

MARIA B. CASTRO, PLAINTIFF AND APPELLANT, VS. GERONIMO DE LOS REYES, DEFENDANT AND APPELLEE.*G.R. No. L-14970. July 30, 1960*

Ponente: BARRERA, J.

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BARRERA, J.:

This is an appeal taken by plaintiff Maria B. Castro, from the decision of the Court of First Instance of Laguna (in Civil Case No. 9828), dismissing her case for lack of appellate jurisdiction over the subject matter of the action, and ordering her to return to defendant Geronimo de los Reyes, the possession of 2 parcels of land covered by Transfer Certificates of Title Nos. T-953 and T-954, and to account to the latter for the income she received therefrom during the period she was in possession thereof, and to pay the costs.

The records disclose that on January 24, 1945, shortly before liberation, defendant filed an action in the Court of First Instance of Manila against plaintiff and her husband, Manuel B. Espinosa, seeking a declaration by the court that the contract entered into by and between him and plaintiff and her husband on August 31, 1943 involving 2 parcels of coconut land located at Calauan, Laguna, containing an area of 246 hectares and described in Transfer Certificates of Title Nos. 8254 and 8255 of the Register of Deeds of Laguna, denominated as "Contract of Sale with Right to Repurchase", was merely a contract of simple mortgage to guarantee the payment of an obligation, and that the other contract entitled "Contract of Lease" executed on the same date by the same parties and involving the same parcels of land, was executed merely to evidence the obligation to pay interest on the principal loan of P120,000.00 at the stipulated rate of 6% per annum. Said complaint was docketed as Civil Case No. 3134 in said court and entitled "Geronimo de los Reyes vs. Maria B. Castro and Manuel B. Espinosa."

Simultaneous with the filing of said case, defendant deposited with the clerk of court, in consignment for the benefit of plaintiff and her husband, the amount of P120,182.50, due notice of which was given to said spouses.

On September 30, 1947, while said Civil Case No. 3134 was still pending, plaintiff executed an affidavit of consolidation of ownership over said 2 parcels of land, and caused the same to be registered in the Office of the Register of Deeds of Laguna, without the knowledge and consent of defendant. On the strength of said affidavit, Transfer Certificates of Title Nos. 8254 and 8255 were cancelled and in lieu thereof, Transfer Certificates of Title Nos. T-953 and T-954, both in the name of plaintiff, married to Manuel B. Espinosa, were issued.

Upon discovery of said consolidation of ownership by plaintiff, defendant on October 9, 1947, filed a petition with the Court of First Instance of Manila praying for the reconstitution of the records of said Civil Case No. 3134 which were destroyed during the battle for liberation of the City of Manila in February and March of 1945. Said petition was, however, denied by the court on the ground that it was not filed on time. Defendant, thereupon, filed with the same court on October 28, 1947, a complaint against plaintiff and her husband, embodying the same allegations and prayer contained in the complaint filed in said Civil Case No. 3134. The new complaint was docketed as Civil Case No. 3910.

In the meantime, or on October 25, 1947, plaintiff, acting alone and without joining her husband, filed with the

Justice of the Peace Court of Calauan, Laguna, a complaint for unlawful detainer (Civil Case No. 3), seeking to eject defendant from said 2 parcels of land. Plaintiff alleged that on August 31, 1943, defendant leased from her said parcels of land for a period of 4 years, and the latter failed to pay the yearly rental of P7,200.00 beginning August 31, 1945. To this complaint, defendant filed his answer, alleging as affirmative and special defenses, the following:

"A. That the plaintiff Maria B. Castro is not the owner nor is entitled to the possession of the property involved in the 'suit for the reason that the contract, styled 'Deed of Sale With Right to Repurchase' under which she claims right to said property was one of mortgage to guarantee the payment of the obligation of P120,000.00, Japanese military notes and the 'Contract of Lease' merely evidenced the payment of the stipulated annual interest on the principal indebtedness of P120,000.00 at the rate of 6% per annum;

"B. That in view of the fact that the question of possession cannot be properly determined by the Justice of the Peace without first settling the question of ownership, said Justice of the Peace without jurisdiction over the subject matter of the action;

"C. That there is a pending action between the same parties involving the same subject matter namely, Civil Case No. 3134 as reconstructed by Civil Case No. 3910, both of the Court of First Instance of Manila; and

"D. That, furthermore, Maria B. Castro has no legal capacity to institute the action without joining her husband, Manuel B. Espinosa."

