

MARIA GULANG, PETITIONER, VS. GENOVEVA NADAYAG, FELIX NADAYAG, ANTIPAS NADAYAG, ANDRES NADAYAG, HILARIO NADAYAG AND HONORABLE COURT OF APPEALS, RESPONDENTS.*G.R. No. 82630. September 30, 1992*

Ponente: DAVIDE, JR., J.

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This is a petition for review on certiorari under Rule 45 of the Rules of Court to annul and set aside the 22 September 1987 decision[1] of respondent Court of Appeals in C.A.-G.R. CV No. 07064 affirming in toto the ruling of Branch IV of the then Court of First Instance (now Regional Trial Court) of Lanao del Norte, at Iligan City, in Civil Case No. 1076; the trial court found the petitioner to have encroached upon the property of the private respondents to the extent of thirty-two (32) square meters. The petitioner was therefore ordered to (a) vacate said portion, (b) deliver possession thereof to the private respondents and (c) pay the sum of P2,000.00 as attorney's fees.

The factual and procedural antecedents are summarized by the respondent Court as follows:

"On October 24, 1978, Genoveva Nadayag, Felix Nadayag, Antipas Nadayag, Andres Nadayag, Pedro Nadayag and Hilario Nadayag filed with the then Court of First Instance of Lanao del Norte at Iligan City, Branch II, a complaint against Maria Gulang and/or Pedro Lasmarias. It is alleged in the complaint that plaintiffs are co-owners of a parcel of land located in Port Area, Iligan City, 62 square meters in area, covered by Tax Declaration No. 76-18851 and TCT No. T-15334; that defendant Maria Gulang is the registered owner of a parcel of land, also located at Port Area, Iligan City, with an area of 40 square meters, covered by Tax Declaration No. 76-281591 and TCT No. T-12999; that before Maria Gulang acquired the abovementioned lot, she rented a portion of the same, 32 square meters in area, together with the improvements thereon from defendant Pedro Lasmarias; that sometime in 1964, Pedro Lasmarias purchased from the plaintiffs' predecessor-in-interest a parcel of land, 38.5 square meters in area, adjacent to the aforementioned 62 square meters lot of the plaintiffs; that plaintiffs had complained against Maria Gulang's occupancy of the above-said 32 square-meters-area in plaintiffs' 62 square-meters-parcel of land, the rentals on which (the 32 square meters-portion and the house erected thereon) Maria Gulang had been paying to Pedro Lasmarias instead of to the plaintiffs; and that Pedro Lasmarias has been claiming that the 32 square-meters-portion is part and parcel of his land which he purchased from plaintiffs' predecessor-in-interest. Plaintiffs pray that Maria Gulang be ordered to vacate the 32 square-meters-portion of plaintiffs' land and restore possession and/or ownership thereof to plaintiffs; and that defendants be ordered to pay back rentals on the said portion for a period of twelve (12) years from 1966 at the rate of P100.00 per month; moral and exemplary damages, attorney's fees and costs of litigation.

In their Answer, filed on November 6, 1978, defendants deny the claim of the plaintiffs and by way of affirmative and special defenses alleged that the defendants are the 'true, legal and lawful owner (sic) and in actual possession and occupation' of the land in question, as evidenced by the original certificate of title in the name of defendant Pedro Lasmarias and the transfer certificate of title in the name of defendant Maria Gulang, describing the property involved as 'Forty (40) meters, more or less'. By way of counterclaim, defendants

seek moral damages and exemplary damages and attorney's fees.

The pre-trial was then set and held, during which the parties came to an agreement to have the two lots in question relocated by surveyors who shall jointly conduct the relocation survey. However, the survey was not conducted because of the failure of the two surveyors to jointly make the survey. Instead, a separate survey was made by a surveyor of the Bureau of Lands, Sr. Geodetic Engineer Norberto Carreon, Land District No. XII-2, Iligan City, who conducted the survey in September 1979, in the presence of both parties who indicated to the said surveyor the extents of their respective occupancies on the lands being surveyed. Said surveyor's report contains the following conclusion:

‘On the actual observations based upon my relocation survey, Maria Gulang, the herein defendant is occupying a portion of Lot No. 6094, Cad. 292, covered by TCT No. T-15314 issued to Genoviva (sic) Nadayag as indicated in the hereto (sic) attached sketch plan shaded in black with an area of 30 square meters.’

But defendants' counsel made an open court manifestation that his clients will not abide with (sic) the abovesaid survey and report.

On February 2, 1981, defendant Pedro Lasmarias filed a motion to admit his amended answer, attaching thereto the Amended Answer in which the defenses of want of cause of action, prescription, estoppel, laches and fraud were introduced. And on February 6, 1981, defendant Maria Gulang filed a similar motion to admit her amended answer, likewise attaching to the motion her Amended Answer in which the same defenses as those introduced in defendant Lasmarias' Amended Answer, abovementioned, were similarly raised. These motions were denied by the court in its Order of September 27, 1981. Again in a resolution dated June 1, 1983, the trial court denied the motion for reconsideration of the abovementioned order denying defendants' motion for the admission of their amended answers.

