

VICTORIANO BULACAN, PLAINTIFF-APPELLEE, VS. FAUSTINO TORCINO AND FELIPA TORCINO, DEFENDANTS-APPELLANTS.

G.R. No. L-44388. January 30, 1985

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The issue before us is whether or not a complaint for forcible entry and detainer should be dismissed by a municipal court on the ground that the plaintiff knowingly asked a non-member of the bar to sign and file it for him.

A complaint for forcible entry and damages with preliminary mandatory injunction was filed with the Municipal Court of Baybay, Leyte by Victoriano Bulacan against Faustino Torcino and Felipa Torcino. The complaint was signed by Nicolas Nuñez, Jr., "Friend counsel for the Plaintiff" but was verified by the plaintiff-appellee himself. The verification reads:

"I, VICTORIANO BULACAN, of legal age, Filipino, married and a resident of Baybay, Leyte, after having been duly sworn to in accordance with law hereby depose and say:

"That I am the plaintiff in the above-entitled case; that I have caused the above complaint to be prepared by Nicolas P. Nuñez, Jr. and that I have voluntarily asked, sought and requested his aid to file, claim, prosecute, and defend in court my civil case against the defendants Faustino Torcino et al or others in connection with this case at the Municipal Court of Baybay, Leyte; that I have read and known the contents thereon and the allegations therein are true and correct to my own knowledge.

"IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of August, 1972 at Baybay, Leyte.

s/VICTORIANO BULACAN

t/VICTORIANO BULACAN

Plaintiff

"SUBSCRIBED AND SWORN to before me this 4th day of August, 1972 at Baybay, Leyte by Victoriano Bulacan with his Res. Cert. No. A-930280 dated Aug. 4, 1972 issued at Baybay, Leyte.

s/NICOLAS P. NUÑES, JR.

t/NICOLAS P. NUÑES, JR.

Notary Public

Until December 31st, 1972

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"Series of 1972"

When the defendants-appellants filed their answer, they did not question the fact that the complaint was signed by Nicolas Nuñez, Jr.

On February 10, 1973, the municipal court issued the following order:

"The contending parties are given one week time to submit the proposed compromise agreement in connection with his case.

"Failure to do so will constrain this court to render judgment on the basis of the ocular inspection conducted sometime on December, 1972."

Due to the failure of the parties to settle their case amicably, the court rendered a decision ordering the Torcinos to demolish and remove the portion of their house which was illegally constructed on the land of the plaintiff. The municipal court stated that there is no doubt that Victoriano Bulacan is the owner and has been in possession of Lot No. 5998 and that the lot of the defendants-appellants is on the eastern portion of said lot. The court found that the Torcinos constructed a residential house which unfortunately encroached on the lot of the plaintiff.

The Torcinos appealed the decision to the Court of First Instance of Leyte.

On September 18, 1973, the appellants Torcinos filed a motion to dismiss the complaint on the ground that the complaint was not signed by the plaintiff or by an admitted attorney, and therefore must be considered as sham and false.

Four days later, another motion to dismiss the complaint was filed with the additional discussion that the fact that the complaint is verified, does not in itself cure the defect obtaining in the complaint.

On September 24, 1973, appellee Bulacan opposed the motion and alleged that the motion to dismiss was not filed on time and the defenses therein were not pleaded in the answer in the municipal court and therefore, are deemed waived and may not be raised for the first time on appeal in the Court of First Instance. The opposition also stated that the complaint substantially conforms to the Rule.

On September 24, 1973, the Court of First Instance of Leyte denied the motion to dismiss. A motion for reconsideration was denied for lack of merit.

On December 7, 1973, when the case was called for continuance, the parties presented to the court a stipulation of facts which states and which we quote verbatim:

"COME NOW, the plaintiff and the defendants duly assisted by their respective counsel and unto this Honorable Court most respectfully submits the following stipulation of facts, to wit:

"1. That the plaintiff and the defendants hereby agree to relocate the defendants' land covered by Transfer Certificate of Title Number T-8133 which is hereto attached.

"2. That should the findings of the Geodetic Engineer be that the present construction particularly the wallings is beyond the lot of the said defendants as defined and described in Transfer Certificate of Title No. T-8133 then the defendants will remove any portion of the wallings that maybe inside the land of the plaintiff and vacate from the premises encroached. However, should the findings of the Geodetic Engineer be that the walling constructed by the defendants does not encroach even an inch on the land of the plaintiff then the plaintiff hereby agrees to the dismissal of the present case.

"3. That should the Geodetic Engineer finds out that the defendants has encroach the land of the plaintiff the

defendants will be the one who will pay for the services of the Geodetic Engineer and should the findings be that no encroachment were made by the defendants, then the plaintiff should shoulder the ex-penses of the relocation survey.

"4. That parties hereby agree that Geodetic Engineer Jaime Kudera be appointed by the Honorable Court to conduct and execute the relocation survey.

"5. That plaintiff and defendants hereby agree to waive the claims and counterclaims for damages.

