

QUINTIN DE BORJA, PLAINTIFF AND APPELLANT, VS. JOSE DE BORJA, DEFENDANT AND APPELLANT.*G.R. No. 42185. September 10, 1935*

Ponente: VICKERS, J.

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This case was assigned to the First Division, and was argued before that division and submitted without objection on the part of counsel for either party. In due course it was considered and decided by a division of three justices of the First Division, but upon motion of the attorney for the defendant the decision was set aside, because it was found that upon computing the amount of rent and other claims allowed the defendant by the lower court the total was in excess of P10,000. It is now suggested by the attorney for the defendant that the case should, because of its nature, be assigned to the Second Division.. We do not agree with that suggestion, because Act No. 4023 provides that in order to attain, an equal distribution of cases between the different divisions, whether of five judges or three judges, the court may order the submission to any of them of any additional cases, within the respective powers of each division as provided in said Act, and in pursuance thereof this court resolved on January 9, 1933 that in addition to the criminal cases assigned by law to the First Division, the said division should consider and decide land registration cases, cases of ejectment and possession of real property, habeas corpus proceedings, and extraordinary legal remedies relating to criminal cases.

Plaintiff brought this action as administrator of the estate of the deceased Marcelo de Borja to recover the possession of the building at No. 1551 Azcarraga Street, Manila, and rent therefor at P30 a month from June 1st, 1921 to November 30th, 1927, and at the rate of P50 a month from December 1st, 1927, to the date of the restitution of the property.

Defendant denied the allegations of the complaint, and in his last amended answer set up two counterclaims: The first, for the rent of a tinaja factory in San Felipe Neri, Rizal, at P200 a month from the 13th of June, 1922 to the 15th of March, 1932, amounting to P23,400; the second, for P5,082.97 as follows: For the funeral expenses of the deceased Marcelo de Borja in the sum of P200; for firewood furnished the plaintiff, P823.02, and for one-third of the advances made by the defendant for the account of the estate of Marcelo de Borja in connection with the registration and administration of the Hacienda de Jalajala, in which the estate of Marcelo de Borja had an undivided one-third interest, P4,059.93. Plaintiff denied the allegations in the answer, and alleged as special defenses to the two counterclaims that any right of action which the defendant may have had with respect thereto had already prescribed; and that the claims of the defendant had already been litigated and disallowed, and were therefore res adjudicata, with the exception of the item of P4,059.93 for advances in connection with the Hacienda de Jalajala.

At the trial of the case the defendant maintained that his father, Francisco de Borja, was occupying the building at 1551 Azcarraga Street, Manila, and that he, the defendant, had no liability therefor.

The lower court found, however, that the building in question was occupied by the defendant, and that he was

liable to the plaintiff for rent therefor at the rate of P30 a month; that the rent had been paid by the defendant up to January 31, 1927, The lower court overruled plaintiff's defenses to defendant's counterclaims, and ordered the plaintiff to pay the defendant P200 a month for the tinaja factory from December 7, 1927 to March 15, 1932; P200 for the funeral expenses of Marcelo de Borja; and the sum of P4,059.93 for advances made by the defendant on, account of the expenses of registration and administration of the Hacienda de Jalajala. Both parties appealed.

Plaintiff alleges that the lower court erred: (1) "Al considerar las pruebas del demandado Jose de Borja mas dignas de fe que las pruebas presentadas por el demandante Quintin de Borja; (2) al declarar que los alquileres de la finca No. 1551 de la calle Azcarraga, Ciudad de Manila, ahora en cuestion, eran P30 al mes solamente, hasta la fecha, no obstante las pruebas concluyentes del demandante de que dichos alquileres se habfan aumentado de P30 a P50 al mes, desde el dia 1.º de diciembre de 1927; (3) al declarar que el cheque de fecha 31 de enero de 1927, expedido por Jose" de Borja a favor del demandante Quintin de Borja, por la cantidad de P2,730, era pago de alquileres de la accesoría ahora en cuestion, en vez de declarar que era uno de los cuatro pagos parciales hechos por el demandado al demandante, a cuenta del importe de tres remesas de arroz, por valor total de P4,690; (4) al declarar que las reclamaciones hechas por el demandado Jose" de Borja en sus dos reconvencciones no han pasado a la categoria de cosa juzgada; y al no declarar que ya han prescrito; (5) al dictar decision condenando y ordenando al demandante Quintin de Borja a pagar al demandado Jose de Borja la cantidad de P200 al mes, por el arrendamiento de la fabrica de tinajas, descrita en la contestacion,, a partir del 7 de diciembre de 1927 hasta el 15 de marzo de 1932; asi como la suma de P200 por los gastos de entierro y funeral de Marcelo de Borja; la cantidad de P823 por leñas suministradas al demandante; y la suma de P4,059.93, por abonos hechos por el demandado en los gastos de registro y administracion de la hacienda de Jalajala, y a pagar las costas del juicio."

