

CIRILO LOCSON, ELIODORO LOCSON, CIRIACA LOCSON, FRANCISCA LOCSON, SABINA LOCSON, ROSARIA LOCSON, AGUSTINA LOCSON, PLAINTIFFS AND APPELLEES, VS. ISAAC MADRAZO, MACARIO MADRAZO, DE...*G. R. NO. 8339. September 11, 1914*

Ponente: JOHNSON, J.

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On the 20th day of July, 1910, the plaintiffs commenced an action in the Court of First Instance of Zamboanga, for the purpose of recovering the value of one-third of a parcel of land specifically described in paragraph 4 of the complaint, together with one-third of the value of the industrial natural fruits of said land.

The complaint alleged that the plaintiffs were the grandchildren of Juan Madrazo and Camillia Natividad; that Juan Madrazo died in the city of Zamboanga in the year 1850; that Camillia Madrazo died in July, 1882; that there were born to Juan Madrazo and Camillia Natividad, during their marriage, the following children:- Guillermo, Leocadio, Clara, Alejo, Paulina, Benigno, Macario and Isaa, all with the surname of Madrazo; that the said Paulina Madrazo was married to one Ramon Locson in the year 1857; that the said Guillermo, Leocadio, Clara, Alejo and Benigno had died without heirs; that Paulina, after her marriage with Ramon Locson, died leaving as her children the plaintiffs herein; that at the time of the death of the said Juan Madrazo, in the year 1850, he was the owner of the real property described in said paragraph 4 of the complaint; that the said Macario Madrazo and Isaac Madrazo took possession of said property in the year 1886 and had continued in possession of the same since that date; that the said Macario Madrazo and Isaac Madrazo had refused to recognize the rights of the plaintiffs as the grandchildren of the said Juan Madrazo in the property in question.

On the 24th day of October, 1910, the defendants answered the petition, denying each and all of the facts alleged therein.

On the 15th day of August, 1911, the plaintiffs presented a supplementary complaint, in which they alleged that on the 20th day of November, 1910, the defendant, Macario Madrazo, had sold and transferred all of his right and interest in the land in question to one of the plaintiffs, Ciriaca Locson. (See Exhibit "A", B. of E. p. 20).

On the 17th day of August, 1911, the defendant Isaac Madrazo presented a demurrer, in which he alleged that the plaintiffs "no tienen personalidad para entablar la demanda"; that there existed a confusion of parties and that the facts stated in the complaint were not sufficient to constitute a cause of action.

On the 26th day of September, 1911, said demurrer was denied.

On the 29th day of September, 1911, the defendant Isaac Madrazo filed his answer, consisting of a general and special denial. In his general denial he admitted all of the facts alleged in paragraphs 1, 2, 3, and 4 of the complaint. In his special denial or defense he alleged that neither the plaintiffs nor their mother (Paulian Locson) had desired to cultivate said land nor to pay any of the expenses relating thereto; that they had refused to pay the taxes upon said land; that the plaintiffs had failed to make any demand or claim for the land in question for a period of nearly thirty years; that Macario Madrazo had died and that he did not have any interest whatever in the land in question. The defendant Isaac Madrazo claimed that he was entitled to be repaid for all of the expenses and improvements which he had placed upon said land.

Upon the issue thus presented, the Judge, upon the 27th day of October, 1911, rendered his decision and found that the plaintiffs were without right in the premises and dismissed the action.

On the 3rd day of November, 1911, the attorneys for the plaintiffs excepted to the said Judgment and made a motion for a new trial. Upon a consideration of the motion for a new trial, the lower court found that his decision was contrary to law, set it aside and granted a new trial.

On the 10th day of November, 1911, after the new trial had been granted, the attorney for the defendant, Isaac Madrazo, presented a motion, asking for permission to amend his complaint. Said motion was supported by an affidavit. In the affidavit he alleged that he had admitted the allegations in paragraph 4 of the original complaint by mistake, and that he was the real owner of the land in question; that Juan Madrazo had no interest in said land. The motion to amend was denied by the court on the 19th day of January, 1918. To that ruling of the court the defendants duly excepted.

