

NICOLAS DE LOS SANTOS, PETITIONER, VS. THE COURT OF APPEALS (SIXTH DIVISION SPECIAL), SANTIAGO K. BAUTISTA AND EDUARDO MENDIGORIA, RESPONDENTS.*G.R. No. L-18682. June 30, 1965*

Ponente: MAKALINTAL, J.

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In 1949 respondent Eduardo Mendigoria executed a chattel mortgage of a house owned by him to secure a loan he had obtained from petitioner Nicolas de los Santos. The loan was payable on or before July 19 of the same year. A few days before then, or on July 11, Mendigoria sold the house to his co-respondent herein, Santiago K. Bautista. In 1958 Mendigoria received from de los Santos a formal demand for payment, with notice of extra-judicial foreclosure of the mortgage, whereupon Mendigoria and Bautista commenced an action in the Court of First Instance of Manila to have the foreclosure sale enjoined (Civil Case No. 35670). The basis of the action was that the loan had been paid to de los Santos, although no receipt for such payment was given.

A writ of preliminary injunction was issued by the court. On April 8, 1958, defendant de los Santos moved to dissolve the writ and to dismiss the complaint. Both prayers were denied, and he then filed an answer with counterclaim for damages, alleging that the suit was malicious and groundless. Plaintiffs were declared in default with respect to the counterclaim for failure to answer the same. The court then proceeded to hear the case on the merits. After plaintiffs presented their evidence defendant filed a motion for dismissal on the ground of insufficiency of such evidence. Plaintiffs opposed, and on December 27, 1958 the court rendered its decision, denying the motion and permanently enjoining the foreclosure sale.

On the effect of the motion to dismiss the court ruled in its decision as follows:

"After the plaintiffs have presented their evidence, defendant * * * filed a motion to dismiss for insufficiency of evidence on what is known as a demurrer to the evidence. Since said defendant has not made any reservation to present his evidence should his demurrer to plaintiffs' evidence be overruled, aforesaid defendant must abide by the result of said demurrer whether the same be favorable or adverse and a finding by this Court to the effect that plaintiffs' evidence is sufficient to support a judgment in their favor terminates this case insofar as this Court is concerned."

Defendant filed a motion for reconsideration on the basis of the evidence for plaintiffs, with an alternative prayer that he be allowed to present his evidence both in support of the defenses alleged in his answer and in support of his counterclaim. Upon denial of the motion he elevated the case to the Court of Appeals, which rendered a judgment of affirmance on May 27, 1961. Evidence concerning the counterclaim was of course deemed unnecessary in view of the court's conclusion that the allegations in the complaint had been duly established and therefore were neither groundless nor malicious. It is from that judgment that the case has come to us for review by certiorari on the legal question of whether or not petitioner, defendant below, was correctly denied the opportunity of presenting his evidence after his motion to dismiss was overruled.

There was nothing in the Rules of Court, prior to their revision effective January 1, 1961,[1] which expressly governed the question presented. But in a number of instances this Court has passed upon similar questions and handed down various rulings, depending upon the varying circumstances. The case most closely analogous to the one at bar, in view of the pertinent facts involved, is *Municipality of Abucay vs. Abucay Plantation Co.*, 64 Phil., 69. In that case after the plaintiff had adduced its evidence counsel for the defendants moved to dismiss on the ground that the plaintiff had not established its cause of action. The court denied the motion and at the same time decided the case in favor of the plaintiff. The defendants moved for a new trial but were refused. On appeal, this Court said:

"The motion to dismiss filed by counsel. . . was in effect a demurrer to the sufficiency of plaintiff's evidence ... It is a practice sanctioned by the jurisprudence in this jurisdiction. . . to permit demurrer to the evidence, and it has been invariably held that when the defendants do not reserve their right to adduce evidence, the courts may decide the case upon the evidence only thus submitted, and on appeal, should the evidence be sufficient to affirm the appealed decision, the case will not be remanded for a new trial to receive the evidence suppressed."

The import of the foregoing is that the affirmance of the appealed decision terminates the case, and that is exactly what transpired in the situation now before us, for the Court of Appeals affirmed the decision of the court of origin on the merits. It is, of course, needless to add that if the appealed decision is reversed the case is likewise terminated, for then the evidence for the plaintiff is deemed insufficient and the defendant's demurrer thereto is in effect sustained.

In the same decision in the *Abucay* case this Court, clarifying the ruling in *Demetrio vs. Lopez*, 50 Phil., 45, which had been relied upon by the defendants, said further:

"A reading of the doctrine in said case reveals a confirmation of the rule that where a defendant in a civil case presents a motion to dismiss upon the ground of the insufficiency of plaintiff's evidence, without reserving his right to present his own evidence should the motion to dismiss be overruled, he loses his right to adduce his evidence, and the court may decide the case upon its merits taking into account only the evidence for the plaintiff. The reason for the doctrine thus established is that in such cases it must be understood that the party filing the motion to dismiss without any reservation renounces its right to present evidence."