Simultaneous, with the filing of his answer, defendant filed a petition for preliminary hearing on the affirmative defenses averred in his answer, especially in respect of the defense that the question of ownership must have to be decided before the question of possession may be determined. The Justice of the Peace Court of Calauan, then presided by Hon. Artemio Elepaño, denied said petition] and ordered the trial of the case. Thereupon, defendant filed with us a petition for certiorari (G. R. No. L-1823), assailing the jurisdiction of said court to try the case on the merits. Denying said petition, we said:

"There is a long line of decisions of this Court holding that the mere fact that the defendant, in his answer, claims to be the owner of the property from which the plaintiff seeks to eject him, is not sufficient to divest the Justice of the Peace or the Municipal Court of its summary jurisdiction in actions for forcible entry and detainer, because, were the principle otherwise, the ends of justice would be frustrated by making the efficacy of this land of action depend upon the defendant in all cases. Exceptions may be made when the evidence during the trial in said court shows that the question of title is actually involved and that the defendant's contention, according to said evidence, is meritorious. (*Supia and Batiaco vs. Quintero and Ayala*, 59 Phil., 312, 321; *Aquino vs. Deala*, 63 Phil., 582, 593; *Torres vs. Pena, et al.*, 78 Phil., 231; *Penalosa, et al. vs. Garcia, et al.*, 78 Phil., 245; *Zapanta vs. Bartolome and Chan-Liongco*, 83 Phil., 433). So much depends upon the merit or lack of merit in the claim or contention of Geronimo about his ownership of the land—this, to be determined during the trial in the Justice of the Peace Court." (*De los Reyes vs. Elepaño*, 83 Phil., 961; 46 Off- Gaz., [11] 143.)

Thereafter, the case was tried on the merits by the Justice of the Peace Court of Calauan. After closing his evidence, defendant reiterated his assault upon the court's jurisdiction over the subject matter of the action. Notwithstanding said objections, the court declared itself with jurisdiction and rendered a decision, the dispositive part of which, reads:

"In view of the foregoing, the Court hereby renders judgment in favor of the plaintiff and orders the defendant to vacate the premises and to pay the plaintiff the sum of P7,200.00 a year from August 31, 1945 until he vacates the same; and to pay attorney's fees to the plaintiff in the sum of P1,000.00 and also the costs of this action."

Defendant filed a motion for reconsideration of said decision but the same was denied. He then filed with us a petition for certiorari (G. R. No. L-3466) assailing the authority of the Justice of the Peace of Calauan to pass upon the case on its merits and render judgment thereon. We denied said petition, stating:

"The only question to decide in the present case is, may the finding of fact of the justice of the peace to the effect that the defendant's claim of ownership is devoid of merit be reviewed by this Court on certiorari to determine whether or not the justice of the peace court had jurisdiction to decide the case. In the first place, the oral evidence adduced before the justice of the peace court is not and cannot be brought before us, said court not being a court of record. In the second place, the extraordinary remedy of certiorari does not lie because the judgment rendered in this case by the justice of the peace is appealable to the Court of First Instance." (De los Reyes vs. Elepaño, et al., 93 Phil., 239.)

Immediately thereafter, defendant within the reglementary period, perfected his appeal from the decision of the Justice of the Peace Court of Calauan to the Court of First Instance of Laguna. The Justice of the Peace, however, refused to give due course to the appeal, as a consequence of which, defendant was compelled to file with the Court of First Instance of Laguna a petition for mandamus (Civil Case No. 9355), to compel the Justice of the Peace to give due course to said appeal. Plaintiff then filed a motion to dismiss the petition, on the ground that the appeal was filed out of time, but the same was denied by the Court of First Instance. Plaintiff, therefore, filed with us a petition for prohibition and certiorari with preliminary injunction (G. R. No. L-4889). We denied said petition for lack of merit (Res. of July 9, 1951.)

