

FELIPE SUÑGA, ET AL., PETITIONERS-APPELLANTS VS. HON. ARSENIO H. LACSON, ET AL., RESPONDENTS-APPELLEE.*G.R. No. L-26055. April 29, 1968*

Ponente: CASTRO, J.

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On November 11, 1958 the appellants Felipe Suñga, et al., filed a petition for prohibition with preliminary injunction in the Court of First Instance of Manila to stop the two appellees - the mayor and engineer, respectively, of the City of Manila — from demolishing the appellants' houses along the Estero de Vitas in Tondo, Manila. The Court ordered summons to be served on the appellees "upon payment by the petitioners [the appellants herein] of the corresponding Sheriffs's fees." Ten days later, or on November 24, 1958, the court, after hearing both parties, ordered the issuance of a writ of preliminary injunction upon the filing by the appellants of a bond in the amount of P1,000, "to be approved by this court."

Neither order was complied with by the appellants. Thus although the appellants appear to have filed a bond, they never asked the court to approve it, nor did they pay the sheriff's fees. The result was that after four long months from the filing of the suit had elapsed, summons was yet to be served on the appellees and an injunction was yet to be issued. On March 20, 1959 the appellees asked the court to dismiss the case. Although no copy of their motion was served on the appellants, it appears nevertheless that the latter was notified by the court that the motion would be heard on June 13, 1959.

On June 16, 1959 the court dismissed the case. The appellants asked for reconsideration but the court stood pat on its order. Hence this appeal, originally taken to the Court of Appeals but certified by the latter to this Court on the ground that the issue involved is one purely of law.

1. It is first of all contended that the lower court could not act on the motion to dismiss filed by the appellees because the former had not acquired jurisdiction over the persons of the latter. The claim of lack of jurisdiction is predicated on the fact that no summons was served on the appellees. The appellants argue that before summons is issued to the appellees only they (the appellants) can dismiss the action under section 1 of Rule 17 (formerly Rule 30) of the Rules of Court, which provides:

"Dismissal by the plaintiff.— An action may be dismissed by the plaintiff without order of court by filing a notice of dismissal at any time before service of the answer or of a motion for summary judgment. Unless otherwise stated in the notice, the dismissal is without prejudice, except that a notice operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in a competent court an action based on or including the same claim. A class suit shall not be dismissed or compromised without the approval of the court."

The appellants overlook the fact that while it is true that no summons was served on the appellees (because of the appellants' own failure to pay the sheriff's fees), the appellees appeared in court and were in fact required by it to file a memorandum at the hearing held on November 17 on the appellants' prayer for a writ of preliminary

injunction. A defendant's voluntary appearance in an action is equivalent to the service of summons upon him.[1] Nor was that the only time the appellees voluntarily submitted themselves to the jurisdiction of the lower court. Their filing of a motion to dismiss (not because of lack of jurisdiction over their persons, but because of the appellants' failure to prosecute their action) was an act of submission to the jurisdiction of the court.[2] This bears strong emphasis because jurisdiction over the person, unlike that over the subject-matter, is acquired by the voluntary appearance of the party who has the right to question the court's jurisdiction, namely, the defendant.

2. Nor is there merit in the claim that until the court acquires jurisdiction over his person, a defendant has no standing to move for the dismissal of an action. Applied to this case this proposition means that the appellants' own neglect to pay the sheriff's fees can be the very means by which they can maintain in perpetuity an action they have neglected to prosecute.

Nothing in the language of section 1 of Rule 17 supports the view that before the defendant has answered, the action can be dismissed only at the instance of the plaintiff. To paraphrase Frankfurter, only literary perversity or jaundiced partisanship can sponsor such a particular rendering of the law.[3] For what the rule says is that before the defendant has answered the plaintiff can withdraw his action by merely giving notice to the court,[4] but that after the defendant has answered the plaintiff may do so only with prior leave of the court.[5] In other words, the rule governs the conditions under which the plaintiff may dismiss his action; it does not purport to deny thereby to the defendant the right to seek the dismissal of the action, in much the same way that to say that all men are mortal does not mean that all women are not.[6] Such implication rests on a fallacy and is possible only through the use of an "illicit major."

3. It is finally contended that as no notice of the motion to dismiss was served on the appellants as required by the Rules of Court,[7] the motion was nothing but a "useless piece of paper," which the court should have disregarded. For this purpose the case of *Manakil v. Revilla*,[8] is cited.

Again the appellants are in error. In *Manakil* the plaintiff, after having been notified on April 12, 1921 that his case had been dismissed, filed a motion for new trial on April 15, without giving notice thereof to the defendant. As the court took no action on his motion, the plaintiff filed another motion, in which he asked that his motion for new trial "be set down for hearing on the 28th day of May, 1921." The court ruled that the motion for new trial was filed out of time with the result that the order dismissing the case became final. On appeal this Court sustained the lower court and held:

"We are of the opinion, and so decide ... that the alleged motion, copied above, was not in fact a motion at all, for the reason that it did not comply with the requirements of Rule 10 of the Rules of Court of First Instance. It was nothing but a piece of paper filed with the court. It presented no question which the court could decide. The court had no right to consider it, nor had the clerk any right to receive it without compliance with Rule 10. ... It did not become a motion until the 23rd day of May 1921, when the petitioners herein fixed a time for hearing of said alleged motion.

"It follows, therefore, that no motion for a new trial was presented until the 23rd day of May, 1921, or forty-one days after they had received notice of the decision. .. A motion for a new trial having been presented outside of the period prescribed by law, the judge of the lower court was fully justified in his order.. ."[9] In the case at bar, when the court learned that no notice of the motion was served on the appellants, it promptly reset the hearing for another day (June 13, 1959) "with due notice to all the parties." Hence, whatever defect there was initially was later cured with no adverse effect on the running of any period, with the result that, when the court dismissed the case, it had before it a motion and not a "useless piece of paper."

ACCORDINGLY, the order appealed from is affirmed, at appellants' cost.

Reyes, J.B.L., (Acting C.J.), Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Angeles and Fernando, JJ., concur.
Order affirmed.

[1] Rule 14, sec. 23.

[2] Cf. 1 M. Moran, Comments on the Rules of Court, 398-399, 421-422 (1963).

[3] Some Reflections on the Reading of Statutes, 47 Colum. L. Rev. 527 (1947).

[4] Rule 17, sec. 1.

[5] Id. Sec. 2.

[6] On this point compare Radin, Statutory Interpretation, 43 Harv. L. Rev. 863, 873 (1930) with Landis, A Note on "Statutory Interpretation." id. at 892, Note 21.

[7] Rule 15, section 6 provides: "Proof of service, to be filed with motion.- No motion shall be acted upon by the court, without proof of service of the notice thereof, except when the court is satisfied that the rights of the adverse party or parties are not affected."

[8] 42 Phil 81 (1921).

[9] Id. at 84-85 (italics supplied).

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