

[G.R. No. L-5736. January 30, 1954]

**VALENTIN ALIGARBES, PLAINTIFF AND APPELLANT, VS. JUAN AGUILAR,
GAUDIOSO SULTAN JR. AND JOSEFA YULO, DEFENDANTS AND APPELLEES.**

D E C I S I O N

BENGZON, J.:

The Justice of the Peace Court of Gandara, Samar, allowed the plaintiff Valentin Aligarbes to sue as pauper in a forcible entry case. After due hearing, the complaint was dismissed. Within the reglementary period he filed a motion to appeal in *forma pauperis*, together with a notice of appeal to the Court of First Instance. The Justice of the Peace by written order of July 25, 1950, declared he had no authority to permit the plaintiff to litigate as pauper on appeal and that such permission may only be granted by the Court of First Instance. However the same judge "transmitted" the records to the superior court "for its proper determination in the premises."

On August 3, 1950 the clerk of Samar Court of First Instance addressed to the defendants a letter of the following tenor:

"In accordance with the provisions of Act 3171 in relation with section 7, Rule 40, of the Rules of Court, you are hereby notified that the above-entitled civil case has been entered on this date in the docket of this court in view of the appeal taken by the plaintiff from the decision of the Justice of the Peace of Gandara, Samar.

"In view hereof, you are required to file before this court your answer to the complaint or any other pleadings therein

within fifteen days from receipt of this notice. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

“Witness the Honorable Fidel Fernandez, Judge of said court, this 3rd day of August, 1950.”

The defendants duly answered. During the hearing, and while the plaintiff was testifying, the trial judge issued this order:

“This case was appealed from the Justice of the Peace Court of Gandara. No docket fees were paid by the appellant on the ground that he presented a motion before the Justice of the Peace Court that he be allowed to appeal this case as pauper. The Justice of the Peace Court, in its order, remanded this case to this court but with the injunction that such petition to appeal as pauper be presented before this Court of First Instance who has the authority to consider it. Such was not done. The required fee for docketing this case was not paid. Neither was an order from this court to docket the same without fee obtained.

“But in spite of the failure to pay the fee and to obtain the order of this court, the case was docketed.

“This court is of the opinion and so holds that the docketing was illegal, it being in contravention of the provisions of law.

“In as much as the period for appeal has already expired, to return this case to the Justice of the Peace Court of origin, or to allow the plaintiff to pay the docketing fee or secure the order from this court to allow it a pauper’s appeal would be void as this court has not acquired jurisdiction over this case. The judgment of the Justice of the Peace Court has already become final.

“Therefore, the court orders that this case be returned to the Justice of the Peace

Court of Gandara for the execution of the judgment.”

His motion for reconsideration having been denied, the plaintiff interposed this petition for review, which the court *a quo* subsequently certified as a pauper’s appeal.

The expediente clearly shows the appellant’s lack of means. And, in view of the constitutional mandate that poverty shall not deny any person free access to the courts, we are impelled to hold that under the circumstances it was a mistaken exercise of discretion to dismiss the case for nonpayment of fees.

The Justice of the Peace granted permission to litigate as pauper by virtue of section 22, Rule 3 of the Rules of Court under which said officer could have subsequently excused the poor litigant from compliance with the requisites involving payment of money to perfect his appeal (*Lacson vs, Tabarres*, 68 Phil., 317). In other words the justice of the peace had the authority to permit Aligarbes to appeal as pauper. Wherefore, his mistake as to the extent of his powers should not prejudice herein plaintiff.^[1]

True, the *Lacson* decision says the appellant should also ask permission from the Court of First Instance to continue or substantiate his appeal *in forma pauperis*; but Aligarbes probably thought it unnecessary to take further steps, the clerk having already docketed the cause without payment of fees as shown by the letter requiring defendants to answer.

Supposing then that, strictly speaking, the controversy was not before the court due to nonpayment of fees, “the lapse in the literal observance of a rule of procedure could be overlooked as it did not involve public policy, and arose from an honest mistake”^[2]

It would now be unfair to hold that the decision of the Justice of the Peace has become final. The plaintiff took all the steps necessary to perfect his appeal; and it was only through the error of said officer, and of the clerk of court that the matter of court fees has not been attended to. There being no question as to appellant’s

inability to pay, he should be afforded opportunity to comply with procedural requirements to enable him to prosecute his suit.

In view of the foregoing, the record will be returned so that the Justice of the Peace may pass on the petition to appeal as pauper, and the Court of First Instance may also act thereafter, upon request by the litigant for exemption from payment of fees. So ordered, without costs.

Paras, C. J., Pablo, Padilla, Montemayor, Reyes, Jugo, and Bautista Angelo, JJ., concur.

^[1] Where failure of appellants

to file an appeal bond on time is due to an error of the Justice of the Peace they will not be deprived of their right to be heard in the Court of First Instance. (*Alandy vs. San Jose*, 79 Phil., 811, 45 Off. Gaz. No. 7, p. 2829.)

^[2] (*Ethel Case and Minna Nantz vs. Jugo*, 77 Phil., 517, 43 Off. Gaz. No. 11, 4620).
