

**ALFONSO VISITACION, PLAINTIFF-APPELLEE, VS. VICTOR MANIT,
SUBSTITUTED BY HIS WIDOW LEONARDA MANIT AND DAUGHTERS
VIRGINIA DUNGOG, VICTORIA BATUCAN AND MERLINDA MANIT,
DEFENDANTS-...**

G.R. No. L-27231. March 28, 1969

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Appeal from a decision of the Court of First Instance of Cebu and certified by the Court of Appeals to this Court, since the issues raised on appeal are all questions of law.

The Court of Appeals in its Resolution of January 17, 1967 certifying the case as falling within the exclusive jurisdiction of this Court points out that this appeal is "unique" in the sense that the appellant purports to be not the original defendant, Victor Manit, now deceased, nor his heirs, his widow and three daughters of age, substituted for him upon his death, per the title of this case above, but rather his counsel of record, Atty. Jesus P. Garcia, who on April 13, 1960, after the trial court's adverse decision, filed the Notice of Appeal and cash bond on Appeal as "Attorney for Victor Manit, deceased" and on the same date filed the Record on Appeal as "Jesus P. Garcia, In his capacity as officer of the Court and as former counsel of the deceased." [1] The Record on Appeal and appeal bond were thereafter approved on April 25, 1960 by the trial court and the case forwarded on appeal to the Court of Appeals, and in turn certified to this Court.

The case originated on January 18, 1956 when plaintiff-appellee filed this case against defendant Victor Manit to hold him liable subsidiary as employer for the death of plaintiff's son, Delano Visitacion, as a result of injuries sustained in a vehicular collision involving said defendant's driver Rudolfo Giron, who, was found insolvent after having been convicted and sentenced in a previous criminal case arising out of said death, to indemnify the victim's heirs in, the amount of P3,000.00.

An Answer to the complaint was filed in due course by Atty. Garcia on behalf of defendant. On June 1, 1956, the case was heard, without defendant or his counsel being present, and plaintiff presented his evidence and the case was submitted for decision. On June 6, 1956, defendant, however, filed a motion for new trial which was granted by the trial court on June 9, 1956. [2]

Plaintiff presented his oral and documentary evidence and was cross-examined by Atty. Garcia. [3] The record further shows that on March 19, 1958, Atty. Garcia commenced the presentation of evidence on behalf of defendant. He presented defendant's wife, Leonarda Manil, who testified that her husband, Victor Manit, "had no business of his own, because he is sickly" and that she was the one operating and managing their transportation business of three trucks. [4]

On October 14, 1958, when the case was scheduled for continuation of the trial, Atty. Garcia manifested that the original defendant, Victor Manit had recently died, and the trial court on the same date directed him to furnish

plaintiff's counsel the names of the said defendant's heirs, so that plaintiff could amend the complaint accordingly. On August 11, 1959, plaintiff's counsel submitted a Motion to Admit the Amended Complaint attached thereto, furnishing copy of said pleadings to Atty. Garcia, who acknowledged receipt thereof as "Attorney for the defendant." The only amendment in the complaint consisted in impleading the widow and heirs of the deceased original defendant in substitution for him, pursuant to Rule 3, section 17 of the Rules of Court. At the hearing of the said motion on the same date, the trial court, after noting that there was no opposition thereto by Atty. Garcia, admitted the Amended Complaint in its Order of August 11, 1959, wherein. "(A)s prayed for by counsel for the defendants, defendants are hereby given fifteen (15) days time within which to file an answer to said amended complaint." [5] No answer to the amended complaint having been filed, the original answer stood as defendants' answer to the amended complaint, in accordance With Rule 11, section 3 of the Rules of Court. [6]

The case was again set for hearing on January 28, 1960 with notice to the parties through their counsels of record. One day before the hearing, on January 27, 1960, Atty. Garcia filed a "Motion to Withdraw as Counsel", alleging that "the heirs of Victor Manit have not hired (him) to represent them and consequently, (his) continued appearance in representation of a dead client would be illegal" and asking the trial court "that he be relieved as counsel in the above-entitled case for the reasons stated herein." [7]

When the case was called on the next day, neither defendants nor Atty. Garcia appeared, and the trial court, noting "defendants' apparent lack of interest as can be gleaned from the records" considered them to have renounced their right to appear and present evidence to contest plaintiff's claim. It did not pass upon Atty. Garcia's Motion to Withdraw as Counsel and proceeded to render judgment in favor of plaintiff, the dispositive part of which provides as follows:

