

**ISHAR SINGH, PLAINTIFF AND APPELLEE VS. LIBERTY INSURANCE CORPORATION, DEFENDANT AND APPELLANT, LEONARDO ANNE, ET AL., THIRD PARTY DEFENDANTS AND APPELLEES.***G.R. No. L-16860. July 31, 1963*

Ponente: DIZON, J.

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On August 15, 1958, Ishar Singh filed an action in the Municipal Court of Manila to recover from Liberty Insurance Corporation the sum of P1,000 allegedly due to him under a fidelity bond executed by Leonardo Anne, as principal, and said defendant, as surety, plus interest thereon, attorneys fees and costs of suit.

On October 8, 1958, Liberty Insurance Corporation filed, with leave of court, a third party complaint against Leonarda Anne, Eliseo V. Garcia and Andres O. Payongayong, to enforce against them the indemnity agreement they had executed in its favor in connection with the fidelity bond already mentioned. The record does not disclose whether the third party defendants filed an answer to the third party complaint or not. On the other hand, on December 22, 1958 the defendant filed its answer to the complaint, denying its liability under the fidelity bond aforesaid.

After trial, the Municipal Court rendered judgment sentencing the defendant, Liberty Insurance Corporation, to pay the plaintiff the sum of P1,000, plus attorneys fees in the sum of P50.00, and costs, and likewise sentencing the third party defendants to pay the defendant third party plaintiff whatever amount the latter shall pay the plaintiff pursuant to said decision.

The third party defendants appealed to the Court of First Instance of Manila and subsequently filed their answer to the complaint and the third party complaint, in which, after denying the material averments thereof, they alleged by way of affirmative defense that Anne had not been guilty of negligence in the performance of his duties and was not therefore liable under the fidelity bond and the indemnity agreement relied upon in the complaint and third party complaint, respectively.

The defendant, Liberty Insurance Corporation, did not appeal, but on June 23, 1959,—within fifteen (15) days docketing of the case in the Court of First Instance due to the appeal taken by the third party defendants, answer to the complaint was filed on behalf of the defendant. On September 9 of the same year, the plaintiff filed a motion to strike out said answer on the ground that defendant not having appealed from the decision of the Municipal Court, the latter's decision had become final and executory with respect to it. After due hearing, the lower court granted the motion and ordered the case remanded to the court of origin for purposes of execution with respect to the defendant. Hence this appeal.

Appellant admits that it did not appeal from the decision of the Municipal Court but contends that the appeal therefrom taken by the third party defendants insured to its benefits; that said appeal vacated the decision not only as far as the third party defendants were concerned but also with respect to the defendant, although it did not appeal; that on appeal the case should be tried de novo as if it had never been tried before, and finally, that being

an appellee itself because of the judgment in its favor against the third party defendants, it did not have to appeal from the decision of the Municipal Court.

It is true, as appellant claims, that an appeal from the decision of an inferior court (Municipal Court) operates to vacate said decision, thereafter the case to stand trial de novo in the Court of First Instance, but it seems obvious that this applies only to the party who had taken the appeal. As against other parties adversely affected the decision who did not appeal, the decision must be deemed to have become final and executory. A contrary view would lead to indefensible results. Let us suppose that the decision of the inferior court against several defendants was agreeable to one of them because it was for an amount less than what the plaintiff claimed in his complaint: that for this reason said defendant did not appeal. Should it be held that the appeal taken by the other defendants vacates the appealed judgment as far as all the judgment debtors are concerned and the case should be tried de novo against all of them, would not prejudice the defendant who did not appeal against whom the plaintiff might now secure judgment in the Court of First Instance for a bigger amount but within that claimed in the complaint? Another hypothetical case may perhaps help drive home this point. Let us suppose that one of several defendants in the inferior court confessed judgment and in view thereof the corresponding judgment was rendered against him, and that thereafter his co-defendant appealed from a similar judgment rendered against him after due trial. Why should the rule be that said appeal vacates the judgment for both defendants, thus compelling him who had confessed judgment to continue the litigation?

