

HIPOLITA ASEJO, PLAINTIFF AND APPELLANT, VS. BONIFACIO LEONOSO, DEFENDANT AND APPELLEE.

CA-G.R. No. 9246. May 26, 1947

Ponente: TUASON, J.

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TUASON, J.:

This is an appeal from an order of the Court of First Instance of Masbate, the Honorable Judge Vicente Varela presiding, dismissing the complaint on the ground that "the plaintiff had previously waived all her rights and claims over the property in question." This was a second order, modifying or replacing the first which gave as reason for the dismissal, that the plaintiff lacked legal capacity to sue.

The suit has been brought by Hipolita Asejo against Bonifacio Leonoso to recover, under a first cause of action, a parcel of land planted with coconut trees and, under a second cause of action, the value of its products. Another action had previously been instituted by the present defendant, Bonifacio Leonoso, against the present plaintiff and three others, all relatives of Hipolita Asejo's deceased husband. The purpose of the first action was to foreclose a mortgage constituted on the land that is the subject matter of the second. The first suit was not decided on the merits. Although the decision "absolved the defendant, without costs," it was in reality a dismissal of the complaint without prejudice, on the ground that the judicial administrator of the mortgagor's estate was not made defendant.

The dismissal of the case at bar was ordered on a motion for that purpose, which alleges three of the grounds enumerated in Section 1 of Rule 8. One of the grounds so alleged is that the plaintiff's demand has been released. This remains as the sole basis of the dismissal. The objection that the plaintiff has no legal capacity to sue has, it seems, been given up as unfounded, as indeed it is.

Sections 3 and 4 of Rule 8 outline the procedure in cases where one or more of the grounds of dismissal are asserted. Two courses are open: (a) to deny or grant the motion or allow amendment of pleading; (b) to "defer the hearing and determination of the motion until the trial if the ground alleged therein does not appear to be indubitable." Any of the grounds to dismiss which has not been brought before the court by motion may be pleaded as an affirmative defense. In either case there must be a hearing. And of necessity the hearing, although called preliminary, should be conducted as ordinary hearings: the parties should be allowed to present evidence and the evidence should be taken down. Otherwise in the event of appeal from an order of dismissal, as in this case, the appellate court would have no means to judge the legality of the proceedings and the sufficiency of the proofs on which the order is predicated. If after the hearing the court is of the opinion that the ground alleged in the motion to dismiss or in the answer is not indubitable, it shall defer the determination of the question until the trial.

The lower court dismissed the complaint on the strength of Exhibit B. What legal or evidentiary force does this exhibit possess? Is it "indubitable" necessitating no extraneous evidence? "Indubitable" is variously defined in 42 Corpus Juris Secundum, 1370 as "something which cannot be doubted; also certain and unquestionable; without

doubt."

Exhibit B is in the nature of a quitclaim deed by which Hipolita Asejo and her coheirs are said to have renounced all rights and interests in the property mortgaged by Asejo's deceased husband to Bonifacio Leonoso. It was introduced in evidence in the mortgage foreclosure suit. In that case, according to the decision rendered therein, Hipolita Asejo testified, among other things, that there had been an agreement entered into in the month of March 1935 between her and Leonoso, stipulating that the latter should reimburse himself for the amount of his credit out of the products of the mortgaged land, possession of which had been turned over by her to the mortgagee. The court did not give credit to that testimony, saying that it was belied by Exhibit B. The decision commented that Asejo's oral evidence could not prevail over Exhibits A and B.

Exhibit B does not, in and of itself, establish beyond doubt the truth of the transaction recited therein. Although it purports to have been subscribed and sworn to before a justice of the peace, it does not preclude the possibility that, for some reason or other, it does not reflect the real intention of the plaintiff. The document is not one to which no possible objection could be made, however trivial. For once, the plaintiff at bar repudiated it in one of her pleadings in the prior case, in which she was a defendant, stating that "If she ever did give her consent at all (to that document), such consent must have been obtained by the plaintiff (defendant herein) by means of fraud and deceit." The bringing of the suit is itself a clear manifestation of her negation to recognize the binding effect of Exhibit B. Under the circumstances, it would have been better practice to postpone consideration of this matter until the trial.

The plaintiff should at least have been accorded a hearing. This is the least she is entitled to. And this is true regardless of any strong opinion the court may have as to the truthfulness of the document. No such hearing was held. Without hearing the plaintiff would be barred from pursuing her action and is to be deprived of what she claims to be her property without being given an opportunity to affirm or deny the validity of Exhibit B.

Perhaps His Honor relied on the finding of the court in the case for the foreclosure of the mortgage. If the court a quo took that finding as concluding the present demand, it is gravely mistaken. The first case, it has been seen, was dismissed without prejudice. According to Section 44 of Rule 39, the order or judgment of a court is conclusive between the parties only on the matter directly adjudged. And Section 45 of the same Rule provides that that only is being conclusively adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto. There was no adjudication whatsoever in the previous case. The dismissal left the parties in status quo.

The court's finding of fact in the previous case was a surplusage. There was no need to make it. Even if the court thought it proper or necessary to state its opinion on the evidence, the opinion could not produce any adverse effect on the rights of the defendants over the property in controversy in the face of the dismissal of the complaint which is the controlling part of the decision.

In view of these considerations, the appealed order of dismissal is reversed and the case is remanded to the court of origin for further and appropriate proceedings in accordance with this decision, with costs of this appeal charged to the appellee.

Paras, Pablo, Perfecto, Bengzon, and Hontiveros, JJ., concur.

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