

**JACINTO DEL SAZ OROZCO Y MORTERA AND MARIA PAZ
ALCANTARA, PLAINTIFFS AND APPELLANTS, VS. SALVADOR
ARANETA DEFENDANT AND APPELLEE.**

G.R. No. 45359. April 27, 1939

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

On October 28, 1935, the plaintiffs and appellants filed in the office of the clerk of court of the Court of First Instance of Manila a complaint praying, on the facts alleged therein, that the defendant Salvador Araneta be declared without any right to have, hold or dispose of the shares of stock covered by certificate of stock No. 8357 issued by the Benguet Consolidated Mining Company in favor of the plaintiff Jacinto del Saz Orozco y Mortera, and, consequently, without any right to have, hold or dispose of said certificate of stock; and that they themselves, without the intervention of said defendant Salvador Araneta, be declared entitled to withdraw said certificate of stock from the Bank of the Philippine Islands.

On November 20, 1935 the defendant, through counsel, interposed a demurrer alleging that there was a defect of parties defendant.

After hearing the demurrer, the plaintiffs' opposition thereto and the parties, the court overruled the same, with the defendant's exception.

On December 20, 1935 said defendant filed an answer in which, after denying generally and specifically each and every fact alleged in the complaint and interposing a special defense, alleging that inasmuch as he has no personal right to the aforementioned 11,428 shares of stock of the Benguet Consolidated Mining Company, subject of this action, as he is merely the lawyer of Francisco del Saz Orozco y Lopez, Dolores del Saz Orozco Lopez, and their minor children Felisa, Eugenio, Antonio, Jose Maria, and Carlos, all surnamed Del Saz Orozco Lopez, who are the real parties in interest and who pretend to own the said shares of stock, and that said persons being necessary parties for the full and final determination of the merits of the case, it was necessary that they be included as parties defendant; and prayed that this be done.

Plaintiffs opposed this petition.

After hearing the petition for the inclusion of parties defendant, the opposition thereto, and the parties, the court issued an order dated January 4, 1936 requiring the plaintiffs to amend their complaint within a period of five days by including as defendants Francisco del Saz Orozco Lopez, Dolores del Saz Orozco Lopez, and the minors Felisa, Eugenio, Antonio, Jose Maria, and Carlos, all surnamed Del Saz Orozco Lopez.

From the foregoing order the present appeal has been taken, six errors allegedly committed by the lower court in its order referred to having been assigned, which, however, may be reduced to the sole proposition that the lower court erred in ordering the inclusion of Francisco del Saz Orozco Lopez, Dolores del Saz Orozco Lopez, and the minors Felisa, Eugenio, Antonio, Jose Maria, and Carlos, all surnamed Del Saz Orozco Lopez, as parties

defendant.

It appears from the complaint filed in the present case that the appellant Jacinto del Saz Orozco y Mortera is the registered owner of the 11,428 shares of stock of the Benguet Consolidated Mining Company which are the subject of this suit and are covered by certificate of stock No. 8387 of the aforesaid company, and that appellant, Maria Paz Alcantara, is the attorney-in-fact of the said plaintiff-appellant Jacinto del Saz Orozco y Mortera, and the administratrix of the properties and interests of the latter in the Philippines, and as such attorney-in-fact and administratrix, she was in possession of the aforesaid certificate of stock No. 8387 on or before December 20, 1934, and was consequently in possession of the shares of stock represented by said certificate; that the defendant-appellee Salvador Araneta, without any right to said shares of stock, induced the aforesaid Maria Paz Alcantara to deliver to him said certificate; that later, when required to return the same, said defendant answered that he could not do so, inasmuch as the shares of stock represented by said certificate belonged in naked ownership to some clients of his; that the said appellee, Salvador Araneta, making use of similar means, induced Maria Paz Alcantara to ask for the delivery of said certificate of stock from the Bank of the Philippine Islands, preparing therefor a written communication to said bank with the signature of plaintiff Maria Paz Alcantara and making the latter understand that said certificate was in the hands of the aforesaid bank; that when the bank was required by Maria Paz Alcantara to deliver to her the certificate in question, said bank merely issued a receipt in which it was stated that said certificate was in the possession of the bank at the disposal of the appellant Maria Paz Alcantara and of the defendant-appellee Salvador Araneta in view of the latter's opposition; that Maria Paz Alcantara was not willing to deliver voluntarily to said Bank of the Philippine Islands or deposit therein or with any other person, than the plaintiff Jacinto del Saz Orozco y Mortera himself, the said certificate of stock, nor was she authorized by the plaintiff Jacinto del Saz Orozco y Mortera, of whom she is attorney-in-fact and agent, to make said delivery or deposit with the Bank of the Philippine Islands.

By the demurrer interposed by the defendant, he hypothetically admitted the allegation contained in the complaint that Maria Paz Alcantara is the attorney-in-fact and administratrix of the properties and interests in these Islands of the other plaintiff Jacinto del Saz Orozco y Mortera, who is the registered owner of the 11,428 shares of stock of the Benguet Consolidated Mining Company which appear in certificate of stock No. 8387 issued in favor of said Jacinto del Saz Orozco y Mortera free from any annotation of an encumbrance. And in the answer interposed by said defendant after the overruling of his demurrer, he did not state the nature of the interest which his clients Francisco del Saz Orozco Lopez, Dolores del Saz Orozco Lopez, and the minors Felisa, Eugenio, Antonio, Jose Maria, and Carlos, all surnamed Del Saz Orozco Lopez, have in the said 11,428 shares of stock, opposed to that of the plaintiffs, to show the necessity of making them parties defendant in the litigation.

It being clear from the complaint that the plaintiff Jacinto del Saz Orozco y Mortera, represented by his attorney-in-fact and administratrix of his properties and interests in these Islands, Maria Paz Alcantara, is the registered owner of the said 11,428 shares of stock of the Benguet Consolidated Mining Company with certificate of stock No. 8387, the subject of the complaint, and the nature of the interest which defendant alleges his clients have in the aforesaid shares not being clearly shown, the necessity to compel plaintiffs to include in their complaint said clients of the defendant as parties defendant cannot be determined.

In view of the foregoing, the order appealed from is reversed and it is ordered that the case be remanded to the Court of First Instance of Manila for further proceedings. So ordered.

Avanceña, C. J., Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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