

VICTORIANO LAZO Y SINGSON, PLAINTIFF AND APPELLEE, VS. MARIANO N. LAZO ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 6733. March 28, 1912

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

In the present case for recovery of a parcel of land the trial court overruled the demurrer interposed by the defendants to the complaint and decided the suit in the plaintiffs favor. But on appeal to this court the trial court's action in overruling the demurrer was the ground for the first assignment of error.

One of the grounds for the demurrer was the fact that there existed another suit between the same parties, the plaintiff herein being petitioner and the defendants, with many others, opponents in the Court of Land Registration with reference to the same land that is the subject of the complaint.

The trial court merely assigned as ground for overruling the demurrer that it did not consider sufficient the reasons upon which the same was based.

But the appellants in this instance, in arguing this first assignment of error, say:

"It is true that that fact that the first ground of demurrer was the pendency of another action does not appear from the complaint and therefore cannot be alleged in a demurrer as an objection to the sufficiency thereof; but it is also true that the lower court knew of the existence of this fact, for it was in that very court that the case of inscription was being heard, even though by proxy, and in that very court that the action for recovery which is the subject matter of the present proceedings was on trial." (Sixth allegation.)

The court's reasons for overruling the demurrer, based on the pendency of another action, are found in section 91 of the Code of Civil Procedure, according to which the facts in the complaint to which the demurrer is interposed are admitted and, as is pointed out by the appellants in the above quotation from their brief, the complaint states no fact or even makes any allusion to the existence of another suit in the Court of Land Registration.

This admitted, the first assignment of error cannot be considered, and the demurrer was properly overruled.

Yet the appellants say that the pendency of the same litigation over the same subject was a fact that could be understood to be alleged in the complaint, because of the perfect knowledge the plaintiff had and the court also had better than anybody else, for it was then trying the other case in representation of that other court. But the law does not permit this interpretation, as this court said in another case:

"The demurrer to a complaint can have no object other than to raise questions of law upon the facts alleged in the complaint." (Liquete vs. Dario, 5 Phil. Rep., 221, 224.)

And it is improper to proceed by means of presumptions, when the law affords other means to the same end.

"When any of the matters enumerated in section ninety-one do not appear upon the face of the complaint, the objection can only be taken by answer." (Code of Civil Procedure, 92.)'

This is what the defendants appear not to have done. In their answer they do not set up as a defense the pendency of another action entered as a ground for demurrer.

The court, however, seeing that it is a precept of the Code of Civil Procedure that "the provisions of this code, and the proceedings under it, shall be liberally construed, in order to promote its object and assist the parties in obtaining speedy justice" (sec. 2); and seeing moreover that it is of vital concern to the stability of the law that what the res adjudicata covers be declared in a single judgment so that it may produce its far-reaching effects, it is meet that for the sake of justice the case be restored to the status of answer to the complaint and not shut the door upon the parties or fail to bring out before the court the true nature of the action instituted, so that the question of lis pendens involved in the defense and already raised, which is of capital importance in the case, may be decided.

The judgment appealed from is therefore set aside. Let the court order the case to be restored to the status of answer to the complaint and in accordance therewith proceed with the trial according to law, thereby being able to appreciate the validity and force of the evidence adduced and to render a new judgment on the merits of the case; without special finding as to costs.

Torres, Mapa, Johnson, and Carson, JJ., concur.

Moreland, J., dissents.

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