"WHEREFORE, it is most respectfully prayed that the Honorable Court renders judgment on the basis of the above stipulation of facts."

The stipulation of facts was signed by plaintiff Victoriano Bulacan, his new counsel Atty. Diego A. Cala, defendants Faustino and Felipa Torcino, and their counsel Gerardo A. Pabello.

The court issued an order directing surveyor Jaime Kudera to conduct the relocation work on the basis of the stipulation.

On December 17, 1973, Kudera submitted his report and on the basis of his findings, the Court of First Instance of Leyte affirmed the decision of the municipal court.

The defendants appealed the case to the Court of Appeals and assigned two errors:

I

THAT THE TRIAL COURT ERRED IN DENYING THE MOTION TO DISMISS FILED BY THE DEFENDANTS-APPELLANTS AND IN NOT DIS-MISSING THE COMPLAINT.

II

THAT THE TRIAL COURT ERRED IN DECIDING THE CASE AGAINST THE DEFENDANTS-APPELLANTS AND IN AFFIRMING THE DECISION OF THE MUNICIPAL COURT ON THE DECISION APPEALED FROM.

The Court of Appeals in a resolution dated August 7, 1976, certified the appeal to us on the ground that no testimonial or oral evidence was presented by the parties and, therefore, no factual matters are in issue in the appeal.

We affirm the decision of the lower court.

The Torcinos allege that the complaint is irregular as it was signed not by the plaintiff but by one who was not a member of the bar and who designated himself merely as "Friend counsel for the Plaintiff." The appellants argue that the municipal court did not acquire jurisdiction over the case. They invoke Section 5, Rule 7 which states:

SEC. 5. Signature and address.- Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with Intent to defeat the purpose of this rule, it may be stricken out as sham and false and the action may proceed as though the pleading had not been served. For a willful violation of this rule an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted. (Underlining supplied)

Under the facts of this case, however, the applicable provision is Section 34, Rule 138 of the Rules of Court which states:

SEC. 34. By whom litigation is conducted.- In the Court of a municipality a party may conduct his litigation in person, with the aid of an agent or friend appointed by him for that purpose, or with the aid of an attorney. In any other court, a party may conduct his litigation personally or by aid of an attorney and his appearance must be either personal or by a duly authorized member of the bar." (Underlining supplied)

The Rules are clear. In municipal courts, the litigant may be assisted by a friend, agent, or an attorney. However, in cases before the regional trial court, the litigant must be aided by a duly authorized member of the bar. The rule invoked by the Torcinos applies only to cases filed with the regional trial court and not to cases before a municipal court.

In the case of *Cantimbuhan v. Cruz, Jr.* (126 SCRA 190) we decided a similar issue and allowed the appearance of two senior law students as friends of the complainant-petitioner Cantimbuhan to prosecute the case before the sala of Judge Nicanor J. Cruz, Jr., of the Municipal Court of Parañaque.

Similarly, in the case of *Laput v. Bernabe* (55 Phil. 621) a law student was allowed to represent the accused in a case pending before the City Court of Manila.

Court procedures are often technical and may prove like snares to the ignorant or the unwary. In the past, our law has allowed non-lawyers to appear for party litigants in places where duly authorized members of the bar are not available. (*U.S. v. Bacansas*, 6 Phil. 539). For relatively simple litigation before municipal courts, the Rules still allow a more educated or capable person to appear in behalf of a litigant who cannot get a lawyer. But for the protection of the parties and in the interest of justice, the requirement for appearances in regional trial courts and higher courts is more stringent.

In the case before us, the complaint was verified by the party litigant himself. In the verification, the plaintiff specifically stated that he had caused Mr. Nuñez to conduct the litigation and to sign the complaint in his behalf, indicating his awareness that Nuñez is not a registered lawyer. There is, therefore, added justification for the pleading to be admitted rather than dismissed. As the lower court has cited:

"So it has been held that, where a pleading is not signed by the attorney as required, but is verified by the party, substantial rights have not been affected and the defect may be disregarded as against a motion to strike." (71 C.J.S. 954-955)

Rules of pleading, practise, and procedure must be liberally construed so as to protect the rights and interests of the parties. As we stated in *Paulino v. Court of Appeals* (80 SCRA 257):

xxx xxx xxx

"x x x pleadings, as well as remedial laws, should be construed liberally, in order that litigants may have ample opportunity to prove their respective claims, and that a possible denial of substantial justice, due to legal technicalities, may be avoided. x x x"

The Torcinos try to impugn the results of the relocation survey. We agree with the appellee that the appellants are now estopped on this issue because they themselves prayed in the stipulation of facts that the findings of the geodetic engineer would be bases for the decision of the court of first instance. We see no error, much less any grave abuse of discretion, in the lower courts' findings that the house of the Torcinos encroached on the lot of Victoriano Bulacan.

WHEREFORE, the decision of the court a quo is hereby AFFIRMED.

SO ORDERED.

Teehankee, Acting C.J., Melencio-Herrera, Plana, Relova, and De La Fuente, JJ., concur.

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