The defendant makes the following assignments of error;

"I. El Juzgado inferior err6 al no estimar que el demandado dejo de ocupar el local objeto de la demanda desde a fines del ano 1922 en que su padre Francisco de Borja comenz6 a ocupar dicho local, y al condenar al demandado a pagar alquileres por la ocupacion de la accesoría No. 1551 de la calle Azcarraga, Manila, a razon de P30 mensuales desde el mes de febrero de 1927, hasta que sea firme la decisi6n.

"II. El Juzgado inferior err6 al no estimar que los alquileres de la finca objeto de la primera reconvenccion"n han devengado desde el 14 de agosto de 1922, cuando menos.

"III. El Juzgado inferior err6 al estimar que el demandante s6lo debe pagar a favor del demandado los alquileres de la finca objeto de la primera reconvencci6n desde el 7 de diciembre de 1927, a razon de P200 al mes."

After considering the evidence and the arguments of counsel, we accept the findings of the trial judge as to plaintiff's claim against the defendant, except as to the rent to be paid by the defendant from December 1, 1927. It appears from Exhibit A-1 that in November, 1927 plaintiff's attorney wrote to the defendant demanding payment of the amount due for rent, and notified the defendant that from December 1, 1927 he would have to pay rent at the rate of P50 a month, and that he should vacate the building if he did not wish to pay the increased rent. Defendant replied on November 22, 1927, stating that he had no objection to the payment of the rent for the building which he was occupying, provided the administrator would submit a detailed statement of the rent due with a view of liquidating defendant's claims against the administrator. Defendant did not object to or make any mention of the increase in the monthly rental. This failure of the defendant to object to the increase in the rent amounted to a tacit acceptance thereof. We find therefore that the plaintiff is entitled to recover from the defendant rent at the rate of P30 a month from February 1, 1927 to November 30, 1927, and at the rate of P50 a month from December 1, 1927 until the building is restored to the possession of the plaintiff.

As to defendant's counterclaim of P23,400 for rent of the tinaja factory, we find that this claim was set up by the

defendant in civil case No. 3809 of the Court of First Instance of Rizal between the present parties; that it was disallowed by the trial judge; that both parties appealed to this court, and that the decision of the lower court was affirmed in G. R. No. 34478 x (Exhibits C and D). It was not for the lower court, nor is it for us, to inquire at this time as to whether or not that case was correctly decided.

Defendant's counterclaims for the funeral expenses of Marcelo de Borja and for firewood furnished the plaintiff were also included in case No. 3809 of the Court of First Instance of Rizal and are likewise res adjudicata.

The only remaining item in the second counterclaim of the defendant is that of P4,059.93 for one-third of the net balance due him for advances made to the Hacienda de Jalajala in the sum of P28,183.97, after deducting his indebtedness of P16,004.17. The complaint in this case was filed on December 23, 1927, but the particular claim now in question was not set up by the defendant until he filed his amended answer on January 21, 1932. It was not included in case No. 3809 hereinabove mentioned.

The evidence for the defendant in, support of this claim consists principally of the testimony of the defendant himself and that of the overseer of the hacienda, Juan B. Angeles, and the typewritten financial statements for the years 1921 to 1926, which the overseer claims to have prepared about February, 1927, and the checks and receipts evidencing some of the payments in question. According to Exhibit 7-a the defendant bought firewood from the hacienda as follows:

1922-1923 P5,106.93

1923-1924 6,373.06

1925-1926 4,524.18

Total 16,004.17

The overseer did not explain, why he failed to show the alleged purchases of the defendant for each calendar year. During this period the defendant paid to the overseer or for the account of the hacienda various sums amounting to P28,183.97, leaving a balance in favor of the defendant of P12,179.80. No dates are given in the statement showing when the payments were made nor is the statement itself dated. The following payments are not evidenced by any receipts:

Recibidos a cuenta P2,628.67

Entregado a G. Borja para maquinilla 200.00

Entregado a Sumtilong el 1925 2,000.00

Notas taquigraficas 301.60

Impresion 80.00

Gregorio Borja 2,014.22

The dates of the other payments are as follows:

May 31, 1923—Amillaramiento de 1923

P4,671.37

May 16, 1924—Materiales telefono

364.40

May 31, 1924—Amillaramiento de 1924

4,671.37

Aug. 1, 1924—Entregado a Tio Nando para entregar al Sr. Sumiilong

500.00

Dec. 10, 1924—Derechos del registro de la hacienda

500.00

June 1, 1925—Amillaramiento de 1925

4,571.37

July 1, 1925—Amillaramiento de 1925 (shortpaid by)

