

PABLO RICOHERMOSO, PETITIONER, VS. JUAN P. ENRIQUEZ AND BERNARDINO RICOHERMOSO, RESPONDENTS.

G.R. No. L-2580. December 07, 1949

Ponente: PARAS, J.

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PARAS, J.:

In an action for forcible entry instituted in the justice of the peace court of Santa Cruz, Marinduque by the herein respondent Bernardino Ricohermoso against the herein petitioner Pablo Ricohermoso, judgment was rendered in favor of the former. The petitioner appealed to the Court of First Instance of Marinduque which set the trial of the case for July 15, 1947. This trial was postponed upon motion of the petitioner who did not even bother about appearing before the court, on the ground of sickness of one of his witnesses. Trial was reset for July 16, 1948, on which date attorney for the petitioner filed a motion praying that the case be transferred to July 20, 1948, for failure of the petitioner and his witnesses to show up. In an order dated July 21, 1948, the respondent judge denied the motion for lack of merit and dismissed petitioner's appeal without costs. The petitioner has filed the present special civil action for certiorari aimed at setting aside said order.

The contention that the respondent judge gravely abused his discretion is untenable. In the first place, the motion for postponement was not accompanied by affidavits of merit as required by section 5 of Rule 31 of the Rules of Court. In the second place, the action is one of forcible entry filed in and decided by the justice of the peace court in 1946, and set for trial by the Court of First Instance first on July 15, 1947, and again on July 16, 1948, or one year apart. Considering the summary nature of the action, it cannot be said that the petitioner has not been given enough time to be in readiness for trial.

While the respondent judge properly denied the postponement, he committed an error in dismissing the appeal. Under section 9, of Rule of Court No. 40, "a perfected appeal shall operate to vacate the judgment of the justice of the peace or the municipal court, and the action when duly entered in the Court of First Instance shall stand for trial de novo upon its merits in accordance with the regular procedure in that court, as though the same had never been tried before and had been originally there commenced," except of course in forcible entry and detainer cases when, upon failure of the defendant to comply with the conditions for staying execution, the Court of First Instance orders the execution of the appealed judgment which does, not, however, bar the appeal from taking its course. The respondent judge was accordingly bound to proceed with the trial and decision of the case after he had denied petitioner's motion for postponement.

Wherefore, the order of the respondent judge dismissing petitioner's appeal is set aside and the case is restored for further proceedings. So ordered without costs.

Moran, C.J., Ozaeta, Bengzon, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

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