94 Phil. 764

[G.R. No. L-5257. April 14, 1954]

ARSENIO ALGARIN ET AL., PLAINTIFFS AND APPELLEES, VS. FRANCISCO NAVARRO ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

LABRADOR, J.:

This action originated in the municipal court of Cavite City, where the plaintiffs-appellee filed an action against the defendants to recover from the latter the amounts which the plaintiffs, who are laborers, earned while working in the construction of the house of defendant Francisco Navarro from September, 1950, to October, 1950. The other defendant, Francisco Legaspi, was the building contractor employed by Navarro. Defendant Francisco Navarro alleges in his answer that he did not enter into a contract with the plaintiffs, nor did he authorize his co-defendant to employ them. As special defenses he asserts that the allegations of the complaint do not constitute a cause of action against him, and that the complaint is premature. The record fails to show whether defendant Francisco Legaspi filed an answer.

The case was tried in the municipal court, and after the plaintiffs had closed their evidence, the defendant Francisco Navarro filed a motion to dismiss, claiming that there is no contractual relation between him and the plaintiffs, and that as the plaintiffs have not shown that he had violated the provisions of Act 3959, he is not liable.

The municipal court sustained the contention of the defendant Francisco Navarro that there is no evidence to prove the facts required in Sections 1 and 2 of Act 3959, because it was not shown that the defendant Francisco Navarro did not require the contractor Francisco

Legaspi to furnish the bond in an amount equivalent to the cost of labor, and that Francisco Navarro had paid the contractor Legaspi the entire cost of labor without having been shown the affidavit that the contractor had paid the wages of the plaintiffs.

The plaintiffs appealed from this decision to the Court of First Instance of Cavite. There was no trial in that court; it only reviewed the record. Thereafter it rendered judgment finding the order of dismissal entered by the municipal court to be an error and reversing it, and remanding the case to said court for further proceedings under the authority of Section 10, Rule 40, of the Rules of Court. In reversing the order of dismissal the court reasoned:

> * * *. From this discussion, this Court has reached the conclusion that under the proven facts of the case as shown by the plaintiffs' evidence, the order of dismissal rendered by the Municipal Judge of the City of Cavite is an error, and since the dismissal was prompted by a demurrer to the evidence defendant Francisco Navarro is precluded from introducing evidence in his defense when this case is remanded to the Municipal Court of Cavite City for further proceedings.

Against this order of remand, the defendants have filed an appeal directly to this Court.

Section 10, Rule 40, of the Rules of Court, upon the authority of which the case was dismissed and remanded to the municipal court, provides as follows:

> SEC. 10. *Appellate powers of Courts of First Instance where action not tried on its merits by inferior courts*.—Where the action has been disposed of by an inferior court upon a question of law *and not after a valid trial upon the merits*, the Court of First Instance shall on appeal review the ruling of the inferior court and may affirm or reverse it, as the case may be. In case of reversal, the case shall be remanded for further proceedings. (Italics ours.)

The issues involved in this appeal, therefore, are: (1) Was the action disposed of in the municipal court upon a question of law? and (2) Was there a valid trial upon the merits in the municipal court, as defined in the above-quoted section? There is no question that there was a trial. That trial was held after issues of fact had been joined by the filing of an answer. And the case was not terminated solely on a question of law, because the court found that the facts proved do not entitle the plaintiffs to recover. Moreover, the mere fact that the municipal court found that there was absence of allegations necessary to entitle the plaintiffs to recover, or evidence to establish said allegations of essential facts, does not mean that there was no valid trial upon the merits.

What Section 10 of Rule 40 considers as termination of a case without a valid trial upon the merits is a dismissal without trial and/or determination of any of the issues of fact raised in the pleadings. Thus, if the hearing is had merely on the lack of jurisdiction or improper venue, without introduction of evidence on the merits, or on the issues of fact which entitle the plaintiff to recover or the defendant to be absolved from the action, there would not be a valid trial on the merits. As stated by Justice Moran, the said section is a restatement of the rulings laid down by the Supreme Court. He cites as example of the application of the rule a case where there is no trial in the inferior court and the case is disposed of upon a question of law, such as the lack of jurisdiction to try the case. In this instance, upon appeal to the Court of First Instance, the only question to be decided in the appeal is the jurisdiction of the inferior court, and if the Court of First Instance finds that the municipal court has jurisdiction, the case is remanded thereto for trial upon the merits, otherwise the dismissal is affirmed. Another example is where the inferior court sustains a motion to dismiss on the ground of failure of plaintiff’s complaint to state a cause of action, in which case the appellate power of the Court of First Instance is to review the order of the inferior court sustaining the motion. And if the Court of First Instance finds the order to be wrong, the case has-to be remanded to the inferior court for trial upon the merits. (1

Moran, 1952 Rev. ed., pp. 889-890.)

It is pertinent to add, by way of clarification, that the existence of a trial on the merits is the determining factor for the application of the rule. Even if the case is decided on a question of law, i.e., lack of jurisdiction, provided there was a trial, the case may not be remanded to the inferior court.

In the case at bar, there was a trial upon the issue as to whether or not the plaintiffs should be entitled to recover. Even if the defendants did not present their evidence for the reason that the court found that the plaintiffs had failed to establish a cause of action, it does not mean there- by that the case was terminated on a question of law, and that there was no valid trial upon the merits. There was a valid trial, only that the court found that the trial was of no advantage to the plaintiffs, because they failed to prove the facts necessary to entitle them to recover. The mere fact that the defendant did not present his evidence, because the court found it unnecessary, is no reason for holding that there was no valid trial at all. As the trial on the merits was held, no matter what the result thereof may have been, whether the court rendered judgment for plaintiff or absolved the defendant or denied the remedy to the plaintiff, as the court has considered the evidence on the merits of the case, there was a valid trial on the merits within the meaning of section 10, Rule 40. of the Rules of Court, and the case may not be remanded for trial.

It will be noted that the purpose of section 10 of Rule 40 is to prohibit the trial of a case originating from an inferior court by the Court of First Instance on appeal, without the said inferior court having previously tried the case on the merits. If there was no such trial on the merits, the trial in the Court of First Instance is premature, because the trial therein on appeal is a trial *de novo*, a new trial. There can not be a new trial unless a trial was already held in the court below. It might happen that after the trial on the merits in the lower count the parties may be satisfied with its judgment. So the evident purpose of the rule is to give the opportunity to the inferior court to try the case first upon the merits, and only

thereafter should the Court of First Instance be allowed to retry the case, or to conduct another trial thereof on the merits.

For the foregoing considerations, the order appealed from should be, as it is hereby, reversed, and the Court of First Instance of Cavite is hereby ordered to proceed with the trial of the case by virtue of its appellate jurisdiction.

Paras, C. J., Pablo, Bengzon, Montemayor, Reyes, Jugo, Bautista Angelo, Concepcion, and *Diokno, JJ.,* concur.

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