Whatever contradiction there might appear to be between the view herein expressed, on one hand, and our decisions in *Royal Shirt Factory, Inc. vs. Co. etc.* 94 Phil., 994, and *Arambulo vs. Court of Appeals*, G. R. No. L-15669, February 28, 1962, on the other, are more apparent than real.

Our ruling in the *Royal Shirt Factory* case does not apply to the present. That was an action for collection where the principal issue was whether the sale by plaintiff to defendant of the three hundred fifty pairs of shoes therein involved was an outright sale, as claimed by the former, or a sale merely on consignment, as contended by the latter. The Municipal Court held that the sale was on consignment and decided the case accordingly. The defendant appealed to the Court of First Instance of Manila who, after trial, held that the transaction involved was an outright sale and, as a result, rendered judgment on this basis. On appeal to Us, the defendant claimed that the Court of First Instance had no jurisdiction to review the question involving the nature of the sale, much less to reverse the finding of the court of origin on this matter, for the reason that the plaintiff did not appeal from the decision of the latter court. We held this contention to be untenable because by reason of the appeal interposed by the defendant himself, the decision of the inferior court was vacated and the case was thrown open for a trial de novo, upon the same issue or issues litigated below. This being the effect of the appeal interposed defendant himself, the fact that plaintiff did not appeal was immaterial. As shown by the facts of said case, there was no other defendant or third party defendant involved and who did not appeal from the decision of the inferior court. It is, therefore, manifest that our ruling therein to the effect that the trial de novo shall be without regard to the proof presented below or the conclusions arrived at by the inferior court does not apply to the present case. Neither did we hold in said case that the appeal interposed by one of several defendants shall re-open the case for a trial de novo in the Court of First Instance even for other defendants who had not appealed and has thus allowed the decision against them to become final and executory.

In the *Arambulo* case, we have a situation similar to the one now before us to a certain extent. It appears that on January 20, 1956, Severino Arambulo, after assuming office as Mayor of Calamba, Laguna, dismissed from the service thirteen municipal patrolman of said municipality, three of whom named Juan B. Isip, Pablo Palupit, and Cornelio Luna appealed their case to the Provincial Governor. Because he was threatened with suspension from office if he did not reinstate the dismissed patrolmen, Mayor Arambulo immediately filed in the Court of First

Instance of Laguna an action for prohibition against the Governor. After due hearing, said court found the dismissal of the patrolmen and their replacement to be illegal and ordered their reinstatement without, however, stating who was to pay their back salaries during the period of their separation from the service. After their reinstatement, the three patrolmen tried to collect their back salaries from the Municipality of Calamba but the Provincial Auditor of Laguna refused to pass in audit the payment thereof on the ground that an unnumbered Provincial Circular issued on February 9, 1955 by the Office of the President provided, inter alia, that salaries corresponding to the period of illegal separation from the service of civil service employees shall be personally paid by the Provincial Governor or City or Municipal Mayor who caused the illegal separation or removal, and on the further ground that on November 16, 1956, the then Commissioner of Civil Service had rendered an opinion holding the Municipal Mayor of Calamba responsible for the payment of the back salaries of the three patrolmen. Consequently, on September 24, 1957, the three patrolmen brought an action in the Justice of the Peace Court of Calamba against Mayor Arambulo to collect from him, in his personal capacity, the back salaries due them during the period of their illegal separation, plus other amounts by way of damages, attorneys fees, and expenses of litigation. On December 12, 1957, the defendant Mayor filed his answer to the complaint as well as a third party complaint against the Municipality of Calamba averring, among other things, that the latter—not he— should pay the back salaries of the plaintiffs. On December 16 of the same year, the Municipality of Calamba filed an answer admitting its liability and stating further that its council had passed a resolution dated October 6, 1956 appropriating the necessary amount to pay such back salaries. The plaintiffs then moved for a judgment on the pleadings, and on March the following year, the Justice of the Peace Court rendered judgment absolving defendant Mayor Arambulo but sentencing the Municipality of Calamba to pay the plaintiffs' back salaries. The plaintiffs appealed to the Court of First Instance of Laguna in so far as the decision absolved the defendant Mayor. In the Court of First Instance, the Mayor first filed a motion to dismiss the appeal, but the same was denied. On September 15, 1958, the third party defendant, Municipality of Calamba, filed a motion to set aside the writ of execution which had been issued by the Justice of the Peace Court of Calamba before the expiration of the period of appeal, claiming that because of the appeal taken by the plaintiffs the decision of the said Justice of the Peace Court was vacated and the whole case was to be tried de novo in the Court of First Instance. Before this motion could be acted upon, the Municipality of Calamba, on September 11, 1958, filed a motion to intervene with its answer as third party defendant attached thereto. On November 3 of the same year, the Court of First Instance denied both motions on the ground that, as to the Municipality of Calamba, the decision of the Justice of the Peace Court had become final and executory, not only because it did not appeal therefrom but also because it could not have taken such appeal even if it wanted to, the judgment rendered against it being one by confession. Its motion for reconsideration having been denied, the Municipality of Calamba, on December 15, 1958, filed in the Court of Appeals a petition for certiorari and mandamus, with a prayer for a writ of preliminary injunction. Said writ was granted, and after proper proceedings, on June 24, 1959, the Court of Appeals rendered judgment ordering the Court of First Instance of Laguna to grant the Municipality of Calamba's motion for intervention as well as its motion for the setting aside of the writ of execution. Thereupon, Mayor Arambulo, who was one of the parties in the case, appealed to this court. In deciding said appeal we said the following:

