

44 Phil. 691

[G.R. No. 19993. March 24, 1923]

**RUFINO FETALINO, PLAINTIFF AND APPELLANT, VS. FRANCISCO SANZ,
DEFENDANT AND APPELLEE.**

D E C I S I O N

OSTRAND, J.:

This is an appeal from an order of the Court of First Instance dismissing the action for want of jurisdiction over the person of the defendant.

The action is brought for the recovery of the possession of five parcels of land situated in the barrio of Calatrava, municipality of Badajoz, subprovince of Romblon, Province of Capiz, of which the deceased Pedro Sanz is alleged to have taken possession unlawfully in the year 1908. It was originally brought against Enriqueta Perez as administratrix of the estate of the said Pedro Sanz; but on August 8, 1917, the plaintiff, upon discovering that Enriqueta Perez was not legally appointed administratrix, filed a motion asking that an administrator be appointed and that, thereupon, he be granted permission to amend the complaint making such administrator the defendant. The motion was granted and one Sebastian Felices was appointed special administrator and the case partly tried on August 9, 1917; it was thereupon continued for the purpose of enabling the plaintiff to have a survey made of the land in question as well as of the "Hacienda de Sanz" in which the defendant claimed that the lands in question were included.

Subsequently, the estate of Pedro Sanz was distributed among the heirs, a scheme of partition having been approved by the Court of First Instance of Romblon. Upon discovering that the distribution had been made, the plaintiff filed a motion on January 12, 1918, setting forth that the five parcels in question had been awarded to Francisco Sanz, one of the heirs of Pedro Sanz, and

asking that said Francisco Sanz be made a party defendant. Two days later the administrator, Felices, presented a motion for the dismissal of the case as to the estate of Pedro Sanz on the ground that as the property had been awarded to Francisco Sanz, the administrator of the estate had no further interest therein.

On January 9, 1918, in ruling on the two motions last mentioned, the court ordered that Francisco Sanz be substituted for Sebastian Felices as defendant and that Sebastian Felices be excluded (*descartado*) from the complaint. The plaintiff did not except to this order, but on August 8, 1919, his attorney filed an affidavit in which he states that he, on July 2, 1918, forwarded a communication by registered mail to Francisco Sanz, which communication was accompanied by an order of the court of January 19, 1918, together with certified copies of all proceedings filed in the case; that said certified copies were received by Francisco Sanz on the 23d of August, 1918, according to certain telegrams received from the postmaster of the City of Manila.

On January 6, 1920, the plaintiff filed a motion asking that the case be set down for hearing for the presentation of a plan of the "Hacienda de Sanz" and for the taking of testimony of the surveyor by whom it was made.

On the same date Sebastian Felices, represented by his attorney, Jose Altavas, filed a motion asking that the case be dismissed with costs against the plaintiff, and on the same day Manuel Terrencio, as attorney for Francisco Sanz, presented the following motion:

"Comes now Francisco Sanz, through his undersigned attorney, for the sole purpose of objecting to the jurisdiction of this court over his person and to this end makes the following motion;

" 'The court of First Instance of Romblon has no jurisdiction over the person of Mr. Francisco Sanz in the above entitled case.'

"GROUNDS

"Mr. Francisco Sanz was not duly summoned to appear before this court. The court acquires jurisdiction by the service of summons.

“Mr. Francisco Sanz was not heard in this case. The court cannot adjudicate a case without granting the party to be affected a previous hearing of his defense.”

Both motions were opposed by the plaintiff and on February 5, 1920, the court, upon hearing, denied the motion of Sebastian Felices, but granted the motion of Francisco Sanz in the following language:

“It being an elementary principle of law that a court of justice cannot acquire jurisdiction over the person of the defendant, without the latter being served with summons, and it not appearing in the record that the movant, Francisco Sanz, was ever served with summons, or that he has ever appeared at any stage of this case; it being a principle of constitutional law that ‘no person shall be deprived of his life or property rights without being previously heard,’ the motion of Francisco Sanz is hereby granted, and it is ordered that the whole proceeding be set aside without special finding as to costs.”

The plaintiff duly excepted to this order and also to a subsequent order denying the motion for a reconsideration and brought this appeal.

The appellant presents two assignments of error:

- (1) The court below erred in dismissing the case, and
- (2) That the court erred in not fixing a day for the presentation of the plan of the “Hacienda Sanz,” the only evidence lacking for the final determination of the case.

The first assignment of error is well taken and must be sustained. The appellee Francisco Sanz is a transferee *pendente lite* of the property involved in the case. As such he stands exactly in the shoes of his predecessor in interest, the original defendant, and is bound by the proceedings had in the

case before the property was transferred to him. He is a proper, but not an indispensable, party as he would, in any event, have been bound by the judgment against his predecessor. (*See* 31 Cyc., 473.)

The court below erred in excluding the administrator Sebastian Felices from the complaint; the proper procedure would have been to continue the action against the administrator and simply join Francisco Sanz as a party defendant. But no exception was taken to the order excluding the administrator and the error can therefore not be considered here.

We agree with the court below that Francisco Sanz was not properly summoned. The service upon a person of a copy of the order of the court making him a party defendant, together with a copy of the complaint and other pleadings, is not the process required for bringing him into court. There may be exceptions where it is sought to bring in the administrator of a deceased party defendant in substitution of the deceased, and it has also been held in at least one case (*Emeric vs. Alvarado*, 64 Cal., 529) that where upon the decease of an original defendant his infant heirs are made parties the service of the order making them parties is sufficient without service of summons, but the present case does not fall within any of these exceptions.

But in view of the fact that Francisco Sanz had been impleaded as a party defendant, opportunity should have been given to have him summoned so as to enable the court to decide the case on its merits. To avoid the retaking of testimony and to prevent unnecessary discussions of the effect of the Statute of Limitations upon the action, it is especially important that the action should be continued as originally commenced. (*See* 25 Cyc, 1304.) It was the duty of the clerk of the Court of First Instance to issue the summons and the responsibility for his failure to do so should not be laid at the door of the plaintiff. As hereinbefore intimated, the court below erred in dismissing the complaint.

The order appealed from is therefore reversed and the record is remanded to the court below with the direction that the defendant Francisco Sanz be summoned as provided for in the Code of Civil Procedure. The trial of the case will then proceed without the necessity for reintroducing the evidence already presented and as if the defendant Francisco Sanz had been a party to the action from its

inception. No costs in this instance. So ordered.

*Araullo, C.J., Street,
Malcolm, Avanceña, Johns, and Romualdez, JJ., concur.*

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