Later the plaintiffs and defendants, by agreement, submitted the cause anew upon the proof which had been presented during the first trial. Upon a reconsideration of said proof, the Honorable Charles A. Low, Judge, found that the defendant, Isaac Madrazo, was the owner of an undivided one-third part of the land in question; that the seven plaintiffs were jointly the owners in common of an undivided one-third of the land in question, and ordered that the land be divided among said parties. The lower court further provided that the parties might themselves, if they desired, make a partition in accordance with his conclusions.

From that decision, after a motion for a new trial, which was denied and exception thereto taken, the defendant, Isaac Madrazo, appealed to this court and made the following assignments of error:-

I.

"No permitir al demandado enmendar la contestacion a la demanda despues, de la orden del Juzgado concediendo nueva vista peticion de los demandantes y de haber sido declarada anulada la sentencia.

II.

"No haber ordenado se iniciaran los abintestados de los finados Juan Madrazo y Camila Natividad conyuges causantes de las partes en este asunto, y de Paulina Madrazo madre de los demandantes.

III.

"Haber ordenado el reparto y adjudicacion de bienes a los demandantes sin haber Justipresiado, el trabajo, gastos y mejoras introducidas por el demandado Ysaac Madrazo.

The appellant complains that the lower court committed error in not permitting him to amend his complaint after the new trial had been granted. He relies upon the provisions of Article 110 of the Code of Procedure in Civil

Actions. Article 110 permits the parties, in the furtherance of Justice, to amend their pleadings at any stage of the action in either the Court of First Instance or the Supreme Court, by the adding or striking out of the names of any parties or by correcting a mistake in the name of a party or a mistaken or inadequate allegation or description in any other respect, so that the actual merits of the controversy may speedily be determined without regard to technicalities.

It will be remembered that the lower court ordered a new trial on the 9th of November, 1911. On the 10th of November, 1911, the attorney for the defendant presented a motion asking permission to amend his answer. Said motion, however, does not indicate in what particular he desired to amend his answer. On the 16th of January, 1912, however, he filed an affidavit in which he indicated that he had made a mistake in admitting the facts alleged in paragraph 4 of the original complaint. It is assumed that the defendant, by said affidavit, which was presented two months after the motion to amend was presented, intended to indicate to the court in what particular he desired to amend his answer. Paragraph 4 of the original complaint is an allegation that the said Juan Madrazo, the father of the defendant and grandfather of the plaintiffs, at the time of his death left certain property described in said paragraph. The affidavit alleges that, even though admitting that the said Juan Madrazo occupied the said land at the time of his death, he did not have either the right of possession or ownership in said land, and further indicated that the defendant, Isaac Madrazo, was the exclusive owner of said property.

If it be true that the land described in paragraph 4, did not in fact belong to their grandfather at the time of his death, they certainly have no right of inheritance in the same, and proof of absolute ownership in the defendant, Isaac Madrazo, would, of course, defeat their right. We find, however, upon reading paragraphs 2 and 3 of the special answer of the defendant, that he, in fact, admitted that the plaintiffs had an interest in the land and that he had, for that reason, requested then to assist in working it and to pay the taxes, etc. etc. Not only does the defendant thus admit the interest of the plaintiffs, but in his general answer he also admitted the relation of the plaintiffs and the defendant - that they are the heirs of Juan Madrazo - but also admitted that at the time of the death of Juan Madrazo, he (Juan Madrazo) was the owner of the land in question. Moreover, not only did the defendant admit that Juan Madrazo was the owner of the land at the time of his death, and that the plaintiffs are his co-heirs, but he permitted the plaintiffs to prove, without objection, all of said admissions. We think, in view of all the allegations and proof, that the lower court did not commit the errors complained of.

With reference to the other assignments of error, we are of the opinion, considering all of the facts, that the errors complained of were not committed. The judgment of the lower court is therefore hereby affirmed, and without any finding as to costs, it is so ordered.

After the expiration of 10 days from the date hereof, let judgment be entered in accordance herewith, and 10 days thereafter let the record be returned to the court from whence it came, for execution.

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