In due time, the mandamus case before the Court of First Instance of Laguna (Civil Case No. 9395) was finally decided granting the petition and directing the Justice of the Peace of Calauan to give due course to defendant's appeal. From said decision, plaintiff appealed directly to us (G. R. No. L-5282). We affirmed the decision of the Court of First Instance of Laguna stating that "under the circumstances of this case, the notice of appeal of appellant (De los Reyes) was filed in due time and that the decision of the Justice of the Peace had not yet become final and executory." [1] As a result of our said decision defendant's appeal from the decision of the Justice of the Peace of Calauan was perfected in the Court of First Instance of Laguna, and docketed in the latter court's Civil Case No. 9828.

On November 12, 1954, plaintiff filed 2 motions in said Civil Case No. 9828 namely, (1) a motion for immediate execution, and (2) a motion to dismiss the appeal and to declare judgment final. The first motion prayed that the judgment of the Justice of the Peace Court be immediately executed, pursuant to Section 8, Rule 72, of the Rules of Court, while the second motion sought to have the decision of the same court declared final and the appeal dismissed, for not having been perfected in accordance with Sections 2 and 3, Rule 40, of the same Rules.

On November 16, 1954, defendant filed a motion, praying that the appealed case (Civil Case No. 9828) be dismissed, on the ground that the Court of First Instance of Laguna had ceased to have jurisdiction over the subject matter of the litigation, upon the enactment of Republic Act No. 1199.

On January 20, 1955, the court, issued an order denying plaintiff's first motion, i.e., to dismiss the appeal and to declare judgment final. From this order of denial, plaintiff did not appeal, or elevate the matter on certiorari before the proper appellate court. On the same date, the court, likewise, denied defendant's motion to dismiss the case. Whereupon, defendant filed his opposition to plaintiff's motion for immediate execution.

When plaintiff's second motion namely, for immediate execution, was called for hearing on March 1, 1955, the trial court issued an order giving defendant 15 days from said date, within which to effect an amicable settlement of the case. Upon the expiration of the said period on March 16, 1955, the court immediately issued an order granting plaintiff's motion for immediate execution. And, on the same date, the Provincial Sheriff placed plaintiff

in possession of the land in question (see Motion for Immediate Execution, pp. 251 and 252, Record on Appeal).

Notified of this order, defendant moved for a reconsideration thereof, which was denied by the court. Whereupon, defendant elevated the matter to us by certiorari (G. R. No. L-8960). We forthwith issued a writ of preliminary injunction, and after the parties had submitted their respective memoranda, we rendered a decision on January 31, 1957, declaring null and void the order of the trial court delivering possession, pendente lite, of the parcels of land in dispute, in this tenor:

"* * * the provision for the immediate execution of a judgment of the justice of the peace court in actions of unlawful detainer under Section 8 of Rule 72 of the Rules of Court, is not applicable to an action of detainer like the present, where there is no immediate urgency for the execution because it is not justified by the circumstances.

* * * * *

"* * * inasmuch as the property now subject of litigation was originally sold only with right to repurchase to the plaintiff, so that the plaintiff was not really and originally the owner and possessor of the property, and since there are reasonable grounds to believe that the contract entered into between them was not one of lease but one of loan with mortgage of the property, the right of the plaintiff to the immediate possession of the property is not apparent; clear or conclusive, and neither should his right to the immediate execution of the property allowed until opportunity to settle the question of ownership is had. In other words, * * * while section 8 of Rule 72 is applicable also in cases of unlawful detainer, the immediate execution it provides for may be availed of only if no question of title is involved and the ownership and the right to the possession of the property is an admitted fact. * * *." (De los Reyes vs. Castro, et al., 100 Phil.; 831; 53 Off. Gaz., [10] 3060).

Finally, on January 28, 1957, the trial court rendered a decision which, in pertinent part, reads:

* * * * *

"The prejudicial question presented to this Court for determination hinges on the jurisdiction of the Justice of the Peace Court to hear and decide the unlawful detainer case in view of the challenge made on its jurisdiction that the question of ownership of the property is necessarily and actually involved in the litigation and so it is argued that the right of possession could not properly be determined without an adjudication of the title. Whether title is necessarily involved in this action is a question of fact which can be determined only from the evidence presented by both parties at the trial. (Alviar vs. Pampolina, 84 Phil., 45; 46 Off. Gaz., 6057; De los Reyes vs. Elepaño, G. R. No. L-3466.)

