

RICARDO CARREON, JUDICIAL ADMINISTRATOR OF THE INTESTATE ESTATE OF THE DECEASED CONCEPCION GERONA, PETITIONER, VS. M. BUYSON LAMPA, JUDGE OF FIRST INSTANCE OF ILOILO; LUCIO LACS...*G. R. No. 45125. September 17, 1936*

Ponente: IMPERIAL, J.

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The petitioner, as judicial administrator of the intestate estate of the deceased Concepcion Gerona, filed this petition for certiorari to set aside the order of the Court of First Instance of Iloilo, dated February 26, 1936, granting the motion of February 5th of said year and ordering the cancellation of the allegations contained in paragraph 22 of the third amended complaint filed in civil case No. 9137 of said court, and to compel the respondent judge to permit the parties to present evidence relative to the value of the fruits and rentals of the lands which are the subject matter of the action.

The above-stated case was instituted by the petitioner against the respondents, with the exception of the judge, to recover the possession of the undivided half of the real properties described in paragraph 2 of the amended complaint. In the latter the petitioner alleged that the intestate estate of which he was administrator was likewise entitled to the rentals and fruits of the real properties claimed by him and that the respondents-defendants had illegally appropriated them, for which reason he stated in paragraph 20 thereof that he had the right to demand an accounting of said rentals and fruits from the respondents in order that the court might render judgment for their entire value in his favor. Several hearings on the case were held and in one of them the attorney for the petitioner attempted to prove by means of a witness the value of the rentals and fruits of the real properties, which the respondents had received and refused to turn over to the petitioner. The attorney for the respondents-defendants objected to the evidence on the ground that it was premature and that it would engender delay in the trial and determination of the case, because they would also be compelled to present evidence on the value of the improvements made by the respondents-defendants on the lands. He stressed the fact that the petitioner had asked that the respondents- defendants render an accounting of the rentals and fruits received by them and that the petitioner was not entitled to present evidence tending to show the value thereof until the accounting is submitted and questioned. The court sustained the objection and the attorney for the petitioner did not insist. The petitioner later presented his second amended complaint, alleging in paragraph 20 thereof that the value of the rentals and fruits of the properties in Occidental Negros received by Ignacio Arroyo from 1895 to 1924 amounted to not less than P200,000 and that the value of said rentals and fruits received by Mariano B. Arroyo and the testate estate of Jose M. Arroyo from the year 1925 to 1935 was not less than P700,000; that the rentals and fruits of the properties in the Province of Iloilo, which were received by Ignacio Arroyo, amounted to not less than P100,000, and asked that the pleading be admitted. Upon the resumption of the trial and before the second amended complaint was admitted, the court became aware that the Beaterio del Santisimo Rosario de Molo and the municipality of Iloilo, as donees, ,s were necessary parties in this pleading but, in spite thereof, they were not joined as defendants. To

cure the defect, it ordered the attorney for the petitioner to amend his amended complaint by joining said entities as defendants, and the trial was again postponed. The attorney for the petitioner filed his third amended complaint, dated January 20, 1936, reproduced in paragraph 22 the allegations relative to the value of the rentals and fruits of the real properties during the entire period of time that they were in the possession of the respondents-defendants and their predecessors in interest, joined the two entities above-stated as new defendants and applied for the admission thereof. He served the attorney for the respondents-defendants with a copy of the pleading with a notice at the foot thereof to the effect that on the following Saturday, January 25, 1936, he would ask the court to admit the third amended complaint in question. The court admitted this pleading without any objection on the part of the attorney for the respondents-defendants. After the admission of the third amended complaint, the attorney for the respondents-defendants, in a motion of February 5, 1936, asked for the rejection of paragraph 22 thereof on the grounds already stated. The court, in an order of February 26 of said year, granted the motion and directed the cancellation of the allegations of said paragraph 22 of the third amended complaint, reiterating its resolution that the petitioner could not introduce evidence on the value of the rentals and fruits until the case is determined and it is decided that the account should be rendered.

The petitioner does not claim that the court lacked jurisdiction or exceeded it in issuing the disputed order but alleges that it abused its discretion in ordering the cancellation of paragraph 22 of the third amended complaint and in preventing him from presenting evidence to show the value of the rentals and fruits, as specified in said paragraph 22. The respondents, particularly the defendants, claim the contrary and furthermore insist that the third amended complaint was approved surreptitiously because the petitioner's attorney did not previously obtain permission to present it; that had the petition been presented in said sense, the attorney for the respondents-defendants would have been aware of the nature of the amendment and would have objected to the admission of paragraph 22; that the court acted correctly in ordering the cancellation of the amendment because it is not authorized by article 110 of the Code of Civil Procedure, and if the amendment and the presentation of evidence in support thereof is permitted, the respondents-defendants would likewise be entitled to introduce evidence on the improvements alleged by them in their answers, all of which would cause unnecessary delay in the determination of the case and also prevent the termination and filing of the intestate proceedings of the deceased Ignacio Arroyo and Jose Ma. Arroyo.

