

MIGUELA CABUTIN, ISABELO G. CABUTIN, EUTEQUIA C. VALEN-TINO, ANTONIO CABUTIN, PAS-CUAL CABUTIN, LUCINA CABUTIN AND JOSE CABUTIN, PETITIONERS, VS. GERONIMO AMACIO, AND THE HON. W...

G.R. No. 55228. February 28, 1989

Ponente: PARAS, J.

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PARAS, J.:

This special civil action for certiorari was filed after the respondent Judge denied petitioners' motion for reconsideration of his prior order rejecting said petitioners' plea to allow a second amendment of their complaint. The following pertinent facts can be gleaned from the respective pleadings of the parties.

The petitioners' Parcel No. I is adjacent to private respondent's Lot No. 1, the latter being in the western side of the former. On November 8, 1974, the petitioners filed a complaint for quieting of title with damages against private respondent with the then Court of First Instance of Samar, Branch I, and was docketed as Civil Case No. 5521. After private respondent filed his answer, the petitioners, on January 2, 1975, filed their first amended complaint, the relevant portion of which reads:

"xxx xxx xxx

"4. That while taking advantage of the absence of all the plaintiffs from Pinabacdao, Samar, as they are now all residing at Manila, the Defendant herein, motivated by that unlawful desire to enrich himself at the expense of the herein plaintiffs, fraudulently and in bad faith caused an actual survey of the eastern portion Parcel I, supra, as part of his Lot No. 1 in his PSU?201271 private land survey, thereby encroaching into plaintiffs' property a distance of six (6) meters, more or less, from the row of coconut trees growing on the top of a hill which mark as boundary between plaintiffs' and defendant's property (Lot No.1) x x x" (pp. 79-80, Rollo)

Private respondent moved to strike out said amended complaint but the lower court ruled to allow the same.

On March 2, 1979, Engineer Pablito Eraya was appointed by the lower court as commissioner to survey Parcel Nos. I and II of petitioners and Lot No. 1 of private respondent, and to determine any encroachments as claimed by petitioners. On May 9, 1980, a pre-trial conference was finally held, after several re-schedulings, where respondent Judge issued his pre-trial order. In the course of the trial, Engineer Eraya was presented by petitioners as their second witness. He testified that the western portion of petitioners' Parcel No.I was included in private respondent's survey of his Lot No. 1. Thus, on August 6, 1980 petitioners submitted their "Motion for Leave to Admit Second Amended Complaint" where they sought the changing of the word "eastern" in paragraph 4 of the amended complaint (supra) to "western" so as to make their complaint conform to the evidence presented. A copy of said Motion and Notice of Hearing was personally served upon counsel for private respondent in court on the same day. The Notice of Hearing was addressed to the Clerk of Court with the request that the Motion for Second Amendment be submitted for the lower court's consideration and approval "3-days from receipt of the foregoing motion, or any time earlier upon permission of the Court" (Rollo, p. 20). The lower court refused to grant leave

for second amendment of the complaint in its order dated August 19, 1980, ruling that:

"O R D E R

"To the motion for leave to admit second amended complaint, the Court after a careful and thorough consideration of the reasons relied upon and the opposition registered thereto, finds no justifiable ground to grant the relief prayed for, for the reason that, the amendment sought is already late, would prejudice the rights of the defendant, and moreover it will substantially change the plaintiffs' theory or cause of action.

"The motion is, therefore, denied.

"SO ORDERED." (p. 45, Rollo)

In resolving this case, We shall limit ourselves to the main legal issues raised which may be summarized as follows: 1) whether or not the amendment sought may be permitted under the Rules; (2) whether or not the pre-trial order issued by respondent Judge serves as a bar to any further amendment to the complaint; 3) whether or not petitioners' motion to admit their second amended complaint is a mere scrap of paper due to its fatal defects in its notice of hearing; and 4) whether or not this petition for certiorari is appropriate. We shall dispose of the foregoing issues in the same order.

1. It is contended by the private respondent that the second amendment proposed would necessarily alter the cause of action of petitioners considering that this case had been converted to a boundary dispute by virtue of the amended complaint, which introduced the phrase "encroaching into plaintiffs' property a distance of six (6) meters..." (supra). It is further asserted that to change "eastern" to "western" is "to make a complete and absolute turnabout for those two directions are entirely diametrically opposite each other. (p.133, Rollo). This is not correct.

The amended complaint is clearly one for quieting of title and the petitioners' cause of action has not been changed by it. From the records, it can be gleaned that petitioners' cause of action is anchored on the fact that private respondent caused a survey which included in the latter's Lot No. 1 a portion of the former's Parcel No. I, and that such survey is being used by the latter "in his application for the issuance of an administrative title over the aforescribed properties under his name, as owner, ... consequently, putting a cloud over the title of plaintiffs on their property subject of this suit" (pp. 22-23, Rollo). And as shown above, the amended complaint is one for quieting of title and not one primarily involving a boundary dispute.