100.00

Dec. 22, 1925—Derechos del sheriff

P170.00

Do—Demanda, copias certificadas y roneo

48.00

Do.—Derechos del sheriff

75.00

Do—Roneo y sheriff

16.00

June 1, 1926—Amillaramiento de 1926

4,671.37

Aug. 6, 1926—Entregado a Lavides

600.00

With respect to the item of P2,628.67 for payments made to the overseer, the evidence is conflicting. While Angeles claims that no receipts were issued, the defendant contends that the receipts were handed by him to Angeles. As to the item of P200 for a typewriter delivered to G. de Borja, it appears that this expenditure was not made for the benefit of the hacienda as a whole, but for the personal use of G. de Borja. Respecting the item of P2,014.22 paid to Gregorio de Borja, it is contended by the defendant and the overseer that this item is erroneous; that the sum paid was P2,000, and that it was paid to A. Zamora, who surveyed the hacienda.

The evidence shows that Francisco de Borja, the father of the defendant and one of the co-owners of the hacienda, was the manager thereof from the time the hacienda was bought in 1918 until an extrajudicial partition was made in 1927; that Juan B. Angeles was the overseer under Francisco de Borja, and that the plaintiff Quintan de Borja, the administrator of the estate of Marcelo de Borja, had no part in the management of the hacienda. According to the testimony of Angeles, Quintin de Borja protested when he was furnished a copy of the reports in question on

the ground that they were not complete, that they did not include the full period during which Francisco de Borja had been manager. Angeles admitted that during the period from 1921 to 1926 the hacienda produced palay, maize, sugarcane, and other products, but that the value of these products was not included under the heading of receipts or ingresos, because Bernardo de Borja, one of the co-owners, ordered these products to be sent to him in Pateros, and that in fact he shipped the palay to Bernardo de Borja during these years, but that he did not know how much palay was sent to Bernardo de Borja, because the books had been destroyed by fire. The evidence shows, however, that the lire in question did not occur until March, 1931, while the statements or reports in question were prepared according to Angeles in February, 1927. Angeles further testified that he did not know whether or not Quintin de Borja received any part of the palay sent to Bernardo de Borja. The foregoing is sufficient to show that the reports of Angeles in question are incomplete and unreliable even as to the period during which he was the overseer of the hacienda.

Case No. 3809 (G. R. No. 34478), between Quintin de Borja and Jose de Borja, which has already been mentioned, was filed in the Court of First Instance of Rizal on December 23, 1927. The defendant filed his answer on January 28, 1928, and set up therein the other counterclaims which we have already discussed, and on October 21st he filed an amended answer, but neither in his original nor in his amended answer did he include the counterclaim now in question.

It appears that an extrajudicial partition of the Hacienda de Jalajala was made in 1927, and if the estate of Marcelo de Borja owed defendant P4,059.93 as evidenced by the overseer's statement, Exhibit 7-a, made in February, 1927, why did the defendant not set up a claim therefor in case No. -3809? There is no explanation in the record of defendant's failure to set up the present claim in that case. Plaintiff's attorney contends that defendant's right to recover the sum in question has prescribed¹, even if it be true that the payments were made as alleged, because they were made more than six years prior to the filing¹ of defendant's claim therefor. Defendant's attorney replies that his client could not demand payment earlier because his account with the hacienda had not been liquidated. There is obviously no merit in the contention of defendant's attorney. In the first place a liquidation could have been made at any time, and in any event should have been made at the end of each calendar year. In the second place, if we are to believe the overseer, the liquidation was in fact made in February, 1927. As to plaintiff's defense of prescription, although it is true that most of the payments in question were made more than six years prior to the filing of defendant's counterclaim, we prefer to rest our rejection of defendant's counterclaim upon other considerations hereinafter to be set forth.