"The appeal from the judgment rendered by the Justice of the Peace Court of Calamba to the Court of First Instance of Laguna vacated the judgment of the former court not only as between the plaintiffs patrolmen who have appealed and the petitioner Mayor Severino Arambulo, who was absolved from the complaint, but also as to the third-party defendant Municipality of Calamba which has not appealed therefrom. Section 9, Rule 40, of the Rules of Court, aforequoted, considers an appealed case from an inferior court as though the same had never been tried before and had been originally there commenced. In effect, it considers all the proceedings in the interior court, including the judgment, inexistent. Only the complaint is not vacated, which is deemed reproduced in the Court of First Instance.[1] Such being the case, the appeal reopens all issues or questions already passed upon by the inferior court, regardless of whoever appeals."

It must be observed that the action filed by the three patrolmen in the Justice of the Peace Court of Calamba was exclusively against Mayor Arambulo and upon the claim that the latter was personally liable for the payment on their back salaries during the period of their illegal separation from the service. The defendant impleaded the Municipality of Calamba as third party defendant and because the latter admitted its liability for the payment of plaintiffs' back salaries, the Justice of the Peace Court absolved the defendant Mayor but sentenced the Municipality of Calamba to pay said back salaries. Considering that the plaintiffs were the ones who appealed from said decision, our views is that their appeal, although purportedly taken only from the portion of the decision of the Justice of the Peace Court absolving the defendant Mayor, had, of necessity, the effect of reopening the whole case. Legally, the aggrieved patrolmen could have a case only against either the Mayor personally or the Municipality of Calamba. They never claimed that the two were liable to them jointly and severally. In fact, their claim was that it was only the Mayor who was liable. Consequently, their insistence in demanding responsibility from the Mayor, in his personal capacity, necessarily meant that they did not agree with the decision of the Justice of the Peace Court in so far as it held the Municipality of Calamba to be the party liable to them. Thus the issue on appeal was or had to be whether the party liable was the Mayor, personally, or the Municipality. The latter was, therefore, entitled to intervene and defend itself.

Our conclusions, therefore, are: first, that because the defendant Liberty Insurance Corporation did not appeal from the adverse decision of the Municipal Court, it had no right to file the answer in question, and second, that the decision of the Municipal Court having become final and executory as against said defendant, its execution was in order. This notwithstanding, said defendant is still an active party in the appealed case because of the appeal taken by the third-party defendants from the decision of of the Municipal Court in so far as it was in favor of said defendant as third party plaintiff.

WHEREFORE, the orders appealed from are affirmed, with costs.

Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Paredes, Regala, and Makalintal, JJ. concur.

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[1] Section 7, Rule 40, of the Rules of Court.

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