"IN VIEW OF ALL THE FOREGOING, the Court pronounces judgment in favor of the plaintiff and against the defendants; and hereby sentences the defendants, jointly and severally, to pay the plaintiff the amount of P3,000.00 as indemnity for the death of Delano Visitacion, plus P3,000.00 in concept of moral damages, and the additional sum of P2,000.00 as attorney's fees, as well as the costs of this action." [8]

Atty. Garcia's Motion for Reconsideration, based on the same grounds hereinafter discussed having been denied by the trial court, he filed the present appeal, and assigns the following errors in his "Brief for 'Defendant-Appellant'":-

"First Error:

THE LOWER COURT ERRED IN CONTINUING WITH THE CASE WITHOUT THE NEW DEFENDANTS BROUGHT TO ITS JURISDICTION BY SUMMONS AND WITHOUT EVEN INFORMING SAID DEFENDANTS THAT THEY HAVE BECOME PARTIES TO THE CASE.

Second Error:

THE LOWER COURT ERRED IN IGNORING THE MOTION TO WITHDRAW AS COUNSEL FILED BY A LAWYER WHO HAD LOST AUTHORITY TO REPRESENT A DEAD CLIENT.

Third Error:

THE LOWER COURT ERRED IN RENDERING A PREMATURE JUDGMENT IN AN UNFINISHED CASE WHERE THE NEW DEFENDANTS WERE NOT GIVEN THEIR DAY IN COURT."

He prayed therein that the appellate Court render judgment:

"(a). Annulling the decision appealed from;

(b). Remanding the case to the lower court for further proceedings by serving summons on the defendants and

giving them a chance to present their evidence;

(c). Relieving the undersigned counsel from all responsibility in connection with this case in view of the death of his client; and

(d). Granting such other and further reliefs and remedies in accordance with law and equity." (Appellants' Brief, p. 10)

We hold this "unique" appeal by the counsel of record, Atty. Jesus P. Garcia, allegedly "in his capacity as officer of the Court and as former counsel of the deceased Victor Manit" to be untenable.

There are two fundamental errors on which Atty. Garcia's appeal is premised. First, if he presents this appeal "in his capacity as officer of the Court and as former counsel of the deceased Victor Manit", his appeal should be thrown out, as not being a party to the case, much less a party in interest, he has no legal standing whatsoever to prosecute this appeal. Second, in filing his Notice of Appeal and Cash Appeal Bond, he represented himself as "Attorney for Victor Manit, deceased", depositing the sum of P60.00 as appeal bond "to answer or respond for the costs which then appellate court may award against the herein defendant-appellant,"[9] thus representing anew to the trial Court that he was duly authorized to present the appeal on behalf of the estate of the original defendant, Victor Manit, deceased, who had earlier been substituted in the case by his heirs, the widow and three daughters of legal age. The trial Court was perfectly correct in relying upon this representation in accordance with Rule 138, section 21 of the Rules of Court which provides that "(A)n attorney is presumed to be properly authorized to represent any case in which he appears x x x." This appeal must accordingly be dealt with as an appeal on behalf of said heirs as defendants-appellants and not in the unique" concept with which Atty. Garcia would circumscribe it.

1. As to the first error assigned, no error was committed by the trial court in continuing with the case and handing down its decision against defendants-appellants. The contention that said defendants-appellants, as substituted parties-defendants by virtue of their being the heirs of the deceased original defendant pursuant to the trial court's Orders of October 24, 1958 and August 11, 1959 in accordance with Rule 3, section 17 of the Rules of Court[10], should have been brought within the Court's jurisdiction by summons is fallacious. For the record shows that Atty. Garcia at the time acknowledged receipt of the Amended Complaint substituting said defendants-heirs for the deceased original defendant as "Attorney for the defendants", presented no opposition thereto, and furthermore prayed for and was granted by the Court a period of 15 days to file an answer to the Amended Complaint. Having been duly impleaded and having submitted to the Court's jurisdiction through their counsel, Atty. Garcia, the issuance of a summons was unnecessary. The other contention that "there is even no record showing that these defendants were at all informed that they had become parties to the above-captioned case"[11] is equally fallacious. Nowhere in appellants' brief is there an assertion by Atty. Garcia, that, he, as their attorney of record, and in compliance with his duty as such and as an officer of the Court, failed or neglected to inform them of the admission of the Amended Complaint substituting them for the deceased original defendant.

