

**MATIAS DE LOS SANTOS ET AL., PLAINTIFFS AND APPELLANTS, VS.
THE PROVINCIAL SHERIFF OF RIZAL, HIS DEPUTIES AND
DELEGATES, RAFAEL LARA, EDUARDO TATCO, AND THE BANK OF
THE PHILIPPI...**

G. R. No. 43412. March 12, 1937

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

Four complaints were successively filed in this case. Demurrers were interposed and sustained as to each of the first three complaints: the original, and the second and third amended complaints. Upon petition of the defendants, the fourth and last amended complaint was dismissed by the trial court in an order of November 27, 1934, as follows:

"AUTO

"Habiendose presentado la ultima demanda enmendada en esta causa fuera del tiempo fijado por la orden del juzgado de 30 de octubre de 1934, y adoleciendo, ademas, dicha demanda enmendada de los mismos defectos senalados en los demurrers anteriores, se ordena el sobreseimiento de esta causa, sin especial condena de costas. Asi se ordena.

"Pasig, Rizal, I. F., 27 de noviembre de 1934.

(Fdo.) "PEDRO TUASON

"Juez"

It appears that on October 30, 1934, the trial court issued an order sustaining the demurrer to the third amended complaint of October 5, 1934 and directing the plaintiffs to amend the complaint within ten days from receipt of notice of the order. Plaintiffs received notice of the order on November 3, 1934, but filed their last amended complaint only on November 14, 1934, after the expiration of the ten-day period allowed. The trial court committed no error in disallowing the last amended complaint. The Court of First Instance is vested with authority to fix, with or without terms, the time within which pleadings adjudged defective may be amended and, if the party fails to amend his pleadings within the time limited or elects not to amend, to render such judgment upon the subject matter involved as the law and the facts set forth in the pleadings warrant (sec. 101, Code of Civil Procedure; Rule 14 of Courts of First Instance). Under this express power and the incidental power of every court to compel obedience to its judgments, orders, and process in an action or proceeding pending therein (sec. 11, par. 3, Code of Civil Procedure), the trial court is authorized to disregard the pleading filed beyond the period fixed. The last amended complaint of November 14, 1934, having been filed out of time and disallowed by the lower court on that account, the order of November 27, 1934 dismissing the case should be interpreted to refer to the

third amended complaint of October 5, 1934, demurred to by the defendant on October 29, 1934, which demurrer was sustained by the trial court on October 30 following, and duly excepted to by the plaintiffs.

The question now to be determined is whether the court erred in sustaining the demurrer to the third amended complaint of October 5, 1934. The grounds of the demurrer were: (a) ambiguity, (b) failure to state facts sufficient to constitute cause of action, and (c) defect of parties. As to the first ground, we hold that the allegations are sufficiently clear and definite as to give the defendants notice of what the plaintiffs are complaining against them. Not only the specific wrong complained of but also the particular acts constituting the same are intelligibly stated. The damages which the plaintiffs demand for the alleged invasion of their property rights have been fixed at P150,000. The defendants cannot be misled in making their defense, and the court may render a definite judgment upon the subject matter involved. "While a complaint may be awkwardly drafted, and for this reason be subject to criticism with respect to incidental particulars, it will be held sufficient if it fairly apprises the defendant of the plaintiff's real claims and contentions in such manner that the defendant is not misled to his surprise or injury." (Lizarraga Hermanos vs. Yap Tico, 24 Phil., 504.)

Neither is there good ground for the general objection based on insufficiency of facts. The plaintiffs allege that they and their predecessors in interest have been in the peaceful and continuous possession, in good faith and under a claim of ownership, of the two parcels of land described in the complaint even before 1890 (par. 2, B. E., p. 22) ; that they have constructed on said lands about 150 houses belonging to them, and have made other improvements thereon consisting of fruit trees, cane, palay and other plantations (par. 3, B. E., p. 23); and, that the defendants, in conspiracy with one another, were demolishing said 150 houses of the plaintiffs and were destroying the other improvements on the land thereby causing to plaintiffs damages amounting to P150,000 (par. 4, B. E., p. 23). It is further alleged that the parcel of land over which the defendants might levy on execution by virtue of the final judgment in the case of Bank of the Philippine Islands vs. Acuna (59 Phil., 183), is different from, and not included within any portion of, the two parcels of land claimed by the plaintiffs in this case (pars. 5 and 6, B. E., pp. 23, 24). These averments, taken for granted in the demurrer, are sufficient to constitute a cause of action. They plainly show the substantial facts which form the basis of the primary right of the plaintiffs and the culpatory acts of the defendants. The rules of pleading limit the statement of the cause of action only to such operative facts as give rise to the right of action of the plaintiff to obtain relief against the wrongdoer. The details of probative matter or particulars of evidence, statements, of law, inferences and arguments need not be stated (Pomeroy, Code Remedies, sec. 420, p. 635; Philips, Code Pleading, sec. 182, p. 163; vide Ortiz vs. Garcia, 15 Phil., 192; Canete vs. Wislizenus and Serna, 36 Phil., 428, 432; La Insular vs. Jao Oge, 42 Phil., 366, 372; Valmiller vs. Kong Chang Seng, 33 Phil., 84; Bank of the Philippine Islands vs. Laguna Coconut Oil Co. and Fidelity and Surety Co., 44 Phil., 618; Robinson vs. City of Glendale, 182 Cal., 211; 187 Pac, 741).