Furthermore, the present case was filed in the Court of First Instance of Manila on December 23, 1927. The defendant filed his answer on April 16, 1928, and included therein the other counterclaims which we have discussed, but did not include his present claim for advances made to the Hacienda de Jalajala. It was only on January 21, 1932 that the defendant set up the present claim by means of an amended answer. The fact that the defendant did not include the sum now in question in his original answer of April 16, 1928, but set it up only in his amended answer, of January 21, 1932 is significant. On October 29, 1931 judgment was rendered in pursuance of an agreement between the parties in case No. 4565 of the Court of First Instance of Rizal between Quintin de Borja as administrator of the estate of the deceased Marcelo de Borja as plaintiff, and Francisco de Borja and Bernardo de Borja as defendants. in the agreement between the parties in that case it was provided that the proportional part of P12,000 corresponding to Quintin de Borja, Juliana de Borja, and Crisanta de Borja which the attorneys Sumulong and Lavides were trying to collect as fees, or P3,000,, should be paid by Francisco de Borja; and that Quintin de Borja as administrator of the estate of Marcelo de Borja waived his right to require Francisco de Borja and Gregorio de Borja, the latter in substitution of the deceased Bernardo de Borja, to account for the third part of the products of the Hacienda de Jalajala from 1918 to the date of the agreement, October 27, 1931. The stipulation in question is as follows:

"3. Que la parte proporcional que debe corresponder a Quintin de Borja, Juliana de Borja y Crisanta de Borja de la cantidad de P12,000 que los abogados Sumulong y Lavides tratan de cobrar en concepto de honorarios de las partes en este asunto, o sea tres mil pesos, mil pesos para cada uno de los cuatro herederos de Marcelo de Borja, debe ser pagada por el demandado Francisco de Borja.

"4. Que el demandante Quintin de Borja, en su concepto de administrador de los bienes dejados por el finado Marcelo de Borja, renuncia a su derecho como tal administrador, de exigir a los demandados Francisco de Borja y Gregorio de Borja, en sustitucion este ultimo de Bernardo de Borja, la rendencion de cuentas sobre los productos de la tercera parte de la Hacienda de Jalajala, correspondiente al intestado de Marcelo de Borja, desde el afio 1918 hasta la fecha, la cual renuncia se hace con la conformidad de los herederos de este finado llamados Juliana de Borja, Crisanta de Borja y del mismo Quintin de Borja."

In the present case Francisco de Borja, father of the defendant and manager of the Hacienda de Jalajala, testified that from 1918 until 1928 he ceased to have a current account in any bank in his own name; that his money was deposited in the name of his son, the defendant Jose de Borja, and that it was under the care and management of his son, who issued checks in his own name. The defendant himself testified that he kept his father's money, and that he was in charge of his father's funds in the banks from 1915 or 1916 until 1928, and that he, Jose de Borja, did not have any current account separate from that of his father. In view of the foregoing we are satisfied that the payments now in question made by Jose de Borja in his own name for the benefit of the Hacienda de Jalajala were not made by him from his personal funds, but from funds belonging to his father, the manager of the hacienda, because the defendant handled his father's money and deposited it in the banks in his own name and issued check against it. The defendant was not the manager or a coowner of the Hacienda de Jalajala, and there was no reason why he should make any advances for the benefit of the hacienda. It does not appear that he was requested or authorized by the owners of the hacienda to make the payments in question. It is too much to expect us to accept defendant's contention that he made the advances in question out of his personal funds merely because he had bought firewood from the hacienda. He could have ascertained at any time the status of his account and made a settlement. It was quite unnecessary, and is incredible, that he should overpay his account by P12,000. There is no doubt in our minds that the advances in question were made out of funds belonging to Francisco de Borja as the manager of the hacienda, who, together with Bernardo de Borja and Gregorio de Borja, received the products of the hacienda, which has an area of four thousand hectares from 1918 to 1931, but failed to account for them to the plaintiff. It was obviously the intention of the parties to settle all claims relating to the management of the hacienda in the agreement made in case No. 4565 of the Court of First Instance of Rizal. It is true that the defendant herein was not a party to that case, and claims to have left the courtroom before the decision was dictated, but the defendant is a son of one of the defendants in that case and a lawyer, and was present in court when the case was being tried. After the judgment became final and executory in that case and Quintin de Borja had waived his right to require Francisco and Bernardo de Borja to account for the products of the hacienda, and any claim of Francisco de Borja for advances to the hacienda was barred, the defendant herein, the son of Francisco de Borja, made a claim for these advances for the first time.

Defendant's counterclaim for the sum of P4,059.93 is therefore disallowed, and the decision of the lower court as to all of defendant's counterclaims is reversed.

The defendant is ordered to restore to the plaintiff possession of the building at 1551 Azcarraga Street, Manila, and to pay him rent therefor at the rate of P30 a month from February 1, 1927 to November 30, 1927, and at the rate of P50 a month from December 1, 1927 until said building is vacated by the defendant, with legal interest from the date of the filing of the complaint on the amount then due, and on the other amounts from the dates when they respectively fell due. The plaintiff is absolved from the counterclaims of the defendant.

As thus modified, the decision appealed from is affirmed, with the costs of this instance against the defendant.

Avanceña, C.J., Abad Santos, Hull, and Diaz, JJ., concur.

Judgment modified.

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