

JUAN MARIN, PLAINTIFF AND APPELLANT, VS. MANILA RAILROAD CO., DEFENDANT AND APPELLEE.*G. R. No. 34596. October 01, 1931*

Ponente: STREET, J.

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In December, 1917, this action was instituted in the Court of First Instance of Tayabas in the name of Juan Marin as plaintiff, at the instance of his attorney-in-fact, Jose Palacios Lahoz, for the purpose of recovering from the Manila Railroad Co. the value of certain land now occupied by it in the municipality of Candelaria, in the Province of Tayabas, and used by it for railroad purposes, as well as to recover an adjacent strip of land alleged not to be used by the railroad company for its corporate purposes, together with damages and costs. On June 18, 1920, the court, in open session, granted to Lahoz leave to intervene as a plaintiff in the cause, upon his representation that he had acquired from Marin the interest of the latter in the subject matter in litigation. No amended complaint was filed pursuant to the authority thus granted, and the record continued to stand upon the leave thus granted by the court in these words: "The plaintiff is permitted to amend his complaint in the sense of including Sr. Jose Palacios Lahoz as plaintiff."

It appears that the railroad company had taken possession of the property which is the subject matter of this action in virtue of a judgment of expropriation which it had instituted in 1907 against Hermenegildo Nadres, the then alleged owner of the property. It was therefore thought desirable by the railroad company to file a crosscomplaint against Nadres for the purpose of warranty in case of eviction, and Nadres was so included at the request of the defendant. Later Nadres died and the litigation instituted by Marin in the case now before us suffered extended delay from the death of said party. Finally, upon the initiative of the plaintiff, one Juan R. Brano was procured to be named as administrator of Nadres, and the proceedings pursued their way towards final resolution. After the proof in chief had all been taken, and the cause was approaching final submission, the attorney for the defendant made a motion, on May 22, 1930, to dismiss the case for uncertainty as to the personality of the plaintiff and an alleged inconsistency in the allegations of the complaint and subsequent proceedings with respect to the personality of the plaintiff. This motion to dismiss was granted in an order of the presiding judge on May 29, 1930, and after motion for reconsideration had been interposed, the court amplified said order on July 2, 1930, denying the motion for reconsideration.

We are of the opinion that the motion to dismiss was improperly sustained, and the cause must be returned to the court of origin for a hearing on the merits, with leave to the plaintiff to file an amended complaint and to submit proof in rebuttal, if desired.

We observe that the only effect of the dismissal of the case would be to impose upon the plaintiff the task of filing a new complaint, with the probable result that the whole business would have to be gone over again.

It cannot be fairly said upon this record that the plaintiff is to blame for the many delays that the case has suffered, and especially with reference to the appointment of an administrator of Hermenegildo Nadres, as this individual

was made defendant at the instance of the defendant, and it was in the first place the duty of the defendant to procure said representation to be brought in if necessary for its protection.

We note that it makes no difference whether Lahoz was intended by the court to be substituted for the original plaintiff Marin or whether Lahoz was intended to be brought in merely as an additional plaintiff, since the proper thing to do in the end, would be to award judgment in favor of the real party in interest as might appear from the proof.

It was of course desirable that an amended complaint should have been filed for the addition of Lahoz as a plaintiff, but the parties to the case apparently assumed that he had acquired the status of a party by virtue of the leave granted by the court for him to come in "as plaintiff, and if the defendant had thought it desirable to raise the question over the alleged uncertainty as to the personality of the plaintiff, it would have done well to have raised the question sooner, without going to proof on the merits. There is good reason for holding that the defendant had waived the formal presentation of an amended complaint, and the court at least erred in not conceding to the plaintiff the right to file an amended complaint when attention was called to the state of the record.

The order appealed from is set aside and the cause remanded to the court of origin for further proceedings. So ordered, without costs.

Avanceña, C. J., Johnson, Malcolm, Villamor, Romualdez, Villa-Real, and Imperial, JJ., concur.

OSTRAND, J.: I dissent.

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