3 Phil. 429

[G.R. No. 1476. March 19, 1904]

MAGDALENA CANCINO ET AL., PLAINTIFFS AND APPELLANTS, VS. GERVASIO VALDEZ ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

WILLARD, J.:

The original complaint described the lands by reference to a document marked "A," which was attached to the complaint. The amended complaint contained this clause: "The estate is described in detail in Exhibit A, which is hereto attached, and the plaintiffs ask that it be considered as an integral part of this complaint." Exhibit A was, however, not attached to the amended complaint, but remained attached to the original complaint. Section 106 of the Code of Civil Procedure provides that pleadings shall be liberally construed. Applying this rule, we think that the amended complaint should be considered as if Exhibit A had been physically attached to it. No harm is done to the defendants by this holding. They had in the original complaint the exhibit and were fully informed of its contents. In his decision sustaining the demurrer the judge below evidently took this view of the matter.

With this Exhibit A attached the amended complaint stated the pueblo, barrio, and sitios in which the land was situated. It stated the purpose to which it was devoted, that it contained 309 hectares and 5 ares, and gave its boundaries. This is a good description as against a demurrer.

The amended complaint describes only one tract of land. This appears in almost every paragraph thereof. The fact that in paragraph 9 it is

stated that certain of the defendants took illegal possession of various parts of this tract can not be allowed to overcome the allegation in paragraph 7 to the effect that *the defendants* had taken possession of the lands of the plaintiffs.

It is claimed by the appellees that the case is improperly before this court. When the court below sustained the demurrer the plaintiffs excepted. They did not then attempt to bring the case here upon that exception. They waited until the court made its orders of July 10 and 11, dismissing the action. They then interposed the remedy of appeal against these two orders. Tins document, called an appeal, was equivalent to an exception to these orders and must be so considered.

The order of July 11 put an end to the case. It was the final judgment therein, and, having excepted thereto, the plaintiffs had then the right to remove the case to this court. Upon that removal, by the terms of section 143, they had the right to have reviewed ” all rulings, orders, and judgments made in the action to which the party has
duly excepted.” That includes in this case the order sustaining the demurrer.

Although in view of the result arrived at it is not necessary, yet we will add that we agree with the appellant that dismissal was not the proper way to terminate this case. The demurrer to the complaint having been sustained and the plaintiffs having refused to amend, the court should have entered judgment for the defendants to the effect that the plaintiffs take nothing by the action and the defendants recover their costs.

The plaintiffs took an exception to the order of the court below refusing to appoint a receiver. They have, however, neither assigned this ruling as error nor mentioned it in their brief. The exception must be considered as abandoned.

The judgment is reversed and the case remanded with instructions to the court below to overrule the demurrer to the amended complaint and

proceed with the case in accordance with law, with costs of this instance against the appellees.

Arellano, C. J., Torres, Cooper, Mapa, McDonough, and *Johnson, JJ.,* concur.

Date created: January 18, 2019