After trial, the lower court found that ‘there is undoubtedly an area of 32 sq. meters in the land of the plaintiffs encroached upon by the defendant Maria Gulang, [and] this should be returned to the plaintiffs’; and accordingly rendered judgment ordering the defendant Maria Gulang to vacate the said area and to deliver possession thereof to the plaintiffs, and to pay the sum of P2,000.00 as attorney's fees; and dismissing all other claims and counterclaims for lack of merit and insufficiency of evidence.

Defendant Maria Gulang elevated the abovesaid decision to the then Intermediate Appellate Court on appeal. And plaintiffs likewise appealed that portion of the decision concerning the ‘none (sic) award of rentals and reasonable use of the property only’. Plaintiffs' appeal was however dismissed by the then Intermediate Appellate Court for failure to file appellants' brief.”[2]

In her Brief filed with the respondent Court, petitioner submitted the following assignment of errors:

- “1. The honorable court erred in denying defendant Pedro Lasmarias' motion to amend answer as predecessor in interest of defendant-appellant Maria Gulang to plaintiff's complaint;
2. The lower court erred in not holding that plaintiff's action has long prescribed;
3. The lower court erred in not holding that plaintiffs are estopped from denying the existence of the contract of purchase of the land and house in question by defendant Pedro Lasmarias which land and house was (sic) subsequently sold to defendant Maria Gulang (Exh. "1", Lasmarias and Exh. "2", Gulang);
4. The lower court erred in not holding that plaintiff's (sic) complaint should be dismissed on grounds (sic) of laches;
5. The lower court erred in holding that defendant Maria Gulang encroached on 32 square meters of the land of the plaintiffs and ordering her to vacate the same and in not holding that the title of the plaintiffs over the land in question was acquired thru fraudulent means; and

6. The lower court erred in ordering defendant Maria Gulang to pay attorney's fee (sic) of P2,000.00."[3]

In disposing of these assigned errors, respondent Court ruled that the trial court correctly denied defendant Lasmarias' motion to amend the answer pursuant to Section 3, Rule 10 of the Rules of Court considering that the same was filed after the case had been set for hearing and that it substantially altered his defense by adding the grounds of prescription, estoppel, laches and fraud; accordingly, since the second to the fifth assigned errors raise precisely these defenses in issue, they are thus deemed raised for the first time in the appeal. Pursuant therefore to Section 2, Rule 9 of the Rules of Court, these defenses are deemed waived.

The appellate court further declared that the main issue in the case "is whether or not defendants had encroached on the land of the plaintiffs." It then concluded that "the trial court made a proper assessment" of the evidence in relation to the pertinent law.

Petitioner reiterates the above assignment of errors in this petition.[4]

In the Resolution of 8 November 1989, this Court gave due course to the petition[5] and required the parties to submit their respective Memoranda.

Deliberating on the pleadings of the parties, We find no merit in this petition.

In addition to the ruling of the respondent Court on the first assigned error, it is worth noting that petitioner and defendant Pedro Lasmarias originally filed, on 6 November 1978, a common Answer through Atty. Luis Buendia.[6] On 2 February 1981, through a new counsel, Atty. Moises Dalisay, Jr., defendant Lasmarias filed for himself a motion to amend the answer; the proposed Amended Answer[7] was attached thereto. It is thus clear that petitioner neither joined her co-defendant nor was included as a party in the motion to amend the answer and the amended answer itself. Neither does she claim in any of her pleadings that the motion and amended answer were further amended to include her as a party thereto or that she adopted the same as her own. Petitioner, therefore, cannot benefit from Lasmarias' action, which ultimately failed, or revive the same after the latter unilaterally and voluntarily abandoned it by failing to appeal from the decision. That petitioner is a successor-in-interest of Lasmarias with respect to the property acquired by the latter from private respondent Genoveva Nadayag and therefore, was indirectly benefited by the filing of both the motion and the proposed amended complaint, does not improve her position because even if it were so, such defenses were deemed waived by Lasmarias' failure to allege the same in the Answer and exercise his right under Section 2, Rule 10 of the Rules of Court. Section 5, Rule 16; Section 2, Rule 9; and Section 2, Rule 10 of the Rules of Court easily come into focus.

Section 5 of Rule 16 provides:

"SEC. 5. Pleading grounds as affirmative defenses. -- Any of the grounds for dismissal provided for in this rule, except improper venue, may be pleaded as an affirmative defense, and a preliminary hearing may be had thereon as if a motion to dismiss had been filed."