"From the evidence adduced by the parties it is clear that the plaintiff's pretended right to the possession of the property in dispute ultimately rests upon her claim of ownership which in turn is based upon a purported contract of sale with right of repurchase. While the defendant admitted to have signed the said deed, he nevertheless claimed that it was a simulation to hide a mortgage of obligation providing¹ for the payment of interest. If said contract was really a sale subject to repurchase and as the defendant failed to exercise the right of redemption, the plaintiff would already be the owner of the property and as such entitled to its possession. On the other hand, if the contract was as defendant claim, in fact a mere mortgage, then he could not be ejected therefrom much less required to pay rentals. In the final analysis, this case therefore hinges on a question of ownership and is for that reason not cognizable by the Justice of the Peace Court (Teodoro vs. Balatbat 94 Phil., 247; 50 Off. Gaz. No. 2 p. 601).

Moreover, the defendant has made out a prima facie case and established a meritorious claim as may be gleaned from the following circumstances to wit: (1) the defendant remained in possession of the property after he had allegedly sold it to, the plaintiff; (2) he further bound, himself to pay the land taxes on the property; (3) the stipulated annual rental is equivalent to 6% interest per annum computed on the sum of P120,000.00; (4)

the plaintiff retained part of the purchase price in the sum of P14,400.00 representing the alleged rentals paid in advance for two years and the 3% commission of Mr. Miranda; (5) the defendant as early as January, 1945, had already filed an action in the Court of First Instance of Manila to annul the alleged sale made by him to plaintiff; and (6) the consideration for the sale of the property was much below its true value especially taking into consideration the income that may be derived therefrom.

"The Justice of the Peace Court of Calauan erred in passing upon the merits of the respective contentions of the parties as its sole duty was to resolve first the prejudicial question raised by the defendant—whether title to the property is involved in the controversy. It had no authority to pass upon and determine if the transaction between the plaintiff and the defendant was in fact a sale with a right to repurchase or a loan secured by real estate mortgage. Such controversy should be solved, not in a summary proceeding of ejectment but in Civil Case No. 3910 of the Court of First Instance of Manila.

"From the evidence adduced by the parties, the question of involved in the unlawful detainer case cannot be properly determined without first resolving the question of ownership of the parcels of land from which the defendant is sought to be ejected and considering that the validity and legal effect of the contracts executed by and between the parties have been squarely put in issue in Civil Case No. 3910 of the Court of First Instance of Manila, the Justice of the Peace Court of Calauan was divested of jurisdiction and should have dismissed the case. It follows that this Court had no appellate jurisdiction to entertain and decide the case.

"Wherefore, judgment is hereby rendered dismissing the case for lack of appellate jurisdiction over the subject matter of the action and the plaintiff is ordered to return to the defendant the possession of the two parcels of land, now covered by Transfer Certificates of Title No. T-953 and T-954 and to account to the latter for the income she received therefrom during the period she was in possession thereof. The plaintiff is further ordered to pay the costs in both instances." (Emphasis supplied.)

From this decision, plaintiff appealed to the Court of Appeals, but said court, in its resolution of January 7, 1969, certified the case to us, on the ground that it involves a question of the jurisdiction of the lower court.

Plaintiff-Appellant claims that the lower court erred in dismissing the case on the ground that it had no appellate jurisdiction to decide the same.

The claim is devoid of merit. In contesting the jurisdiction of the Justice of the Peace Court of Calauan (in Civil Case No. 3), defendant-appellee presented evidence in said court to show that the question of possession of the 2 parcels of land in question could not be decided without first deciding the question of title thereof. This can be seen from the very decision of said court which, in pertinent part, reads:

"From the evidence presented by both parties, the following facts have been established: On August 31, 1943, the defendant sold to the plaintiff the two parcels of land in question covered by Transfer Certificate of Title Nos. 8254 and 8255 with the right to repurchase for the sum of P120,000.00. In the deed of sale (Exh. A), it is expressly provided and agreed upon by the parties that the defendant may repurchase the properties within four (4) years from August 31, 1943 and 'said right of redemption shall be exercised at any time during the period between August 31, 1945 and August 31, 1947'. On the same date, August 31, 1943, a contract of lease was entered into between the parties, whereby the defendant leased from the plaintiff these two parcels of land for a period of four (4) years at a rental of P7,200.00 per annum, the rentals for the period from August 31, 1943 up to and including August 31, 1945 having been paid in advance by the defendant herein (Exhs. B and B-1). On September 30, 1957, upon previous notice made by the plaintiff to the defendant to pay back rents and to leave the premises due to the expiration of the contract of lease and failure to repurchase within the agreed period (Exh. C), the plaintiff consolidated the ownership of the two parcels of land and, in view of which, the Register of Deeds of Laguna cancelled Transfer Certificates of Title Nos. 8254 and 8255 in the name of the defendant and issued Transfer Certificates of Title Nos. 953 and 954 in the name of the plaintiff. The plaintiff also has paid the land taxes for these properties for the years 1946-1949 (Exhs. D and D-1).

"The defendant tried to prove that the deed of sale with right to repurchase (Exh. A) was not really a sale but a mortgage, such being the intention of the parties; that the right of redemption could be exercised any time within four (4) years provided the annual interest on the mortgage loan is regularly paid; and that he tried to pay the plaintiff the amount of P120,000.00 in December, 1944 and January, 1945 and, because of her refusal to accept payment, the defendant instituted Civil Case No. 3134, in the Court of First Instance of Manila in January, 1945, depositing and consigning at the same time the amount of P120,000.00 with the Clerk of Court under Official Receipt No. 0607565 (Exhs. 2, 3, 4, and 5). The defendant herein sought to have the contract declared a mere mortgage and to have it cancelled because of payment by virtue of the deposit made." (Italics supplied.)

The rule is well-settled that the defendant, in a case of forcible entry and detainer in a justice of the peace court, may not divest said court of its jurisdiction by merely claiming ownership of the property involved.[2] In a long line of decisions, however, we have repeatedly held that if it appears during the trial that, by the nature of the proof presented, the question of possession cannot be determined without settling that of ownership, then the jurisdiction of said court is lost and the action should be dismissed.[3] So, it was held in one case[4] that if the plaintiff's right to the possession of the property in dispute ultimately rests upon his claim of ownership, which is based upon a purported contract of sale with right of repurchase admittedly signed by defendants but alleged by them to be a mere simulation to cloak a mortgage obligation tainted with usury, in the final analysis, the case hinges on a question of ownership and is, for that reason, not cognizable by the justice of the peace court.

For the purpose solely of determining whether the Justice of the Peace Court had jurisdiction to try the ejectment case, we are in full conformity with the trial court in its finding that defendant's evidence has made out a prima facie case and a meritorious claim that the question of possession of the 2 parcels concerned could not be decided without first determining title of the same, and that, therefore, the Justice of the Peace of Calauan was divested of its jurisdiction, and should have dismissed the case. It follows that the Court of First Instance of Laguna had no appellate jurisdiction to decide the case and, its order of dismissal on that ground, was, consequently proper and justified.

Furthermore, as correctly observed by the lower court, the validity and legal effect of the contracts executed between plaintiff and defendant have been squarely put in issue before the Court of First Instance of Manila in Civil Case No. 3910 thereby likewise divesting said Justice of the Peace Court of its jurisdiction; over the latter case and, consequently, the trial court's appellate jurisdiction thereon.

Plaintiff-appellant next contends that the lower court erred in issuing its order dated January 20, 1955 denying her motion to dismiss defendant's appeal (dated November 12, 1954), on the ground that it was filed beyond the period provided in Section 2, Rule 40 of the Rules of Court.

Plaintiff-appellant moved for the dismissal of defendant-appellee's appeal, on the ground that the judgment of the Justice of the Peace Court of Calauan, had already become final, because the appellate court docket fee and appeal bond were not filed within the reglementary period. It was argued that the sending of 2 money orders for the appellate court docket fee and appeal bond to the Justice of the Peace of Calauan, together with the notice of appeal was not in substantial compliance with Sections 2 and 3, Rule 40, of the Rules of Court, because what is required to be filed with the Justice of the Peace Court is the certificate of the Municipal Treasurer that the appellate court docket fee and appeal bond had been deposited with his office. It was further pointed out that the Justice of the Peace of Calauan had no legal, nor moral obligation to cash the money order for the appellate court docket fee and then pay it to the Municipal Treasurer and, thereafter, secure from the latter the certificate of deposit to be filed with the records of the case.