2. Appellants claim in their second assignment of error that the trial court erred in ignoring the Motions to Withdraw as Counsel filed by Atty. Garcia. In the face of Atty. Garcia's previous representations and appearance as counsel of record for the substituted defendants, his last-hour motion to withdraw as counsel and disclaimer that said defendants have hired him to represent them -- which he filed one day before the date set for resumption of the hearing came -- too late and was properly ignored by the Court. The Court could not accept this turn-about on his mere "say-so." His motion was not verified. Aside from the fact that his said motion carried no notice, in violation of the requirement of Rule 15, section 4 of the Rules of Court, and could therefore be treated as a "mere scrap of paper", [12] the said motion was likewise fatally defective in that it carried no notice to his clients on record, the defendants-appellants, as required by Rule 138, section 26 of the Rules of Court. Furthermore, it is

well settled that "(A)n attorney seeking to withdraw must make an applica-tion to the court, for the relation does not terminate formally until there is a withdrawal of record; at least so far as the opposite party is concerned, the relation otherwise continues until the end of the litigation." [13] The trial court's ignoring of the last-hour motion and its handing down of its decision on the day of the hearing, upon the failure of defendants and their counsel to appear, in spite of their having been duly notified thereof, was in effect a denial of counsel's application for withdrawal. Atty. Garcia's unexplained failure to appear was unexcusable. He had no right to presume that the Court would grant his withdrawal. If he had then appeared and insisted on his withdrawal, the trial court could then have had the opportunity to order the appearance of defendants-appellants and verify from them the truth of his assertion that they had not "hired him to represent them."

3. The trial court, therefore, did not render a "premature judgment in an unfinished case where the defendants were not given their day in court", as claimed in the last error assigned by appellants. As stated earlier, the record shows that on March 19, 1958, the original defendant's widow, Leonarda Mani, was placed by Atty. Garcia on the witness stand during the deceased's lifetime and testified that her husband "has no business of his own, because he is sickly" and that she was the one operating and managing their transportation business of three trucks since as early as 1952, some years before the filing of the complaint on January 18, 1956. [14] In effect, the widow, Leonarda Mani had then submitted herself to the Court's jurisdiction, asserting as she did that she was the one operating the business and that her husband had no business of his own. The widow and her three children of age as heirs of the deceased cannot therefore claim ignorance of the pendency of the case, and that notwithstanding that she was the actual operator and manager of the business, that she has been kept in complete ignorance of its subsequent developments after her husband's death over 10 years ago. Almost 10 years have elapsed since they were substituted in 1959 as defendants for the deceased, and it taxes all credibility for them to claim now in their brief that "said new defendants did not even know that they became parties in the Amended Complaint," [15] and that all this time, not the slightest effort was made by them to find out from Atty. Garcia or from the Court for that matter what had happened to the case nor did Atty. Garcia in compliance with his duty as an officer of the Court inform them of the decision handed down by the Court over 9 years ago. Having failed to appear on the day set for trial without any justifiable explanation to the Court nor having presented an affidavit of merits as to the existence of valid and lawful defenses, they cannot now complain of having been deprived of their day in Court.

The circumstances of the case and the appeal taken all together lead to the conclusion that the last-hour withdrawal applica-tion of Atty. Garcia and his appeal "as officer of the Court and then counsel of the deceased" was but a device to prolong this case and delay the execution of the judgment, which should have been carried out years ago. The imposition of double costs is therefore in order.

ACCORDINGLY, the judgment appealed from is hereby affirmed, with double costs to be paid by the attorney for defendants.

SO ORDERED.

Concepcion, C.J., Reyes, JBL, Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Fernando, and Capistrano, JJ., concur.

Barredo, J., in the result.

[1] Rec. on App., pp. 28-29.

[2] Decision, Rec. on App., p. 20.

[3] T.S.N., October 9, 1956.

[4] T.S.N., March 19, 1958, p. 3, 16.

[5] Rec. on App., pp. 17-18.

[6] Formerly Rule 9, section 3 of the Rules of Court.

[7] Rec. on App., pp. 18-19.

[8] Rec. on App., p. 22.

[9] Rec. on App., p. 29.

[10] The pertinent portion of this Rule provides: "x x x The heirs of the deceased (party) may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the Court may appoint guardian ad litem for the minor heirs."

[11] Appellants' Brief, p. 6.

[12] Magno. v. Hon. Montano Ortiz, etc. et al. G. R. L-22670, Jan. 31, 1969.

[13] 6 C.J. 674.

[14] T.S.N., March 19, 1958, pp. 3, 14-16.

[15] Appellants' Brief, p. 9.

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