

LEODIGARIO GILLEGO, PETITIONER-APPELLANT, VS. SALVACION DIAZ AND MANUEL GATA, AND HON. MAYORICO GALLANOSA, AS MUNICIPAL JUDGE OF MATNOG, RESPONDENTS-APPELLEES.

G.R. No. L-27428. May 29, 1971

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Direct appeal on a question of law from the order of the Court of First Instance of Sorsogon dismissing appellant's petition for certiorari seeking to restrain the execution of a judgment of ejectment rendered by the municipal court of Matnog, Sorsogon, on the ground of the latter court's alleged loss of jurisdiction over the ejectment case after the lapse of one year from the filing of the complaint.

On January 15, 1964, respondents Salvacion Diaz and Manuel Gata filed a complaint for ejectment and illegal detainer of a certain residential property against petitioner before the municipal court of Matnog, Sorsogon, presided by respondent judge Mayorico Gallanosa.

After numerous postponements attributed by respondents to the effort of respondent judge to effect an amicable settlement of the case (petitioner's wife being the sister of respondent Salvacion Diaz) and to postponements secured by the parties, judgment of ejectment was rendered on November 1, 1965 by respondent judge, sentencing "the defendant Leodigario Gillego and other occupants therein to vacate the premises as soon as possible, to pay the amount of P315.00 as rentals in arrears at the rate of P15.00 a month which is considered a reasonable compensation for the use and occupation of the premises from the final filing of the complaint to date, and finally to pay P100.00 as attorney's fee and the cost of this action."

The judgment having become final and executory, respondents filed on February 16, 1966 the corresponding motion for execution of judgment, but petitioner filed with the lower court on March 22, 1966 the present petition for certiorari with injunction, praying for a declaration of nullity of the judgment of ejectment on the sole ground that "the said decision of the respondent Municipal Judge of Matnog, rendered on November 1, 1965 is null and void ab initio for the reason that the same was rendered by him after he has lost jurisdiction over the case due to the lapse of one year from the date of filing of the complaint."

The lower court made short shrift of the petition, and issued its order of May 3, 1966, dismissing the petition without costs, upon the authority of *Alejandro vs. Court of First Instance of Bulacan*,^[1] *Barrueco vs. Abeto*,^[2] *Gallano vs. Rivera*,^[3] and *Casilan vs. Tomassi*,^[4] and ruling that "(T)he Municipal Judge of Matnog, Sorsogon, did not lose jurisdiction over the case just for the reason that the decision was rendered more than one year after the filing of the complaint."

Hence, this appeal which the Court finds bereft of merit.

Sections 9 and 11 of Rule 4 of the old Rules of Court (now Rule 5, sections 8 and 10) providing that "Adjournment. - Inferior courts may adjourn the hearing of an action from day to day as the interest of justice

requires, but shall not have power to adjourn hearings for a longer period than five (5) days for each adjournment, nor for more than fifteen (15) in all," and that at the conclusion of trial, the municipal judge shall render judgment, "(B)ut he may adjourn the disposition of the case to a stated day, not exceeding one week from the time of conclusion of the trial, for the consideration of the judgment, if he requires time for consideration" - have long been uniformly held by the Court in the above-cited cases of Alejandro, Gallano and Casilan to be merely directory in character, a violation or non-observance of which would not nullify the judicial proceeding, although a willful disregard or reckless violation thereof by a judge would constitute a breach or neglect of duty which may subject him to appropriate administrative action.

In Casilan, where the Court reaffirmed anew the above-cited cases, including Barrueco involving the counterpart provision of Rule 31, section 4 of the old Rules of Court (now Rule 22, section 3) for courts of first instance, the Court stressed that the requirement in the cited Rule "for the judge of an inferior court to decide a case within one week after trial is not jurisdictional and that a violation thereof does not render the decision void but subjects the judge to disciplinary action."

