

MARIA C. ARVISU, PETITIONER AND APPELLANT, VS. MATIAS E. VERGARA, IN HIS CAPACITY AS ADMINISTRATOR OF THE ESTATE OF L.H. GOLUCKE, DECEASED, AND HON. LUCIO M. TIANCO, MUNICIPAL J...

G.R. No. L-3934. December 28, 1951

Ponente: REYES, J.

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REYES, J.:

Sometime in 1949 Matias E. Vergara, in his capacity as administrator of the estate of L.H. Golucke, deceased brought an action in the Municipal Court of Rizal City against Maria C. Arvisu to eject her from a house and lot belonging to said estate and the collection of unpaid rents. Alleging that the property had already been adjudicated by a final court order in favor of Golucke's heirs, the defendant Maria C. Arvisu moved for the dismissal of the action; but the municipal court denied the motion on the ground that no evidence had been presented to sustain it. Forthwith, the said defendant petitioned the Court of First Instance of Rizal for a writ of certiorari to reverse the order denying her motion, alleging that the said order constituted an abuse of discretion. Having been required to answer the petition, the administrator filed a motion to dismiss on the ground that certiorari did not lie since petitioner had her remedy by appeal. Considering the motion well founded, the court, in an order dated February 18, 1950, dismissed the petition. From this order, petitioner has appealed to this Court, contending that the Court of First Instance erred (1) in holding that her remedy was by appeal and (2) in dismissing her petition without due hearing and without giving her an opportunity to present her evidence.

It is not disputed that the municipal court of Rizal city had jurisdiction over the case which it refused to dismiss, and while this refusal is alleged to constitute abuse of discretion no claim is made that the abuse is grave. Petitioner's argument under the first error assigned is planted on the proposition that since the order denying her motion to dismiss was merely interlocutory and hence not appealable in accordance with Sec. 2 of Rule 41, Rules of Court, certiorari would lie to correct it. This proposition is without merit, for it fails to appreciate the fact that the section cited does not prohibit an appeal but merely postpones it until after final judgment is rendered in the case. And the reason for the rule is obvious. If every error committed by the trial court were to be the subject of review by certiorari trials would be interminable. Such would be the results if the mere denial of petitioner's motion to dismiss in the municipal court could be taken to a higher court for review before final judgment is rendered in the case.

Equally without merit is the contention that it was error for the lower court to dismiss the petition for certiorari without hearing and without giving petitioner an opportunity to present her evidence. Under Section 8 of Rule 67, Rules of Court, once the answer to the petition for certiorari is filed "the court may order the proceedings complained of to be forthwith certified up for review and shall hear the case." But it is not mandatory upon the court to order the elevation of the proceedings and to hear the case. The court may deny the writ if from the answer it finds that the petition should be dismissed in the interest of justice. (II Moran, Comments on the Rules of Court, 3rd ed., p. 180.) On principle, dismissal would also be proper if before answer is filed, the attention of

the court is called to the fact that from its own allegations the petition appears to be without merit. It is obvious that in such a case a trial would be but an empty gesture which may and should be dispensed with.

In view of the foregoing, the order appealed from is affirmed, with costs against the appellant.

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

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