

JOSE ARGUELLES, PLAINTIFF AND APPELLANT, VS. PEDRO SYYAP, SILVINO LIM AND ANTONINO BABASA, AS SHERIFF OF THE PROVINCE OF BATANGAS, DEFENDANTS AND APPELLEES.

G.R. No. 6912. March 30, 1912

Ponente: MAPA, J.

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MAPA, J.:

The complaint presented in this case alleges the following facts:

"I. That the plaintiff is an inhabitant of the Province, of Batangas and a resident of the pueblo of the same name.

"II. That the defendants, Pedro Syyap and Silvino Lim, are residents of the city of Manila and domiciled, the former, at No. 640 Calle Herran, and the latter, at No. 75 Calle Santo Cristo.

"III. That the defendant Antonino Babasa is and has been at all the times hereinafter mentioned, the sheriff of the Province of Batangas, and as such is made a party defendant.

"IV. That the plaintiff and the defendant, Pedro Syyap, on or about November 4, 1908, formed and organized a partnership for the repair of the highway from Batangas to San Jose, of the Province of Batangas, P. I., the award of the contract for which, for the sum of P77,277 Philippine currency, was, on October 20, 1908, made, through public bid, by the provincial board to Hilarion Ramirez, from whom the said partnership, under the name of the plaintiff, acquired it.

"V. That the plaintiff, by reason of his having furnished funds for the partnership mentioned in the next preceding paragraph, had a one-third interest therein, and the defendant, Pedro Syyap, for the same reason, had a two-thirds interest therein.

"VI. That the said partnership formed by and between the plaintiff and the defendant, Pedro Syyap, purchased and acquired, on or about the month of December, 1908, through the said Syyap and with the company's own funds, for the sum of P27,000 Philippine currency, the following property:

"(a) One boiler and one motor, and 25 tons of rails (about 5 miles), 25 pounds to the yard, together with their bolts, spikes, and other appurtenances and accessories.

"(b) One locomotive of six wheels, with 7-inch diameter cylinder, course 12, steel firebox, and brass pipes; capacity of water tank, 150 gallons; diameter of the wheels, 21/42. Two right and two left hand switches, 96 wheels, 46 axles and 96 axle boxes, sufficient for 12 cars.

"(c) A stone crusher, of 125 tons daily capacity, with sieve, and portable breaker 20 by 10 inches.

"(d) A stone-hoist, 24 feet in height, with all the necessary implements for carrying crushed rock.

"VII. That, on or about November 30, 1909, the defendant Silvino Lim sued the defendant Pedro Syyap, in the Court of First Instance of the city of Manila, for the sum of F32,000 Philippine currency, which, as alleged in

the complaint filed in that suit, the said Pedro Syyp owed to the said Silvino Lim, against which demand the said Pedro Syyp made no defense and allowed judgment to be entered against him, in favor of the plaintiff Silvino Lim, for the sum claimed, P32,000 Philippine currency.

"VIII. That, by virtue of the said judgment, a writ of execution was issued by the Court of First Instance of the city of Manila, addressed to the sheriff of the Province of Batangas, P. I., against the defendant Pedro Syyp.

"IX. That the defendant Silvino Lim then indicated to the defendant Antonino Babasa, as sheriff of the said Province of Batangas, the machinery specified in Paragraph VI and belonging to the company formed between the plaintiff and the defendant Pedro Syyp, as being property owned by the said defendant Syyp which could be levied upon by means of the writ of execution above mentioned, notwithstanding that the said Silvino Lim knew perfectly well that the aforementioned property did riot belong to the defendant Pedro Syyp, but to the firm of Argiellles and Syyp.

"X. That the defendant Antonino Babasa, as sheriff of the Province of Batangas, levied upon the said chattels specified in Paragraph VI of this complaint, in compliance with the said writ of execution, and refused to raise the attachment, although he was requested so to do by the plaintiff, who gave notice that the said property did not belong to the judgment debtor, Pedro Syyp, but to the firm of Arguelles and Syyp, in which the plaintiff was a partner.