It is well settled in this jurisdiction that the remedy of certiorari lies when it appears that the court, which has issued the order in question, has abused the discretion conferred upon it by the law, although it has acted with jurisdiction and has not exceeded its authority in the exercise thereof (sec. 217 of the Code of Civil Procedure; *De Castro and Morales vs. Justice of the Peace of Bocaue*, 33 Phil., 595; *Valdez vs. Querubin*, 37 Phil., 774; *Leung Ben vs. O'Brien*, 38 Phil., 182; *Salvador Campos y Cia. vs. Bel Rosario*, 41 Phil., 45; *Larrobis vs. Wislizenus and Smith, Bell & Co.*, 42 Phil., 401). Consequently, the question to be decided is whether or not the court abused its discretion in issuing the order of February 26, 1936, directing the cancellation of the allegations contained in paragraph 22 of the third amended complaint and prohibiting the attorney for the petitioner from presenting evidence in support thereof. This court holds the affirmative. Under section 110 of the Code of Civil Procedure, amendments for the purpose of correcting an erroneous allegation or a mistake in the allegation are permissible, and section 105 provides that a supplemental complaint may be presented for the purpose of alleging material facts occurring after the filing of the original complaint. Both amended and supplemental complaints should, of course, be filed at any stage of the trial but before final judgment is rendered. In the first amended complaint, the petitioner had already alleged that as administrator he was likewise entitled to the rentals and fruits produced by the real properties in question during the entire period that they were in the illegal possession of the respondents-defendants; that, notwithstanding the demands made of them, the latter refused to pay for or to turn them over to him, and that, not knowing their true value, the respondents-defendants should be compelled in the

judgment to render an accounting thereof. In the course of the trial, the attorney for the petitioner discovered evidence tending to establish the amount of said rentals and fruits for which reason, he filed the second and third amended complaints alleging the value of said rentals and fruits, and, by way of a remedy, he asked that judgment be rendered for the entire value thereof. In view of this, it appears evident that the third amended complaint, whether considered as an amendment or as a supplemental complaint, should have been admitted so that all the controversies raised by the parties in their pleadings might be decided only once and at the same trial. It cannot be successfully alleged that the petitioner had changed his mind or that he had essentially changed the nature of his action on the rentals and fruits, because from the beginning he had already invoked his right to recover the rentals and fruits of the properties or to demand payment of their value of the respondents-defendants. All that happened was that the petitioner discovered evidence showing him the value of the rentals and fruits which he claimed, and it is for this reason that he alleged it in the third amended complaint and abandoned his former allegation that the respondents- defendants were obliged to render an accounting.

It is sound procedural practice to ask for previous permission to present an amended complaint or any other amended pleading, but such technicality may be disregarded in this jurisdiction, and ordinarily the motion is accompanied by the amended complaint or answer, as the case may be, the court generally granting both the permission and the admission of the amended pleading in only one order. In this case, the respondents-defendants cannot complain of any prejudice because their attorney received beforehand notice and a copy of the third amended complaint and it is to be presumed that he had knowledge of its contents when the court admitted it. It is inferred from the foregoing that the third amended complaint was not admitted surreptitiously by the court.

There is not much merit in the contention that if the amendment is accepted and the petitioner permitted to present evidence on the value of the rentals and fruits of the property, the case would suffer much delay and the trial would be indefinitely and unnecessarily prolonged because the respondents-defendants would also present evidence to substantiate their allegations on improvements. If the court were to proceed in accordance with its theory, that is, disregarding the amendment and the evidence on the rentals and fruits, the result would be that if final judgment were rendered in favor of the petitioner after an appeal, the case would have to be tried anew by the same court to compel the respondents-defendants to render an accounting and to give the parties opportunity to present evidence on the exactness thereof. Afterwards any of the parties could again appeal thus implying¹ two appeals. On the other hand, if the evidence on the rentals and fruits and on the improvements is presented now, the court will render only one decision and there would be only one appeal. Neither is the assertion that if the amendment and the presentation of such evidence were permitted, the intestate proceedings of the two deceased would suffer delay because they could not be considered terminated. This court understands that the contrary would happen precisely if the proceeding planned by the court were followed, and the reason is clear because, with the petitioner and two of the respondents-defendants intervening as judicial administrators, the intestate proceedings of which they are functionaries could not legally be considered terminated while the principal case and any of the incidents thereof are pending.

For the foregoing considerations, the order of February 26, 1936, signed by the respondent judge, is set aside and the latter is ordered to admit paragraph 22 of the third amended complaint as well as the other paragraphs with allegations related to those contained therein; to permit the petitioner and the respondents-defendants to present evidence on the value of the rentals and fruits produced by the real properties during the time specified in the third amended complaint, and furthermore, to permit the respondents-defendants as well as the petitioner to present evidence relative to the improvements allegedly made thereon by the former, with the costs of these proceedings to the respondents-defendants. So ordered.

Villa-Real, Abad Santos, Diaz, Laurel, and Concepcion, JJ., concur.

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