final, since it was excepted to by Limjap's counsel and is now one of the errors assigned in this appeal. In no sense can it be said that when Limjap's counsel filed his petition to present a counterclaim against the bank, the latter was not a party to this action.

At all events, the counterclaim may be filed against a third person if, according to the allegations of the answer, such third person is a necessary party to the complete determination of the controversy (*Winter vs. McMillian*, 87 Cal., 256; *Eureka vs. Gates*, 120 Cal., 54; *Mackenzie vs. Hodgkin*, 126 Cal., 591; 77 Am. Dec, 209; *Lewis vs. Fox*, 122 Cal., 244). That the bank is, in this sense, a necessary party to this case, is beyond doubt.

The second clause of the contract between Limjap and the bank, to which reference has already been made, and by virtue of which the bank obligated itself to reimburse Limjap for the price of the land the registration of which might be denied, is, in substance, a warranty stipulation in case of eviction, peculiarly framed, so to speak, but legally made nevertheless, since the law allows the contracting parties to specify such conditions as they may deem fit (article 1475, Civil Code). Limjap expressly subrogated De la Riva in all his rights arising from this stipulation. The registration of parcel 10 having been denied, De la Riva brought this action against Limjap for the recovery of the price paid for this parcel. Limjap alleges that by virtue of this transfer, the bank is liable to De la Riva. The bank's intervention is, therefore, necessary in this cause in order to determine who is really liable to the

plaintiff. The fact that the bank did not enter into any contract with De la Riva is no bar to this intervention. The rule enunciated in article 1257 of the Civil Code that the contract binds only the parties thereto and their heirs, is not applicable to this case, since the basis of De la Riva's action is Limjap's transfer to him of his right to the warranty, a right which Limjap had against the bank. De la Riva's action is the same as Limjap's against the bank and he exercises it instead of Limjap, by virtue of the transfer. (Decision of the Supreme Court of Spain of January 27, 1897.)

In regard to the exception to the order of the trial court dismissing the complaint as against the bank, it appears that this dismissal was ordered because the bank's demurrer to the complaint had been sustained and said complaint had not been amended within the period fixed by the court. The order in which the court sets forth its grounds for sustaining the demurrer has not been included in the bill of exceptions and for this reason we cannot consider whether it erred or not in dismissing the complaint against the bank. On the other hand, the decision on this point is unimportant in view of the disposition we are going to make of this case.

The judgment entered on the merits is set aside and the record in this case is ordered remanded to the court of origin in order that it may permit the administratrix of Mariano Limjap's estate to present a counterclaim against the Bank of the Philippine Islands, and, after the proper legal proceedings, render judgment on the claims of all parties. It is so ordered without special pronouncement as to costs.

Johnson, Street, Malcolm, Johns, Romualdez, and Villa-Real, JJ., concur.

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