In denying plaintiff-appellant's motion to dismiss, the lower court stated:

" There is no question that the notice of appeal which was enclosed with the letter of counsel for the defendant to the Justice of the Peace of Calauan was filed on time, the said letter having been posted by special delivery-registered mail in Manila on November 16, 1950. It is also undisputed that the two money orders were enclosed with the notice of appeal and that the letter of counsel for the defendant to the Municipal Treasurer of Calauan bringing to his attention that the appellate court docket fee and appeal bond had been forwarded to the Justice of the Peace of the same municipality, was posted by special delivery-registered mail on November 16, 1950, the same day the other letter was sent. It is clear, therefore, that had the defendant caused the money order of P16.00 to be payable to the Municipal Treasurer of Calauan and enclosed it and the other money order with the letter sent to the said official, the appeal, according to the admission of counsel for the plaintiff, would have been perfected on time for the reason that 'pursuant to the provisions of Section 1, Rule 27 of the Rules of Court, the mailing of the payment of deposit with, the proper office or official, as shown by the post office registry receipt, is the date of payment of deposit.' In other words, the mistake, if it may be attributed to the defendant, was in having the money order for P16.00 intended for the appellate court docket fee to be issued payable to the Justice of the Peace of Calauan instead of to the Municipal Treasurer of said municipality and in sending the two money orders to the former instead of to the latter official.

"In this jurisdiction, the Supreme Court has consistently held that the rules of procedure in inferior courts regarding appeals need not be strictly and rigidly complied with because the sense of justice and equity should prevail as against the technicality of the law. This is specially true where the appellant acted in good faith and had no intention to unduly delay the termination of the case (*Castro vs. Justice of the Peace of Bocaue*, 33 Phil., 595; *Contreras vs. Dinglasan*, 79 Phil 42; 45 Off. Gaz., 257; *Alandy vs. San Jose*, 79 Phil., 811; 45 Off. Gaz. 2829, 2831). "In the case of *Alandy vs. San Jose*, supra, the Justice of the Peace required the appellant to post an appeal bond of P200.00 and so the latter did not file the bond required in the order or even that prescribed in the Rules of Court because he had an understanding with the Justice of the Peace that he would raise the legality of the order in question before the Court of First Instance. When the records of the case were received in the Court of First Instance, the appellee moved for the dismissal of the appeal on account of the failure of the appellant to post an appeal bond. The Court of First Instance granted the motion but on appeal, the Supreme Court reversed the judgment and in effect held that when the failure of the appellants to file an appeal bond in time was due to an error of the Justice of the Peace, they would not be deprived of their right to be heard in the Court of First Instance.

"In another case (*Aligarbes vs. Aguilar, et al.*, G. R. No. L- 15736, promulgated on January 20, 1964), the plaintiff was authorized to sue as a pauper in a forcible entry and detainer case. After due hearing, the complaint was dismissed. Within the reglementary period, the plaintiff filed a motion to appeal as a pauper together with a notice of appeal to the Court of First Instance. The Justice of the Peace issued an order that he had no authority to permit the plaintiff to litigate as a pauper on appeal and that such permission may only be granted by the Court of First Instance. However, the same Judge transmitted the records of the case to the superior court 'for its proper determination in the premises'. The case was docketed in the Court of First Instance but after the issues had been joined and the trial had been commenced, the Presiding Judge of said Court *motu proprio* issued an order directing the return of the records of the case to the court of origin for execution of judgment as the docketing thereof in the appellate court was illegal, the docketing fees not having been paid nor had the appellant been exempted from the payment thereof by the Court. On petition for review by writ of certiorari, the Supreme Court ordered the return of the records to the Justice of the Peace so that he may pass upon the petition to appeal as pauper and the Court of First Instance may also act thereafter upon request of the litigant from payment held that—

'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 thru 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 the light of the foregoing precedents, the Court is of the opinion and so holds that it would be unjust to dismiss the defendant's appeal on the mere technicality that he did not send directly the money orders to the Municipal Treasurer of Calauan and in causing the issuance of one of them in the name of the Justice of the Peace. Moreover; the defendant should not be made to suffer from the mistake of the Justice of the Peace in advising the Municipal Treasurer not to cash the money order intended for appeal bond and in also doing likewise with respect to the money order for the appellate court docket fee. In any event the required amounts had been eventually deposited with the Municipal Treasurer of Calauan and the appealed case had already been docketed in this Court. The lapse in the literal observance of Sections 2 and 9 of Rule 40, of the Rules of Court could be overlooked as it did not involve public policy and arose from an honest mistake (*Etherl Case and Minna Hartz vs. Jugo*, 43 Off. Gaz. No. 11)." (Italics supplied.)