Furthermore, it is plain from the allegations of the amended complaint (which private respondent even quoted in his Comment) that petitioners really intended to allege "western" instead of "eastern" when they described their Parcel No. I as "bounded on the North by Swamp; on the East by Lucio Cabutin, on the West by Geronimo Amacio..." (p. 77, Rollo, emphasis supplied). From such description alone, it is undeniably manifest that the extent of the alleged intrusion by private respondent into petitioners' property must have been on the latter's western edge, for to construe otherwise would result to utter absurdity when such could be avoided in the light of certain facts presented elsewhere in the amended complaint. Hence, to change the word "eastern" in paragraph 4 of the amended complaint to "western" would merely be putting into clearer terms one which was already there from the very beginning, though mistakenly expressed, "so that the actual merits of the controversy may speedily be determined, without regard to technicalities, and in the most expeditious and inexpensive manner." (Section 1, Rule 10, Rules of Court). It must be considered that pleadings, as well as remedial laws, should be construed liberally in order that the litigant may have ample opportunity to prove their respective claims, and possible denial of substantial justice, due to technicalities, may be avoided (*Quibuyen v. CA*, 9 SCRA 74; *Lustevco Employees Association-CCLU v. Lustevco, Inc.*, 15 SCRA 660). In this regard, the general rule that amendments to

pleadings are favored (*Torres v. Tomacruz*, 49 Phil. 913; *Cese v. GSIS*, 109 Phil. 306) should come into play; the rule is always in favor of liberality in construction so that the real matter in dispute may be submitted to the judgment of the Court (*Clorox Company v. Dir. of Patents*, 20 SCRA 965). Although the allowance of amendments to pleadings after the case has been set for hearing is discretionary on the part of the respondent Judge, it is Our considered view that such discretion should have been exercised to permit the amendment sought to the end that the dispute between the parties may be resolved on its real facts, thus, accomplishing the objectives of the Rules as quoted above. Indeed, We cannot overemphasize the fact that both the respondent court and the counsel for the private respondent should have realized that the error was merely CLERICAL and NON-PREJUDICIAL to private respondent, if as already stated, an absurdity would be eliminated. Be it noted that private respondent has still a remedy; he can file an amended answer.

Was the Motion for a second amendment filed on time? The answer is in the affirmative. It must be noted that the said Motion was filed at the trial stage of the case, that is, after petitioners' second witness had given his testimony. What is sought to be accomplished by the amendment is the correction of a mistaken allegation pursuant to Section 1, in relation to Section 3, of Rule 10. And under Section 3, amendments to pleadings may be allowed at any stage of the action, even on appeal (*Alonzo v. Municipality of Placer*, 5 Phil. 71; *Uy Hoo and Co., Inc. v. Tan*, 105 Phil. 716). There is no doubt, therefore, that the second amendment was introduced well within the period allowed by the Rules, that is, any time "after the case is set for hearing..." (Sec. 3, Rule 10), provided that it be made with leave of court.

In allowing the second amendment, no substantial damage to private respondent would ensue. He claims that since he has been preparing to meet "the evidence of the plaintiffs on their allegation in their first amended complaint that the encroachments are (sic) on the eastern portion of their Parcel No. I" (p. 91, Rollo) he would be greatly prejudiced. However, if only he considered the complaint in its totality, without any pretense, he would have easily discerned the real intent thereof in the light of the technical description of Parcel No. I as narrated therein (*supra*).

2. The theory advanced by private respondent that the pre-trial order dated May 9, 1980 issued by the respondent Judge, which partly states:

"xxx xxx xxx

"The foregoing shall bind the parties and control the subsequent proceedings of this case." (p. 81, Rollo)
(emphasis supplied)

"xxx xxx xxx

mandatorily bars any subsequent "amendment under unjustifiable circumstances" (p. 123, Rollo), while sound, is misleading. In his effort to justify said theory private respondent invokes the second sentence of Section 4 of Rule 20, to wit:

"x x x Such order shall limit the issues for trial to those not disposed of by admissions or agreements of counsel and when entered controls the subsequent course of the action, unless modified before the trial to prevent manifest injustice." (emphasis supplied)

Private respondent's reliance on the above-quoted Rule is misplaced.

It should be observed that the Rules on pre-trial do not prohibit a subsequent amendment of the complaint after a pre-trial order has been issued by the judge. To forbid the allowance of a succeeding amendment would render nugatory the rules on amended and supplemental pleadings which allow substantial amendments after the case had been set for hearing. And as pointed out earlier, such amendments may even be allowed at any stage of the

action if only to insure "that the actual merits of the controversy may speedily be determined without regard to technicalities, and in the most expeditious and inexpensive manner" (Sec. 1, Rule 10). Therefore, the second amendment should be permitted, notwithstanding the pre-trial order issued by the judge. We should recall that the Rules are meant to assist the parties in securing a just, speedy, and inexpensive resolution of their cases and should then be liberally construed in the interest of justice (Section 2, Rule 1). Besides, clear clerical errors can always be corrected.

3. Private respondent dismisses petitioners' "Motion for Leave to Admit Second Amended Complaint," dated August 3, 1980 as a mere scrap of paper since the Notice of Hearing attached thereto was not addressed to him but to the Clerk of Court and that said notice failed to state the time and place of hearing of the Motion. It is not denied, however, that counsel for private respondent personally received a copy of the Motion and Notice of Hearing on the day it was filed in court.

4. Lastly, it is submitted by the private respondent that this petition for certiorari is not proper since "petitioners used only the words 'abuse of judicial discretion'" (p. 136, Rollo) and not "grave" abuse of discretion. We should not be too legaslitic about this matter. As We have previously held in the case of *Samson v. Yatco*, 1 SCRA 1145, an omission of the phrase "grave abuse of discretion" or "without or in excess of jurisdiction" is not fatal. Such allegations are mere conclusions of law which may be deduced from the averred facts even when not specifically pleaded.

PREMISES CONSIDERED, this Petition is GRANTED. No costs.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

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