

**EUGENIO EVANGELISTA AND SIMEON EVANGELISTA, PLAINTIFFS
AND APPELLEES, VS. BRIGIDA SORIANO, DEFENDANT AND
APPELLANT.***G.R. No. L-4625. October 29, 1952*

Ponente: PADILLA, J.

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This is an action for detainer and collection of rentals due and unpaid. After trial judgment was rendered for the plaintiffs. The defendant appealed filing a supersedeas bond. In the Court of First Instance the defendant filed an answer setting up illegality of the rentals sought to be collected and of the assessed value of the leased premises upon which the increased rental was based, failure of the plaintiffs to make plumbing repairs in the leased premises, a counterclaim for P128 claimed to be an excess of the amount of rental authorized by law from February 1945 to December 1946, both inclusive, and damages in the sum of P250. On 21 January 1949 the attorneys for the plaintiffs filed a motion praying for the dismissal of the case, payment to the plaintiffs of the supersedeas bond in the sum of P347.50 and withdrawal by them of the amount of P176 for rentals deposited by the defendant, for the reason that the latter had vacated the premises on 19 January 1949 and because she and her attorney failed to appear at the resumption of the trial of the case on 21 January, (the plaintiffs waiving payment of rentals for July, October, November and December 1948 and half of January 1949, to put an end to the litigation, without costs. On that date, after stating that the case was partly tried on 1 July, the trial having been postponed due to the failure of the clerk of the municipal court to forward the exhibits presented by the parties, and that the resumption of the trial set for 24 August and 23 September was postponed again upon motion of the attorney for the defendant and set for 21 January 1949, on which date the defendant and her attorney failed to appear and the attorneys for the plaintiffs moved for the dismissal of the case and prayed that the plaintiffs be allowed to withdraw the rentals deposited in court by the defendant, the court entered an order holding that "her failure to appear and prosecute her appeal is tantamount to a withdrawal of said appeal" and that "the appeal is considered withdrawn, the judgment of the Municipal Court is deemed revived and let the record of the case be remanded to the Municipal Court in accordance with section 9, Rule 40, of the Rules of Court, for the enforcement of the judgment rendered by it in the case." On 24 January 1949 the attorney for the defendant filed a motion praying that the proceedings be suspended until after the provisions of section 17, Rule 3, shall have been complied with, in view of the fact that the defendant had died on 9 January 1949, and explaining that his (attorney's) failure to appear at the resumption of the trial on 21 January was due to the fact that there was a proposal for an amicable settlement and that not having heard from the defendant despite his letter to her sent on the 15th, he thought that the case had been settled amicably. On 29 January 1949 both motions for dismissal of the case filed on behalf of the plaintiffs and for suspension of the proceedings filed in behalf of the defendant were acted upon, the Court inviting attention to its order of 21 January 1949, which, according to it, disposed of the two motions, and further holding that the case was "within the jurisdiction of the Municipal Court for the execution of the judgment rendered by it in this case." On 18 May 1949, acting upon a motion filed by the plaintiffs, the court authorized the attorneys for the plaintiffs to withdraw the sum of P176 in cash for rentals deposited and of

P347.50 filed as supersedeas bond, and further stated that "this withdrawal is authorized in accordance with the judgment rendered in this case on 21 January 1949." On 21 June 1949 attorney for the defendant moved for reconsideration of the order of 18 May 1949, on the ground that it was contrary to law and entered without jurisdiction. This motion was denied. A notice of appeal, an appeal bond and a record on appeal were filed. The appeal was certified to this Court because only questions of law are raised and involved.

Section 9, Rule 40, provides: "A perfected appeal shall operate to vacate the judgment of * * * 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. If the appeal is withdrawn, the judgment shall be deemed revived and shall forthwith be remanded to the * * * municipal court for execution." The defendant filed her answer within the time provided for in section 1, Rule 9, so she could not be deemed and declared in default (section 3, Rule 7). Even if she had failed to file her answer within the time required and were declared in default, the plaintiffs were bound to present their evidence upon which judgment could be rendered. In accordance with the above quoted provisions of section 9, Rule 40, the party who could withdraw the appeal was the appellant, because such withdrawal would revive the judgment against her rendered by the municipal court. Obviously, the appellees for whom judgment was rendered could not ask for the withdrawal of the appeal. They would not ask for the dismissal of the case because the judgment secured by them would not be revived thereby and they would be left without judgment which was vacated upon perfection of the appeal.

It is contended that section 9, Rule 40, is not applicable to appeals in detainer cases because the appeal does not vacate the judgment but suspends only, as may be inferred from the authority of the court to which the case has been appealed to order execution of the judgment during the pendency of the appeal upon failure of the appellant to pay to the prevailing party or to deposit in court the stipulated rentals or the reasonable compensation, for the preceding month on or before the tenth day of each month, for the use or occupation of the premises, as found by the judgment of the municipal or justice of the peace court. This authority to direct execution expressly provided for in section 8, Rule 72, in no way alters the provisions of section 9, Rule 40, on the effect of an appeal upon a judgment rendered by a municipal or justice of the peace court. And proof of this is the provision in the same section that "such execution shall not be a bar to the appeal taking its course until the final disposition thereof on its merits." When the defendant or her attorney failed to appear at the resumption of the trial on 21 January 1949, the court could not dismiss the appeal because it was not authorized to do so, but was in duty bound to hear the evidence of the plaintiffs and render judgment thereon unless for good reasons it deemed it justified to postpone the hearing of the case. Nor could it dismiss the case and grant the remedy prayed for, such as the payment of rentals, even if the defendant had vacated already the premises, without a finding that such rentals were really due and unpaid, for a dismissal of the case, if granted, would leave the prevailing parties in the municipal court bereft of or without a judgment. The failure of the defendant or her attorney to appear at the resumption of the trial of the case on 21 January 1949 could not be deemed a withdrawal of her appeal. And as there are no findings of facts upon which a judgment may be based and rendered, the order of 21 January 1949 is not and cannot be deemed a judgment of the case on the merits (section 12, Article VIII, of the Constitution).

As to the substitution of the defendant, her attorney should prove the fact of her death and the court shall order, upon proper notice, the legal representative of the deceased to appear for her within 30 days or such time as may be granted, as provided for in section 17, Rule 3. The court could not order the legal representative of the deceased to appear for her because it considered the order of 21 January 1949 as judgment entered in the case and notice of the defendant's death was given it three days later or on 24 January 1949.

The trial court seems to be of the belief and opinion that the order of 21 January 1949 is a judgment, where it held

that failure of the defendant or her attorney to appear at the resumption of the hearing of the case on that date was tantamount to a withdrawal of the appeal, that the judgment of the municipal Court was revived, and that for that reason it directed the record of the case to be remanded to the municipal court for execution. For the reasons above set forth this is an error, because as the appellant did not withdraw the appeal there was no withdrawal thereof. On the other hand, as already stated, the appellees could not ask for the withdrawal of the appeal because it was not their appeal and would not ask for the dismissal of the case because, if granted, they would have been left without a judgment.

The orders of 29 January and 18 May 1949, being predicated upon an erroneous opinion that the order of 21 January 1949 is a judgment, which is not and is a nullity, are set aside and the case remanded to the court below for further proceedings in accordance with law, without costs.

Paras, C. J., Pablo, Bengzon, Tuason, Montemayor, Jugo, Bautista Angelo, and Labrador, JJ., concur.

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