

**CONCHITA VDA. DE SALUDES, PETITIONER AND APPELLANT, VS.
GREGORIO PAJARILLO AND VICENTE BAUTISTA, JUDGE OF
MUNICIPAL COURT OF MANILA, RESPONDENTS AND APPELLEES.**

G.R. No. L-1121. July 29, 1947

Ponente: MORAN, C.J.

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MORAN, C.J.:

Conchita Vda. de Saludes, herein petitioner and appellant, brought an action in the Court of First Instance of Manila on November 12, 1945, to annul a deed of sale of a house and lot executed by her in favor of the herein respondent and appellee, Gregorio Pajarillo. During the pendency of the suit, respondent Pajarillo filed an action for ejectment in the municipal court of Manila against petitioner Saludes to compel her to vacate said house and lot. Petitioner Saludes filed in that case a motion to dismiss upon the ground that there was another action pending between the same parties and for the same cause and that the court had no jurisdiction over the case. The motion was heard and submitted for resolution. The municipal court, however, presided over by Judge Vicente Bautista, without acting upon said motion for dismissal, and without a trial upon the merits, rendered judgment ordering the defendant Saludes "to vacate said premises, pay the rental at the rate of eighty pesos per month beginning July 1st, 1946, until she leaves the premises and surrenders possession thereof to plaintiff, plus costs of suit." Whereupon, Saludes filed a motion for reconsideration and new trial mainly upon the ground that the judgment was a patent nullity there having been no trial on the merits wherein both parties could introduce their evidence. While this motion was pending, Judge Bautista, upon motion of Pajarillo, and without notice upon Saludes, ordered the execution of the judgment. Hence, Saludes filed a petition for certiorari with the Court of First Instance of Manila to annul said judgment. The petition was denied upon the ground that the remedy was appeal. And Saludes appealed to this Court.

It is a fact that there has been no trial on the merits in the municipal court and that its judgment was rendered after the hearing of the motion to dismiss the defendant having not even the opportunity to file her answer to the complaint. Respondent admits this impliedly although in his brief he alleges that at the hearing of the motion to dismiss, respondent Judge questioned both parties as to their stand on the case; that defendant Conchita Vda. de Saludes admitted in open court having received the sum of P2,000; and that she agreed to leave the premises in question on March 31, 1946, but that she could not find a place where she and her orphaned children could transfer to.

In the first place, there is nothing before us to show that these supposed questions and answers have really been made. A brief is not the place where issues of fact may be pleaded for the first time. In the second place, these alleged questions and answers made at the hearing of the motion to dismiss cannot take the place of a valid trial that is a prerequisite to a valid judgment.

Although a municipal court is a court of limited jurisdiction, the procedure therein should be orderly and not so summary as to disregard important measures provided by the rules to safeguard the vital interests of justice. A

defendant is accorded by the rules the right to raise preliminary questions by means of a motion to dismiss (Rule 4, section 7), and the court is powerless to deprive him of such right by ignoring completely the motion to dismiss filed and argued by him and disposing of the case finally on other issues not submitted by the parties. The court is bound to act on the motion, and in the event of a denial the defendant is given the other right to answer the complaint and plead all the defenses and counterclaims he may have (Rule 4, sections 6 and 7); and, in case of counterclaim, defendant is bound to put it in writing (Rule 4, section 6). The right to answer is not an empty ceremony in an inferior court. Well known is the rule that affirmative defenses not pleaded in an inferior court cannot be pleaded for the first time in the Court of First Instance on appeal. (*Bernardo vs. Genato*, 11 Phil., 603; *Beech vs. Jimenez and Crossfield*, 12 Phil., 212.) And compulsory counterclaims not set forth therein are barred forever (Rule 4, section 19; Rule 10, section 6). Thus, an omission to answer may be of harmful consequences to defendant.

It is only after the defendant has answered the complaint that the court may proceed to the trial of the case on the merits. In the trial, first the plaintiff is entitled to testify and to introduce the testimony of his witnesses, and next the defendant may also testify and offer the testimony of his witnesses, and finally plaintiff may offer rebutting testimony. After testimony has been closed, the parties or their representatives may be heard in argument (Rule 4, section 8). And at the conclusion of such trial and not before, may the court render judgment according to the law and the facts proved by the evidence duly presented by the parties (Rule 4, section 11). Thus, the trial to which a defendant is entitled is one in which he has a full opportunity to present all the evidence he may have in support of all the defenses or counterclaims duly pleaded by him. The court has no authority to hold the trial before defendant had an opportunity to plead, and has no power to limit such trial to a mere questioning of the parties as to what their stand on the case is, particularly when the questioning is made at a time when a motion to dismiss is being heard, the parties having no idea at the moment that the trial of the case is already being held and confined to such interrogatory. Under such circumstances, in answering the questions of the court, statements may be made by the parties which are not intended as a pleading or testimony and may thus be devoid of accuracy and completeness; facts may have been stated without care, with omission of important circumstances that may be of decisive influence; and since the parties, or at least the defendant, did not know that she was testifying in a formal trial, she may have failed to mention other issues and other transactions that may affect or change the meaning of all the statements she has actually made. We believe and so hold that such procedure is irregular and arbitrary, conducive to confusion and injustice, and is null and void.

Respondent contends that certiorari was improper because an appeal from the decision of the municipal court was available. This contention is untenable. An appeal under the circumstances was not an adequate remedy there being an order of execution issued by the municipal court.

Judgment appealed from is reversed and the judgment rendered by the municipal court in the ejectment case is set aside, with costs against appellee.

Paras, Feria, Pablo, Perfecto, Hilado, Bengzon, Hontiveros, Padilla, and Tuason, JJ., concur.

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