

**JOSE MARTINEZ ET AL., PETITIONERS AND APPELLANTS, VS.
SANTOS B. PAMPOLINA, JUSTICE OF THE PEACE OF BINAN, LAGUNA,
CARLOS YOUNG, NEWLAND BALDWIN, AND ADELE C. BALDWIN,
RESPONDENT...**

G.R. No. 45177. April 05, 1939

Ponente: DIAZ, J.

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DIAZ, J.:

A suit for forcible entry and detainer and for the recovery of rents was filed against the petitioners in the justice of the peace court of San Pedro, Laguna, by the respondents Carlos Young, Newland Baldwin and Adele C. Baldwin. They were sued in eleven separate actions (civil cases Nos. 811, 812, 813, 815, 816, 817, 818, 819, 820, 823 and 824), one for each of them, except the married ones who were joined with their respective spouses. In nearly all of them they asked that they be provided with, assessors. The judge of the said court, however, did not mind their petition and proceeded, on the contrary, to hear and decide each of the cases to the end. Believing that they were unfairly treated, the petitioners filed this action for mandamus in the Court of First Instance of Laguna, praying, in the first place, that all the proceedings in the referred to eleven cases be set aside; and, in the second place, that they be given the assessors they had asked for. To this complaint, the respondents Young and Baldwin filed a demurrer, alleging that there had been a misjoinder of petitioners or plaintiffs and of actions, and that the facts alleged in said complaint did not constitute a cause of action. Upon hearing the demurrer, the lower court sustained the same and allowed the petitioners to amend their complaint in order to correct its defects.

The petitioners amended their complaint, but for failure to correct the defect appearing in its original form, another demurrer was interposed to it by the respondents Baldwin and Young. The lower court again upheld the second demurrer and gave the petitioners another opportunity to amend their complaint. In the second amended complaint presented, the petitioners did not allege that they had been sued separately in eleven different cases, as they did in each of the previous complaints, limiting themselves to the statement that they had been sued for forcible entry and detainer and the payment of rents by the said respondents, before the justice of the peace court. In view of this new phase of their last complaint, the respondents' demurrer, based on the same grounds previously alleged, did not prosper.

But, before the case was heard, the respondents asked that the petitioners be ordered to divide their action, each of them exercising that which of right belonged to him, as all of them together did not have the same rights nor the same cause of action. To support their petition, they presented Exhibits A to A-11, which are copies of the decisions rendered by the justice of the peace court of San Pedro, Laguna, in the eleven cases above-mentioned and which show very clearly that each one of them had entirely distinct interests and obligations from the others. The lower court, taking cognizance of the true facts, ordered the petitioners to exercise against the respondents their respective actions, independently one of the other, relying undoubtedly on section 108 of Act No. 190, which provides when and how to require a party to specify clearly its allegations. The petitioners, instead of complying with the order, expressed their election not to change their last amended complaint; and for this reason, the

respondents filed a motion for dismissal, which was granted by the court on February 28, 1936.

We find no error in the proceeding of the lower court for, in reality, the motion of the respondents Young and Baldwin asking the court to order the petitioners to exercise their respective actions independently of one another because they did not have the same interests or the same cause of action, is equivalent to a petition for greater specification, based on said section 108 of Act No. 190, or at least, to a demurrer based on the misjoinder of the plaintiffs. The lower court so held, thereby practically reconsidering its order overruling the demurrer of the respondents, a thing perfectly legal and possible because, like any other court, it had the inherent incidental power to modify and alter its orders, in the interest of justice (sec. 11 of Act No. 190). On the other hand, the law is that when a demurrer to a complaint is sustained by the court, or when the latter orders that the allegations of the complaint be made more specific, and the plaintiff neither amends it to correct its defects nor makes the required specific allegations, the only remedy open is to dismiss the case, as the lower court correctly did (secs. 101 and 127 of Act No. 190; *Marcelo vs. Bermudez and Alcantara*, 38 Off. Gaz., 1612).

Wherefore, we affirm the appealed order dated February 28, 1936, with costs against the appellants. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Laurel, and Concepcion, JJ., concur.

Moran, J., see concurring opinion

CONCURRING OPINION

MORAN, J.,

I agree with the dispositive part. Although the motion for dismissal is not equivalent, in my opinion, to a motion for specification nor to a demurrer, I believe, however, that the same is permissible under the special circumstances of the case, where the plaintiff desires to conceal in his last amended complaint an undisputable fact alleged in his previous complaints, for the deliberate purpose of hiding an error in procedure, which, sooner or later, will be discovered, and which should be corrected as soon as possible to prevent unnecessary delays. The courts should be invested with ample powers to direct the proceedings and lead them toward a quick and efficient disposal of cases.

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