The contention of the defendants that the plaintiffs should set forth the specific extent of their respective shares in the parcels of land claimed by them as well as the specific nature of their title is not well taken. They are merely matters of evidence which the plaintiffs, under the rules herein above referred to, need not allege and which they may prove at the trial on the merits in support of their claim of ownership. A general allegation of ownership is a sufficient averment of the ultimate fact, and a complaint containing it sufficiently pleads plaintiff's ownership (Robinson vs. City of Glendale, 182 Cal., 211; 187 Pac, 741, 742; Payne vs. Treadwell, 16 Cal., 243; Fudickar vs. East Riverside, etc., Co., 109 Cal., 36; 41 Pac, 1024; Hooser vs. Miller, 77 Cal., 193; 19 Pac, 375; Johnson vs. Vance, 16 Cal., 130; 24 Pac, 863; Gray vs. Walker, 157 Cal., 384; 108 Pac, 278; Shurtleff vs. Kehrer, 163 Cal., 26; 124 Pac, 724). The defendants can not be permitted to vary the areas of the lands claimed by the plaintiffs and the amount of damages sought to be recovered in the action. The defendants by demurring to the amended complaint in question can not change or set out new facts. The facts involved in a demurrer are only those set out in the pleading demurred to, and the demurrer merely raises a question of law as to the insufficiency of those facts

to constitute a cause of action. The defendants assume pro re nata the truth of the plaintiffs' allegations and submit to the court the question of law whether they are obliged to proceed further in the suit upon the assumed state of facts (Sutherland, Code Pleading and Practice, sec. 237).

As regards the defendants' claim of defect of parties, it is sufficient to state that "when a demurrer is presented for a defect or misjoinder of parties and the court finds upon examination of the petition that the demurrer is well founded, it is its duty not to dismiss the action but to order the inclusion in the case of a defect of parties and the exclusion in the case of a misjoinder of parties." (Sanchez vs. Court of First Instance of Rizal, 40 Phil., 155, 159.)

In view of the foregoing, the order appealed from is reversed and the cause is hereby remanded to the trial court, with instruction that the defendants be required to answer the third amended complaint presented on October 5, 1934 within ten days from receipt of notice of this decision and the case thereafter allowed to take its ordinary course in accordance with law. So ordered.

Avancena, C. J., VillaReal, Abad Santos, Diaz, and Concepcion, JJ., concur.

CONCURRING

IMPERIAL, J.,

I concur in the result but I do not agree to the ground upon which it is based. It is stated that as the third amended complaint (not the fourth amended complaint because there were only three amended complaints, the first complaint being the original) was correctly and legally rejected by the court upon the ground that it was filed out of time, it should be interpreted that the appealed order of November 27, 1934, in dismissing the case, referred to the second amended complaint of October 5, 1934, the demurrer to which was sustained in the order of October 30th of said year. I do not adhere to this reasoning because a pleading which was not under consideration by the court, having been substituted by another, is revived thereby and because the appeal is directed against an order which is not the one really appealed from, although it is true that it was excepted to.

When a demurrer to a complaint is sustained and an amended complaint is filed after the order sustaining the demurrer has been excepted to, it is the amended complaint and not the original complaint that is before the court because the latter has been replaced by the former, and the original complaint so replaced does not form a part of the record (Reynes vs. Compania General de Tabacos, 21 Phil., 416; Redell vs. Baltimore, etc., R. Co., 245 Fed., 788; U. S. vs. Gentry, 119 Fed., 70; Lasky vs. Newtown Min. Co., 56 Fed., 628; Barnes vs. Union Pac. R. Co., 54 Fed., 87; Cramer vs. Mack, 12 Fed., 803). Under this principle of procedural nature, it appears that this court cannot base its decision upon the sufficiency of the allegations of an amended complaint which before the law has been replaced by another amended complaint, no longer forms a part of the record and is not the basis of the appealed order of November 27, 1934. To so proceed would be to change entirely the appellants' theory inasmuch as their appeal would then be directed against the order of October 30, 1934, instead of that of November 27th of said year, which is really the order appealed from and disputed by the parties.

The decision is based upon the theory that as the third amended complaint had been filed out of time and had not been admitted by the court, this pleading is but a mere scrap of paper and it has no legal existence in the record. The fact, however, is that the pleading was attached to the record and the rejection thereof by the court was decreed subsequently. If the negligence incurred by the party which presented it out of time is excusable and the allegations thereof constitute a cause of action, the decision rendered by this court, reversing the appealed order, must be based upon the sufficiency of the allegations of said pleading.

Referring now to the filing of the third amended complaint, it appears that said complaint was filed on the day following the expiration of the period of ten days fixed by the court. Although I agree that the court had discretionary power to dismiss the case on the ground that the third amended complaint was presented out of time, I am of the opinion that it should not have done so because, after all, only one day of delay had elapsed. Section 127, paragraph 3, of the Code of Civil Procedure provides that the court may dismiss an action when the plaintiff fails, for an unreasonable length of time, to prosecute his action. I am of the opinion that the one day that elapsed in this case can not be considered an unreasonable length of time.

With respect to the sufficiency of the third amended complaint, I understand that the allegations thereof constitute sufficient causes of action as stated in the decision, referring to the allegations of the second amended complaint. In fact the allegations of both pleadings are virtually the same, for which reason the respondents-appellees insisted that their last demurrer should likewise be sustained.

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