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FIRST DIVISION

[G.R. No. L-43364. September 30, 1976]

ADELA SALAZAR, TEOFILA SALAZAR, CONSOLACION SALAZAR PATIU, *petitioners, vs.* **THE HONORABLE JUDGE FERNANDO M. BARTOLOME, FELISA, LUCIANO, BRIGIDO, REGINO, EUFEMIA, MELQUIADES, ADELA, PACITA, BIENVENIDO, ANGELA, SOLEDAD, FLORENTINO, FELICITA, NICOLAS, RICARDO, PABLO, all surnamed CASTRO; JOSE, ANGELINA, ONOFRE, PABLITO, VICTORIA, all surnamed SANTOS, ENCARNACION SANTOS VDA. DE NUCUP, the HEIRS OF ROMAN CASTRO, namely: ELEUTERIA VITAL, RUFINO, HERMINIA, VICTORIA, RICARDO, all surnamed CASTRO, the latter is survived by HELEN SUBA, RODRIGO and RICARDO CASTRO; the HEIRS OF EXEQUIEL SANTOS namely: AVELINA RUIZ; NOEL, FIDES, ROSARIO, and ARIEL, all surnamed SANTOS,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; AMENDED AND SUPPLEMENTAL PLEADINGS; WHERE THE DEFECT OF THE COMPLAINT IS MERELY ONE OF FORM, IT IS CURABLE BY AMENDMENT.— Petitioners are entitled to the relief prayed for as respondent Judge gravely abused his discretion in denying petitioners' motion for admission of their amended complaint which amendment was solely for the purpose of specifically identifying who were the heirs of Roman Castro and Exequiel Santos. "It is a well established rule in our jurisprudence that when a court sustains a demurrer or motion to dismiss, it is error for the court to dismiss the complaint *without giving the party plaintiff an opportunity to amend his complaint if he so chooses.* (Unless, of course, the defect is incurable, as in lack of jurisdiction.)" "Amendments to pleadings are favored and should be liberally allowed in the furtherance of justice. (*Torres vs. Tomacruz*, 49 Phil. 913). Moreover, under Section 1

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of Rule 17, Rules of Court, a party may amend his pleading once as a matter of course, that is, without leave of court, at any time before a responsive pleading is served. A motion to dismiss is not a 'responsive pleading.' (Moran on the Rules of Court, Vol. 1, 1952, p. 376). As plaintiff's amended their complaint before it was answered, the motion to admit the amendment should not have been denied. It is true that the amendment was presented after the original complaint had been ordered dismissed. But that order was not yet final for it was still under reconsideration."

APPEARANCES OF COUNSEL

Eduardo P. Ocampo for petitioners.
Martin N. Roque for respondents.

D E C I S I O N

MUÑOZ PALMA, *J.*:

This petition for review on *certiorari* seeks a reversal of the order dated February 20, 1976 of respondent Judge Fernando M. Bartolome of Branch V of the Court of First Instance of Pampanga denying petitioners' motion to admit amended complaint in Civil Case No. 4264, entitled "*Adela Salazar, et al. vs. Felisa Castro, et al. and Heirs of Roman Castro, Heirs of Exequiel Santos.*"

The following incidents are undisputed:

Petitioners filed on May 21, 1975 in the Court of First Instance of Pampanga, Branch V, an action for annulment of extrajudicial partition against private respondents herein docketed as Civil Case No. 4264. (p. 17, *rollo*). On June 17, 1975 private respondents moved to dismiss the complaint on the ground, among others, that the court did not acquire jurisdiction over the case because the defendants referred to in the complaint as "the heirs of Roman Castro" and "the heirs of Exequiel Santos" were not specified and duly summoned. (p. 26, *ibid.*). Respondent Judge, stating the opinion of the court that the legal defect of the complaint cannot be cured by amendments,

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dismissed the complaint by resolution dated August 28, 1975 (p. 30, *ibid.*), notice of which received by petitioners on September 5, 1975. (p. 10, *ibid.*). On September 8, 1975 petitioners filed a motion for reconsideration but the trial court denied the same in an order of November 7, 1975, copy of which was received by petitioners on November 15, 1976. (p. 10, *ibid.*) Notwithstanding the denial of their motion for reconsideration, petitioners filed on December 8, 1975, a motion for the admission of their amended complaint (p. 38, *ibid.*) attaching thereto the amended complaint which now specifically named the respective heirs of Roman Castro and of Exequiel Santos. (Annex "G", p. 39, *rollo*). The motion was opposed by private respondents herein. Respondent Judge denied the motion for admission for lack of merit in an order dated February 20, 1976 (p. 50, *ibid.*) copy of which was received by petitioners on February 27, 1976. (p. 11, *ibid.*) Their motion for reconsideration of February 20, 1976 order having been denied, petitioners filed the instant petition to set aside the aforesaid order.

Petitioners are entitled to the relief prayed for as respondent Judge gravely abused his discretion in denying petitioners' motion for admission of their amended complaint which amendment was solely for the purpose of specifically identifying who were the heirs of Roman Castro and Exequiel Santos.

In the case of *Dauden-Hernaez vs. De los Angeles*[1] this Court, speaking through then Acting Chief Justice J.B.L. Reyes, held:

"It is a well established rule in our jurisprudence that when a court sustains a demurrer or motion to dismiss, it is error for the court to dismiss the complaint *without giving the party plaintiff an opportunity to amend his complaint if he so chooses.* (Unless, of

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[1] L-27010, April 30, 1969, 27 SCRA 1276, citing the following cases: *Macapinlac vs. Gutierrez Repide*, 43 Phil. 774; *Ibanez vs. Fortis*, 17 Phil. 82; *Balderrama vs. Compania General de Tabacos*, 13 Phil, 609; *Molina vs. La Electricista*, 6 Phil. 519; *Mapua vs. Suburban Theaters, Inc.*, 87 Phil. 364.

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course, the defect is incurable, as in lack of jurisdiction.)" (Italics supplied).

The Court referred to its ruling in *Paeste vs. Jaurigue* (94 Phil. 179, 181) where the following was said:

"Appellants contend that the lower court erred in not admitting their amended complaint and in holding that their action had already prescribed. Appellants are right on both counts.

"Amendments to pleadings are favored and should be liberally allowed in the furtherance of justice. (*Torres vs. Tomacruz,* 49 Phil. 913). Moreover, under section 1 of Rule 17, Rules of Court, a party may amend his pleading once as a matter of course, that is, without leave of court, at any time before a responsive pleading is served. A motion to dismiss is not a 'responsive pleading.' (Moran on the Rules of Court, Vol. 1, 1952, p. 376). As plaintiff's amended their complaint before it was answered, the motion to admit the amendment should not have been denied. It is true that the amendment was presented after the original complaint had been ordered dismissed. But that order was not yet final for it was still under reconsideration."

The defect of petitioners' complaint was merely one of form which was curable by amendment.

In fact, Section 14, Rule 3 of the Revised Rules of Court allows the suing of a defendant, whose identity or name is unknown, as the unknown owner, heir, devisee, or by such other designation as the case may require, and directs the amendment of the pleading when his identity or true name is discovered.

WHEREFORE, the order dated February 20, 1976 of the Court of First Instance of Pampanga, Branch V, is hereby set aside, and petitioners' amended complaint is ordered admitted and respondent court is directed to proceed with the trial of the case after all proper pleadings shall have been filed.

With costs against private respondents.

SO ORDERED.

Teehankee (Chairman), Makasiar, Concepcion, Jr., and *Martin, JJ.*, concur.