

EULOGIO RODRIGUEZ, SR., PETITIONER, VS. HON. JUDGE WENCESLAO L. FERNAN, ETC., ET AL., RESPONDENTS.*G.R. No. L-15143. November 29, 1961*

Ponente: DIZON, J.

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On September 24, 1957 respondent Ceferino de los Santos, Jr. brought an action in the Court of First Instance of Iloilo (Civil Case No. 4392) against Ricardo Yap Ladrado and Eulogio Rodriguez, Sr.—the latter in his personal capacity as well as in his capacity as President of the Nacionalista Party—to secure judgment restraining Ladrado from using in his election campaign posters the words "Official Candidate, Nacionalista Party" and from claiming the right to the election inspectors in the Fourth Congressional District of Iloilo, and to restrain Rodriguez from allowing Ladrado to continue holding himself as the official candidate of the Nacionalista Party for said congressional district. The complaint filed also sought to recover damages of different kinds amounting to a total of more than P500,000.

Herein petitioner, after being summoned, filed a motion to dismiss the complaint on the ground that the court lacked jurisdiction over his person and over the subject matter of the action, and on the further ground that the complaint did not state facts sufficient to constitute a cause of action. Inasmuch as before said motion could be resolved the elections were held on November 11, 1957, petitioner filed a supplemental motion to dismiss the complaint on the ground that the issue involved therein had become moot. This motion was denied by the Court for the reason that the complaint also sought to recover damages.

Subsequently, petitioner filed a second motion to dismiss on the ground that the plaintiff in the case had not paid in full the docketing fees. Before ruling on this motion the court ordered the clerk of court to fix or assess the docket fees due from the plaintiff in the case, and on February 25, 1958 said court officer assessed the fees in the sum of P50.00. Petitioner contested this assessment and, subsequently, on the basis of Opinion No. 316, Series of 1956, rendered by the Department of Justice, the court made a new assessment requiring the plaintiff in the case to pay the sum of P485.00 as docket fees. Instead of paying this increased amount, however, said plaintiff filed a motion for the admission of an amended complaint in which the damages specifically claimed amounted only to P70,000.00. Petitioner objected to the admission of said amended complaint on the ground that, as the plaintiff had not paid in full the docket fees due upon the original complaint, the case should be dismissed. The court over-ruled this objection and admitted the amended complaint. Thereupon the present action for prohibition was filed against Ceferino de los Santos, Jr., plaintiff in the above-mentioned civil case, and against the Hon. Judge Wenceslao L. Fernan.

Upon the undisputed facts above stated, the writ should be denied.

At the time the amended complaint was filed and submitted to the court for admission, the defendant in the action had not yet filed his answer. Consequently, pursuant to the provisions of Section 1, Rule 17 of the Rules of Court, the plaintiff could amend his complaint "as a matter of course".

Upon the other hand, that the court presided by the respondent judge had jurisdiction over the matter of allowing or not allowing amendments to pleadings filed in an action before it can hardly be doubted. Any error committed by it in this connection would constitute mere error of judgment—which may be corrected only by appeal.

For the reasons above stated, the writ is denied, with costs.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes. J. B. L., Barrera, Paredes, and De Leon, JJ., concur.

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