"XI. That, on or about April 4,1910, the defendant Antonino Babasa, as sheriff of the Province of Batangas, advertised the sale at public auction of the personal property mentioned in Paragraph VI of this complaint, attached by him pursuant to the writ of execution issued against the defendant, Pedro Syyp, as aforesaid; and sold and delivered the said property to the defendant Silvino Lim for the sum of P12,875 Philippine currency.

"XII. That, on the date when the chattels specified in Paragraph VI of this complaint, were attached, the plaintiff, as manager of the firm of Arguelles and Syyp, held possession of the said property and was utilizing the same in fulfillment of the terms of the said contract for the construction of the highway from Batangas to San Jose, mentioned in Paragraph IV of this complaint.

"XIII. That, after the defendant Antonino Babasa, as sheriff of the Province of Batangas, had sold the said personal property described in Paragraph VI of this complaint, to the defendant Silvino Lim, the latter disposed of the same as if it were of his exclusive ownership and leased it to the Government of the Philippine Islands, the said Silvino Lim applying to his own use the whole of the price paid by the said Government for the lease of the personal property referred to.

"XIV. That the attachment of the chattels above¹ mentioned by the defendant Antonino Babasa, and the deprivation of their use by the firm of Arguelles and Syyp, from the date the attachment was served, has caused the plaintiff, as a member of the said partnership, losses and damages to the amount of P50,000 Philippine currency."

And the petition in the complaint is as follows:

"Therefore, the plaintiff prays the court to render judgment by finding that the defendant Silvino Lim only acquired, by virtue of the sale of the said personal property effected by the defendant Antonino Babasa, as sheriff of the Province of Batangas, the right or share therein which belonged to the defendant Pedro Syyp, and that the plaintiff is now the owner of an undivided part of the aforesaid personal property equivalent to the share he had as a capitalist partner in the firm of Arguelles and Syyp; that it determine the present value of the said property, and sentence the defendant Silvino Lim to pay to the plaintiff the proportionate part of such value as corresponds to him, or, in case the said Lim should be unwilling to make such payment, that the court order the sale of the aforementioned personal property and the distribution of the proceeds thereof proportionally between the plaintiff and the defendant Silvino Lim; that it furthermore sentence, severally, the defendant Silvino Lim and the defendant Antonino Babasa to pay P50,000 Philippine currency to the plaintiff

for losses and damages caused him by the illegal attachment of the said personal property in the manner described in this complaint, with the costs."

The defendant Antonino Babasa answered the complaint by denying some of the facts alleged therein, alleging others as a special defense and praying that he be absolved from the said complaint, with the costs of the trial against the plaintiff.

The other two defendants, Silvino Lim and Pedro Syypap, filed a demurrer to the complaint, on the following grounds:

"A. That the plaintiff lacks the legal personality requisite for the prosecution of this action.

"B. That there is a confusion of parties defendant in the complaint.

"C. That the complaint is ambiguous and therefore unintelligible.

"D. That the court lacks jurisdiction to try this case."

By order of February 1, 1911, the court sustained the demurrer upon the first of the grounds alleged therein, declaring the others to be unfounded; and, by virtue of such ruling, allowed the plaintiff a period of fifteen days in which to amend his complaint. The plaintiff duly excepted to this order and, by a written petition of February 11, stated to the court that in his opinion the complaint was not susceptible of amendment and requested that the case be finally decided on its merits. The court, therefore, on January 6, finally dismissed the case, with the costs against the plaintiff, which judgment was duly and opportunely excepted to by the latter.

The legal grounds of the order sustaining the demurrer, are summarized in the following excerpt therefrom, which, copied literally, reads thus :

