

ANTONIO NARITO, PETITIONER, VS. JOSE CARRIDO, RESPONDENT.*G.R. No. L-27792. July 28, 1969*

Ponente: CASTRO, J.

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Before us is a petition brought by Antonio Narito to set aside the resolutions of the Court of Appeals of February 6, 1967,[1] March 2, 1967,[2] and May 31, 1967.[3] In a separate petition Narito prayed that he be allowed to litigate as pauper before this Court, which we granted in our resolution of July 18, 1967.

The petitioner was the defendant in civil case L-25 of Branch V of the Court of First Instance of Camarines Sur, entitled "Jose Carrido, Plaintiff vs. Antonio Narito, Defendant." Judgment was rendered against Narito in the said case; he then appealed to the Court of Appeals where the case was docketed as CA-G.R. 38782-R. He received a notice from the clerk of the said court requiring him, within the specified time, to pay the appellate docket fee and to file forty copies of the printed record on appeal. He paid the docket fee of P53, but claiming to be old and a very poor man, he prayed that the Court of Appeals allow him to file a typewritten or mimeographed record on appeal, which request was denied in the resolution of February 6, 1967. His subsequent motions to have the Court of Appeals reconsider its action were likewise denied, the court reiterating its order that he file a printed record on appeal.

In support of his petition to be granted the privilege to liti-gate before the Court of Appeals as a pauper, the petitioner alleges he is already 67 years old and is a very poor man with a family to support; that his property consists of a very small parcel of land planted to coconuts containing an area of about two hectares and assessed at P200, from which he can gather only "very few nuts" due to recent typhoons in the province of Camarines Sur which destroyed about 100 fruit-bearing coconut trees on his land; that he would find it difficult, if not impossible, to raise the amount of P250 to cover the cost of printing a record on appeal, as he can hardly afford to buy rice to feed his family, substituting therefor root crops like camote and banana; and that our Constitution provides that a man should not be deprived of the right to free access to the courts by reason of poverty.

On July 18, 1967 this Court allowed the petitioner to litigate as a pauper before it,[4] and required the respondent Court of Appeals to file an answer to the petition.[5]

On August 3, 1967 the Court of Appeals filed its answer, denying the statements made in the petition that there were "several typhoons" that swept the Bicol region which destroyed coconut trees on the two-hectare land possessed by the petitioner, and that the latter has obtained the services of his lawyer for free, the truth being that the petitioner paid his lawyer P400 in attorney's fees as found by the lower court. As special defenses, the respondent court averred that the petitioner is not as impecunious as he claims to be, as he is the owner and is in possession of a two-hectare co-conut land; that he is likewise in possession of the two parcels of land subject of the litigation below with a total area of more than 2-1/2 hectares planted to coconuts and bananas, whose products he has been appropriating, including the plaintiff-appellee's share therein; that the harvest of coconuts takes place three to four times a year; that the petitioner not being really poor, the constitutional provision that no person shall be denied access to courts due to poverty may not be invoked by him; that granting, arguendo, that the petitioner

is a poor man, his motion to appeal as pauper should have been filed with the lower court.

It is noteworthy that the petitioner made no attempt to controvert the special defenses set forth by the respondent Court, particularly those alleging his ownership and possession of the 2-1/2 hectares of land from which he allegedly derives three or four harvests of coconuts a year; and that he had paid his lawyer the amount of P400 in attorney's fees. The respondent court's defense tending as it does to destroy the petitioner's claim to poverty, the latter should have incurred no delay in disputing its allegations, nor overlooked his duty to make immediate reply thereto if he is to convince this Court of the merit of his claim.

However, without going into the merits of the petitioner's prayer that he be considered a pauper for the reasons advanced by him, it is our considered view that his present petition does not merit serious consideration. For the Rules provide in no uncertain terms that the trial court, not the appellate court, is the proper forum to ventilate one's claim to be allowed to litigate as a pauper. Thus section 16, Rule 41, provides:

"Where a party desiring to appeal shall establish to the satisfaction of the trial court that he is a pauper and unable to pay the expenses of prosecuting the appeal, and that the case is of such importance, by reason of the amount involved, or the nature of the question raised, that it ought to be reviewed by the appellate court, the trial judge may enter an order entitling the party to appeal as pauper. The clerk shall transmit to the appellate court the entire record of the case, including the evidence taken on trial and the record on appeal, and the case shall be heard in the appellate court upon the original record so transmitted without printing the same.

"A petition to be allowed to appeal as pauper shall not be entertained by the appellate court."

Even before the adoption of the Revised Rules, this Court had uniformly frowned upon appellate courts entertaining petitions to appeal as pauper, holding that the task of determining the merits of such petitions properly devolves upon the trial court, even though the old Rules contained no provision, as does the present one, expressly withholding from an appellate court the right to entertain petitions to appeal as pauper. The reason behind the policy is that whether a party-litigant is so poor as to qualify him to litigate as a pauper, is a question of fact which can best be determined by a trial court. This was explicitly explained in this Court's resolution of September 4, 1951, dismissing a motion for reconsideration filed by the plaintiffs-appellants in G.R. L-4998, *Jose Alcantara, et al. v. Mariano Tuazon y de la Paz, et al.*, thus:

"A petition to be allowed to appeal as pauper cannot be entertained by this Court as appellate court. Such petition must be filed with the trial court under section 16, Rule 41, of the Rules of Court. The reason is that the trial court is the court which may properly decide or pass upon the question of fact, which may require presentation of evidence, whether the appellant is pauper and may appeal as such, and whether the case is of such importance that, by reason not only of the amount involved but of the nature of the question raised in the court below, it ought to be reviewed by the appellate court. It is not for this Court to examine the facts and law of the case for the first time in order to pass upon this last requirement."

There is not even the least pretense that the petitioner had asked, much less was allowed by, the trial court to prosecute his defense therein as a pauper, and that the permission stood unrevoked when he interposed his appeal to the Court of Appeals, so as to entitle him to continue litigating as a pauper, on the strength of *Comia vs. Judge Castillo*, 75 Phil. 526.

ACCORDINGLY, the present petition is denied. No costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Sanchez, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

Zaldivar, J., is on official leave.

[1] Denying petitioner's motion to file only typewritten record on appeal and brief, and requiring him to file printed copies thereof.

[2] Denying motion to reconsider resolution of February 6, 1967.

[3] Denying motion to reconsider resolution of March 2, 1967, to admit 15 mimeographed copies of appellant's record on appeal, and to give due course to his appeal.

[4] Permission was given on the basis of petitioner's verified petition supported by an affidavit executed by the Assistant Provincial Assessor of Camarines Sur (annex A).

[5] This Court treats the petition, considering its allegations, as an original action brought before it. See *Acar v. Hon. Rosal*, L-21707, March 18, 1967, for authority of this Court to issue writs of certiorari and mandamus to compel a trial court to allow a party to litigate as pauper.

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