In an earlier case (*Moody, Aronson & Co. vs. Hotel Bilbao*, 50 Phil., 198) it was held that "the defendant who, after the plaintiff has submitted his evidence, makes a motion to dismiss which the trial court in its decision grants, and who, on appeal by the plaintiff, has the judgment reversed, cannot then be permitted to produce evidence in defense." To be sure the facts in that case are somewhat different from those in the one before us in that the motion for dismissal there prospered in the trial court, while here it was overruled, but the reason given in the judgment of reversal is to the point, namely, "that the defendant in offering a motion to dismiss 'n effect elects to stand on the insufficiency of the plaintiff's case."

In *Arroyo vs. Azur*, 76 Phil., 493, this Court reiterated and clarified the ruling in the *Moody* case and went one step further: that even when in a motion to dismiss on the ground of insufficiency of the plaintiff's evidence there is a reservation by the defendant of the right to present his evidence in case the motion does not prosper, such reservation will be disregarded by the appellate court on appeal by the plaintiff from an order granting the motion, should said court find the dismissal erroneous. In other words, the case will not be remanded for reception of evidence for the defendant but will be decided on the merits of the evidence already submitted by the plaintiff. The rule, said this Court, should be that the defendant had no right to reserve presentation of his evidence but that he should submit to the consequences of his demurrer, favorable or adverse. The suggestion that such rule would render the concept of demurrer to the evidence purely academic was rejected by this Court in this wise:

". . . Entendemos que no. Torque sicmpre habra casos en quo la parte que opte por utilaar este recurso confie y

descanse en el enteramente, estimando superfluo el articular pruebas. Solo que ya Be sabe que bajo la regla que nos ocupa el recurso no tiene ningun valor tactico, para fines de tanteo, sino que es didecto y final."

Later decisions of this Court revealed a further qualification of the rule enunciated in *Arroyo vs. Azur*, supra. In *Guido vs. Castelo*, 81 Phil., 81, the efficacy of a reservation by the defendant of his right to present evidence was recognized where his demurrer to the plaintiff's evidence was denied by the trial court and no judgment had yet been rendered when the defendant asked that his side be heard. This circumstance, it was pointed out in a subsequent case (*Enderes, et al. vs. Encomienda*, G. R. No. L-4506, March 17, 1952) was of vital significance, because it showed "that there was no intention on the part of the defendant to waive his right to call witnesses."

In his brief petitioner relies expressly on the case of *Madrid vs. Mañalac*, 92 Phil., 803, where the trial court refused to allow the defendant to present evidence after "is motion to dismiss on the ground of insufficiency of the evidence for the plaintiff was turned down. On certiorari this Court reversed the ruling. In that case, however, it should be noted that when the defendant filed the motion he made an express reservation to present his evidence in the event the motion was denied. In the present case there was no such reservation. Reference is made to a statement in the decision relied upon (*Madrid vs. Mañalac*) taken from Justice Moran's Comments on the Rules of Court, Ed., Vol. 1, p. 672, as follows: "whether the motion is made with or without reservation, if denied, the defendant may still be allowed to introduce evidence." This statement cites and is evidently based on the cases of *Guido vs. Castelo*, supra, and *Cotaoco vs. Dinglasan*, 83 Phil., 681. But as has been already pointed out, the *Guido* case does not support the statement because precisely there was a reservation made by the defendant there when he presented his motion to dismiss. Neither is the *Cotaoco* case authority for the sweeping proposition expressed by Justice Moran, for the motion to dismiss therein was not in the nature of a demurrer to the evidence since it was based on the ground that the plaintiff was not the real party in interest, and therefore if the trial court should render judgment after denying the motion and without first receiving the evidence for the defendant and the judgment should be subsequently reversed on appeal, the case necessarily would have to be remanded for further proceeding.

It is demonstrably clear, from the foregoing, that as the state of our jurisprudence stood at the time the incident in question came up before the trial court, a defendant who filed a demurrer to the plaintiff's evidence without any reservation in effect submitted the case for decision, and if the result be adverse to him he could not claim, as a matter of right, that the decision be vacated so that he might adduce his own evidence. This is particularly true in the present case where petitioner insisted, both in the trial court and in the Court of Appeals, that the evidence for respondents was insufficient and in both instances the contention was overruled after a mature consideration of the merits of such evidence.

By way of advertence to the Bench and Bar, it need only be added that similar questions arising after the promulgation of the Revised Rules of Court are expressly governed by Rule 35, Section 1, quoted in the earlier part of this decision.

The judgment appealed from is affirmed, with costs.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J.B.L., Paredes, Regala, Bengzon, J.P., and Zaldivar, JJ., concur.

Dizon, J., concurs in the result. Judgment affirmed.

[1] Rule 35 Section 1 of the Revised Rules provides: "Section 1. Effect of judgment on demurrer to evidence.—After the plaintiff has completed the presentation of his evidence, the defendant without waiving his right to offer

evidence in the event the motion is not granted, limy move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. However, if the motion is granted find the order of dismissal is reversed on appeal the movant loses his right to present evidence in his behalf."

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