"In accordance with these allegations, there existed a partnership of a purely civil character, formed by two capitalist partners only, who were the plaintiff, Jose Arguelles, and the defendant Pedro Syypap, and the purpose of which was the repair or construction of the highway from Batangas to San Jose in this province. The said partnership acquired and legitimately became the owner of certain personal property which afterwards the defendant, Antonino Babasa, as sheriff of the Province of Batangas and in compliance with a writ of execution issued by the Court of First Instance of the city of Manila, against the defendant Pedro Syypap and on the asseveration of the other defendant, Silvino Lim, the judgment creditor, that this property belonged to the said judgment debtor, attached the same and sold it at public auction, adjudicating it to the judgment creditor, the said partnership being thus deprived of the use thereof, on which account it is alleged that damages and losses were occasioned in the amount demanded in the complaint. If the said partnership, whose existence must be presumed as continuing, because there is no allegation in the complaint to the contrary, was that which was dispossessed of the personal property in question, obviously it is the partnership itself, and not any of its members in his character as such, which should demand the same and the recovery of possession thereof, because the partnership is a juridical entity completely distinct from the personality of the members constituting it. Therefore, the plaintiff who demands the said property, not as the representative of the said partnership, but in his character of a member thereof, has no legal personality whereupon to sustain his claim."

We do not believe this conclusion of the judgment appealed from to be well founded. The question of the personality of a plaintiff refers, and can only refer, to the qualifications necessary in order that he may appear in a trial, or to the character or representation under which the suit is brought. It is not necessary to treat of this last point in the present case, inasmuch as the plaintiff does not file the complaint in representation of another person, but in his own name. It is true that in the body of the complaint the plaintiff speaks of the partnership formed between himself and the defendant Pedro Syypap, of the acquisition by the said partnership, and with its own funds, of the property which afterwards was attached and sold by the sheriff of the Province of Batangas as

exclusively belonging to the said Syyp, and of the fact of the aforementioned partnership being deprived of the use of the property in question, in consequence of that sale; but said plaintiff does not in fact exercise any action in the name of the partnership before mentioned, nor does he ask for anything in its behalf. The partnership is not the plaintiff, nor does it appear as such in this suit; its name does not figure in the title of the case, neither does the complaint contain any petition whatsoever in favor or benefit of such partnership. All that the plaintiff asks, he asks for himself; he brings an action of his own and demands a right which he considers to be a personal right of his own and the payment of sums which in his opinion were owing to him personally, also.

"That the court find that the plaintiff is now the owner of an undivided part of the property mentioned in the complaint * * *; that it sentence the defendant, Silvino Lim, to pay to the plaintiff the proportional part corresponding to him of the value of said property * * *; that it further sentence, jointly, the defendant, Silvino Lim, and the defendant Antonino Babasa to the payment of P50,000, Philippine currency, for losses and damages caused to the plaintiff * * *."

Such are the fundamental petitions made in the complaint and all of them, as is seen, in the plaintiff's own name and for the plaintiff himself. Accordingly, the plaintiff brought the action in the exercise of the direct and personal right he had to appear in a trial, and, therefore, the whole question, in deciding whether he had or had not the requisite personality to bring such an action, is reduced to determining whether he was or was not in the full possession of his civil rights, which is the only condition required to enable a party to prosecute an action or a personal right as a plaintiff with full and perfect personality. And there is no allegation in the complaint from which it may be concluded, either directly or indirectly, that the plaintiff was not in the enjoyment of the full possession of his civil rights; consequently, the demurrer founded on the alleged lack of personality on the part of the plaintiff should have been overruled.

That, as held in the judgment of the trial court, the dispossession alleged in the complaint may have been committed against the partnership formed between the plaintiff and Pedro Syyp, and that this same partnership, and not the plaintiff as a member thereof, is the one entitled to demand the property of which it was dispossessed, or its equivalent value, as Well as an indemnity for the losses and damages caused by such dispossession, does not affect the personality of the plaintiff, but, his right to ask for what he claims in the complaint. He may not have such a right, he may lack the right of action under the complaint; but the lack of a right of action is one thing, and the lack of personality is another thing entirely different: they are two juridical conceptions which must not be confounded, and they produce different effects in law. Personality affects the form; and the right of action, the substance. Lack of personality cannot be predicated upon the lack of right of action.

With a reversal of the order appealed from, the demurrer interposed by the defendants Silvino Lim and Pedro Syyp is overruled and they are granted a period of ten days in which to answer the complaint. No express finding is made of the costs in this instance. So ordered.

Arellano, C. J., Torres, Johnson, Carson, and Trent, JJ., concur.

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