The Court has but last month reaffirmed the doctrine in *People vs. Catolico*,^[5] emphasizing that "(I)ndeed, the Rule could not but be directory rather than mandatory in character, for it could not have been possibly intended to divest without sanction of law the trial courts of their jurisdiction and authority to try and decide cases within their competent jurisdiction, as conferred by statute."

The earlier case of *Monteblanco vs. Hinigaran Sugar Plantation*^[6] cited by petitioner-appellant clearly has no application to the present case. In that case, the action for detainer first instituted in 1924 was not sought to be reactivated until after more than eight years later in 1933, and the ratio decidendi was that "(F)or purposes of the law, the case had died in the justice of the peace court one year after it had been remanded thereto by the Court of First Instance, with no step having been taken towards its termination in one way or another." Plaintiffs there had been deemed to have abandoned their detainer suit after the lapse of over eight years, with the consequent loss of jurisdiction of the inferior court over the case, since, as stated by the Court, "(I)t is known that under the law (Acts Nos. 3881 and 4115), justice of the peace courts alone have jurisdiction in cases of forcible entry and detainer, when the action arising therefrom is commenced within one year from the time said acts took place."

Petitioner, in his brief on appeal, would belatedly assail the municipal court's ejectment judgment against him on the alleged ground that the said suit should have been considered as one between members of the same family under Article 222 of the Civil Code (since he is a brother-in-law of respondent Salvacion Diaz) and it had not been shown that earnest efforts towards a compromise have been made but failed, as enjoined by said codal provision. Assuming arguendo the applicability of the cited article, it is much too late now for petitioner to raise this question for the first time here on appeal. Not having raised it in the ejectment suit, which has long become final and executory, he is barred now by laches and waiver from invoking the cited provision. Not having raised it either in his petition for certiorari below, where the sole issue raised by him was the alleged nullity of the municipal court's ejectment judgment "for loss of jurisdiction over the case due to the lapse of one year from the date of filing of the complaint," he is doubly barred from raising it for the first time in this appeal, under the well-settled principle that issues of fact or of law not properly brought to the attention of the trial court cannot be raised for the first time on appeal and will not be considered by the reviewing court.^[7]

The case at bar recalls to mind the Court's admonition, through Mr. Justice J. B. L. Reyes, in a similarly unmeritorious case^[8] that "(T)he circumstances surrounding this litigation definitely prove that appeal is frivolous and a plain trick to delay payment and prolong litigation unnecessarily. Such attitude deserves severe condemnation, wasting, as it does, the time that the courts could well devote to meritorious cases." In *Lopez vs. Aquino*^[9] promulgated last month, the Court exhorted counsel that "the cooperation of litigants and their

attor-neys is needed so that needless clogging of the court dockets with unmeritorious cases may be avoided. There must be more faithful adherence to Rule 7, section 5 of the Rules of Court which provides that 'the signature of an attorney constitutes a certificate by him that he has read the pleading and 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' and expressly admonishes that 'for a willful violation of this rule an attorney may be subjected to disciplinary action.'"

WHEREFORE, the order appealed from is hereby affirmed and petitioner's counsel shall pay treble costs in both instances. Let this decision be noted in the personal record of petitioner's counsel.

SO ORDERED.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Fernando, Barredo, Villamor, and Makasiar, JJ., concur.
Ruiz Castro, J., no part.

[1] 70 Phil. 749 (1940).

[2] 71 Phil. 7 (1940).

[3] 72 Phil. 277 (1941).

[4] 98 Phil. 360 (1956).

[5] L-31261-65, April 20, 1971.

[6] 63 Phil. 797 (1936).

[7] *Corpus vs. Phodaca-Ambrosio*, 32 SCRA 279 (Mar. 30, 1970) and cases cited.

[8] *Uypangco vs. Equitable Bank*, 27 SCRA, 1272 (Apr. 30, 1969).

[9] L-28078, Apr. 29, 1971, citing *Pajares vs. Abad Santos*, 30 SCRA 748 (Nov. 29, 1969), emphasis copied.

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