

81 Phil. 311

[ G.R. No. L-797. July 24, 1948 ]

**TOMAS MAPUA, FELISA BAUTISTA VDA. DE MAPUA, PEDRO CASIMIRO, EULALIA O. CASIMIRO, ESTANISLAO O. CASIMIRO, JOVITO O. CASIMIRO, NICANOR O. CASIMIRO AND SUSANA O. CASIMIRO, PLAINTIFFS AND APPELLANTS, VS. SUB-URBAN THEATERS, INC., DEFENDANT AND APPELLANT.**

## **D E C I S I O N**

**FERIA, J.:**

The plaintiffs in this case filed with the municipal court an action of illegal detainer against the defendant based on the ground that the contract of lease between them had already expired, and prayed that the defendant be sentenced to vacate the premises and pay a monthly rental of P1,000 to the plaintiffs until he vacates the premises.

After trial, the municipal court rendered a judgment on September 1, 1945, dismissing the complaint without pronouncement as to costs, and the plaintiffs appealed from the judgment of the lower court.

On appeal, in which the complaint in the municipal court is considered as reproduced under section 7, Rule 40, plaintiffs filed on October 11, 1945, an amended complaint, as a matter of course before the defendant had filed his answer, alleging that "the reasonable compensation for the use and occupation of the leased premises, considering the present boom in the entertainment business, is at least P1,000 a month, and praying that the defendant be sentenced not P1,000 a month until he vacates the premises as prayed for in the original complaint, but to pay P1,000 a month from July to October, 1945 as rent, and the sum of P10,000 a month, for November 1 until he vacates the premises, as reasonable compensation for the use and occupation of the premises."

The defendant filed a motion to dismiss the amended complaint on the ground that, on appeal from an inferior court to the Court of First Instance, the parties can not raise a question not raised in the inferior court, and therefore the plaintiffs cannot amend the

complaint in the Court of first Instance raising the question of whether or not the defendant should pay the sum of P10,000 as reasonable damages for the use and occupation of the property leased, instead of P1,000 demanded in the original complaint.

The Court of First Instance granted the motion to dismiss in an order dated November 2, 1945, and allowed the plaintiffs to amend the complaint within 5 days from receipt of the order.

On November 6, the plaintiffs took an exception from the order of the court dismissing the amended complaint, and filed a second amended answer, demanding that the defendant be sentenced to vacate the premises and to pay a monthly rental of P1,000 until the defendant vacates the premises.

The defendant filed an answer to the second amended complaint, and after trial the Court of First Instance rendered a judgment on May 15, 1946, sentencing the defendant to vacate the premises and to pay the plaintiffs the sum of 1,000 pesos as rental from July 1, 1945, until the defendant vacates the premises as prayed in the second amended complaint, with costs.

Plaintiffs appealed from the order of the court of November 2, 1945, dismissing their amended complaint dated October 11, 1945, as well as from the decision of the same court of May 15, 1946, which determined the reasonable compensation for the use and occupation of the premises leased at P1,000 a month.

The defendant in its turn appealed from the same decision of the Court of First Instance of May 15, 1946.

It is not necessary for us now to decide whether or not, by amending their amended complaint and alleging that the defendant be sentenced to pay P1.000 a month as rent from July 1, 1945, until the defendant vacates the premises, instead of standing upon their first amended complaint so as to secure a final order on the issue raised therein and appeal from such final order, the plaintiffs have waived their right to prosecute their appeal or rather to assign as erroneous the order of November 2, 1945, in their appeal from the final judgment of May 15, 1946. Assuming that the plaintiffs have not waived their right to do so, we are of the opinion that the appeal from the order of November 2, 1945, can not be prosecuted separately and independently from the appeal from the judgment of the court of May 15, 1946; because the order of November 2, 1945, is an interlocutory order and therefore not appealable according to section 2, Rule 41, and may only be attacked or assigned as

erroneous in the appeal from the final judgment of the Court of First Instance of Manila of May 15, 1946. The question as to the amount of monthly rental due from the defendant to the plaintiffs raised by the latter in their first amended complaint and decided against them by the order of the said court dated November 2, is so interwoven or intimately connected with the question decided in the judgment on the merits of May 15, also appealed from by both parties, that the decision by the appellate court on the first must necessarily affect the decision on the other, and vice-versa.

As the appeal from the lower court's order dated November 2, 1945, is merely an incident of the appeal from the judgment of May 15, 1946, and can not be prosecuted independently or separately from the latter, and the appeal from the judgment of May 15, 1946, involves questions of fact and law, and must be taken cognizance of by the Court of Appeals, the case of the so-called appeal from the order of November 2, 1945 of the Court of First Instance of Manila, certified to this Court by resolution of the First Division of the Court of Appeals promulgated on June 25, 1948, must be returned to said court for proper action. So ordered.

*Paras, Actg. C. J., Pablo, Perfecto, Bengzon, Briones, Padilla, and Tuason, JJ., concur.*

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