In the light of the above findings of fact of the lower court and the rulings of this Court therein cited, we are of the opinion and so hold, that said court committed no error in denying plaintiff-appellant's motion to dismiss defendant-appellee's appeal of November 12, 1954.

There is another reason why the order in question should be upheld. In *De los Reyes vs. Elepaño*, supra, the question raised was whether the judgment rendered by the Justice of the Peace Court of Calauan in the detainer case had already become final and executory in view of the alleged failure of defendant to perfect his appeal within the reglementary period. As already stated, we held in said case that under the circumstances of the case, the notice of appeal of appellant (defendant) was filed in due time and that the decision of the Justice of the Peace had not yet become final and executory. Plaintiff could have raised in said case the question she presented in her motion) to dismiss defendant's appeal dated November 12, 1954. Having failed to do so, she could not now raise the same question (failure to perfect his appeal for reasons stated in said motion) for the matter is deemed res adjudicata. The rule is that a judgment is conclusive not only upon questions actually contested, but also upon matters which might have been litigated and decided in the same suit, and the estoppel applies where defenses which were available in the first action but not set up are sought to be used in a second action either by way of defense or as the foundation of a claim for relief. (*Soriano vs. De Leon, et al.*, G. R. No. L-7863, prom. August 31, 1959.)

"* * * a judgment is conclusive not only upon the questions actually contested and determined, but upon all matters which might have been litigated and decided in that suit; and this is undoubtedly true of all matters properly belonging to the subject of the controversy and within the scope of the issues, so that each party must make the most of his case or defense, bringing forward all his facts, grounds, reasons, or evidence in support of it, on pain of being barred from showing such omitted matters in a subsequent suit; and it is also true that, where the second suit is upon the same cause of action, all matters which might have been litigated are conclusively settled by the judgment; and that generally the estoppel applies where defenses which were available in the first action, but not then set up are sought to be used in a second action either by way of defense or as the foundation of a claim for relief." 34 C. J. 909-911, cited in *Tejedor, et al., vs. Palet, et al.*, 61 Phil., 494.)

Wherefore, finding no reversible error in the decision appealed from, the same is hereby affirmed in toto, with costs against the plaintiff-appellant. So ordered.

Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Gutierrez David, JJ., concur.
Padilla, J., took no part.

[1] *De los Reyes vs. Elepaño, et al.*, 93 Phil., 239; 49 Off. Gaz. (6) 2285.

[2] *Supia, et al. vs. Quintero, et al.*, 59 Phil., 812; *Aquino vs. Deala*, 63 Phil., 582; *Torres, et al. vs. Peña, et al.*, 78

Phil., 231; 44 Off. Gaz., 2699; Savinada vs. Tuazon, et al., 88 Phil., 840; 46 Off. Gaz., [11] 291; Lee Soo vs. Osorio, 89 Phil., 135; Cruz vs. Lansang, 87 Phil., 443; 48 Off. Gaz., 551. [3] Mediran vs. Villanueva, 37 Phil., 752; Masallo vs. Cesar, 89 Phil., 134; Favie vs. Gutierrez David, et al., 75 Phil., 536; 42 Off. Gaz., 511; Dy Sun vs. Brillantes, et al., 93 Phil., 175; Centeno vs. Gallardo, et al., 93 Phil., 63; 50 Off. Gaz., [1] 165; De Po, et al., vs. Moscoso, et al., 93 Phil., 427; 49 Off. Gaz., (7) 2487; Elepaño vs. De los Reyes, *supra*.

[4] Teodoro vs. Balatbat, et al., 94 Phil., 247; 50 Off. Gaz. (2) 601.

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