Section 2 of Rule 9 reads:

"SEC. 2. Defenses and objections not pleaded deemed waived. -- Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived except the failure to state a cause of action which may be alleged in a later pleading, if one is permitted, or by motion for judgment on the pleadings, or at the trial on the merits; but in the last instance, the motion shall be disposed of as provided in section 5 of Rule 10 in the light of any evidence which may have been received. Whenever it appears that the court has no jurisdiction over the subject matter, it shall dismiss the action."

And Section 2 of Rule 10 provides:

"SEC. 2. When amendments allowed as a matter of right. -- A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within ten (10) days after it is served."

In the instant case, the motion to amend was filed long after the pre-trial was terminated and the case placed on the trial calendar. If Lasmarias failed to take any positive action to amend his answer before pre-trial, he should have raised during the pre-trial itself, which was conducted much later, his other possible defenses and, accordingly, amend his answer for that purpose. One of the avowed purposes for the holding of a pre-trial as provided under Section 1, Rule 20 of the Rules of Court, is precisely to consider "the necessity or desirability of amendments to the pleadings."

The foregoing rules are not, however, iron-clad. Under Section 3 of Rule 10, substantial amendments may be made even after the case has been set for hearing provided prior leave of court is obtained. Such leave may be refused if the motion requesting for the same would delay the action or the cause of action or defense would be substantially altered by the proposed amendment. This rule was correctly applied by the trial court.

As could be gleaned from Section 2 of Rule 9, two (2) defenses are not deemed waived by the failure to raise them in a motion to dismiss or in the answer, to wit: (a) lack of cause of action and lack of jurisdiction on the part of the Court.

Lack of cause of action may thus be raised in a motion to dismiss after the answer has been filed, by a motion for judgment on the pleadings, or at the trial on the merits.[8]

As to jurisdiction, while it is true that jurisdiction over the subject matter of a case may be raised at any stage of the proceedings as the same is conferred by law,[9] it is nevertheless settled that a party may be barred from raising it on the ground of laches or estoppel.[10]

There is also authority to the effect that the defense of prescription is not deemed waived, even if not pleaded in a motion to dismiss or in the answer, if plaintiff's allegation in the complaint or the evidence he presents shows clearly that the action has prescribed.[11]

As to whether or not petitioner had encroached upon the lot of private respondents, We see no reason to disturb the findings of the trial court on this matter which were subsequently affirmed by the respondent Court of Appeals; such findings are supported by the evidence. The relocation survey conducted by Senior Geodetic Engineer Norberto Carreon of the Bureau of Lands, prepared in the presence of both parties who indicated to him the extent of their "respective occupancies", discloses that the petitioner "is occupying a portion of Lot No. 6094, Cad. 292, covered by TCT No. T-15314 issued to Genoviva (sic) Nadayag as indicated in the hereto (sic) attached sketch plan shaded in black with an area of 30 square meters."

IN VIEW OF ALL the FOREGOING, the instant petition is hereby DENIED for lack of merit.

Costs against petitioner.

SO ORDERED.

Bidin, Romero, and Melo, JJ., concur.

Gutierrez, Jr., J., (Chairman), on official leave.

[1] Rollo, 65-70; per Associate Justice Lorna Lombos-De la Fuente, concurred in by Associate Justices Ricardo J.

Francisco and Alfredo L. Benipayo.

[2] Rollo, 65-67.

[3] Rollo, 67-68.

[4] Id., 6.

[5] Rollo, 107.

[6] Id., 33-36.

[7] Id., 36-41.

[8] De Jesus vs. Manglapus, 81 Phil. 114 [1948]; Community Investment and Finance Corp. vs. Garcia, 88 Phil. 215 [1951]; Azur vs. Provincial Board, 27 SCRA 50 [1969]; Quiaoit vs. Consolacion, 73 SCRA 208 [1976].

[9] Lagman vs. Court of Appeals, 44 SCRA 228 [1972]; see also People vs. Eduarte, 182 SCRA 750 [1990].

[10] Tijam vs. Sibonghanoy, 23 SCRA 29 [1968]; Quimpo vs. Dela Victoria, 46 SCRA 139 [1972]; Zulueta vs. Pan American World Airways, Inc., 49 SCRA 1 [1973]; People vs. Munar, 53 SCRA 278 [1973]; Capilitan vs. de la Cruz, 55 SCRA 706 [1974]; Balais vs. Balais, 159 SCRA 37 [1988]; Tejones vs. Gironella, 159 SCRA 100 [1988]; Marquez vs. Secretary of Labor, 171 SCRA 337 [1989]; Bañaga vs. Commission on the Settlement of Land Problems, 181 SCRA 599 [1990].

[11] Philippine National Bank vs. Pacific Commission House, 27 SCRA 766 [1969], citing PNB vs. Perez, G.R. No. L-20412, 28 February 1966, and Chua Lamko vs. Dioso, 97 Phil. 821; Garcia vs. Mathis, 100 SCRA 250 [1980]; Aznar III vs. Bernad, 161 SCRA 276 [1988].

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