

**ANGELINA CANAYNAY, PRUDENCIA V. ASPREC AND CLETO ASPREC,
PETITIONERS, VS. BIENVENIDO A. TAN AND FELICIANO SARMIENTO,
RESPONDENTS.**

G.R. No. L-2336. April 27, 1949

Ponente: MORAN, C.J.

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MORAN, C.J.:

This is a special civil action for certiorari.

Respondent Feliciano Sarmiento filed an action for illegal detainer against petitioners Angelina Canaynay, Prudencia V. Asprec and Cleto Asprec in the Justice of the Peace Court of Parañaque, Rizal. Petitioners filed an answer claiming ownership of the property and after trial asked for the dismissal of the case upon the ground that it involved a question of title over which the justice of the peace had no jurisdiction. The motion was denied and judgment was rendered against petitioners, who appealed to the Court of First Instance. Upon the docketing of the case in that court, petitioners filed what they called a "Constancia", wherein they impugned the jurisdiction of the justice of the peace and objected to the exercise by the Court of First Instance of its original jurisdiction over the case and prayed that "after hearing the above-entitled case be dismissed for lack of jurisdiction of the justice of the peace court." According to the petitioners themselves, this "Constancia" was not meant as a motion to dismiss but merely to make of record their objection to both the jurisdiction of the justice of the peace and the original jurisdiction of the Court of First Instance, and their prayer was that "after the trial of this case when this court (of First Instance) shall have found from the evidence presented that the real question involved is one of ownership and not merely possession, to declare that the justice of the peace court is without jurisdiction, and, consequently, should dismiss the case." But the prayer contained in this "Constancia" was denied by the court.

In the meantime, petitioners failed to file their answer to the complaint which was deemed reproduced in the Court of First Instance upon the docketing of the case therein, and for that reason, the court, on motion of the plaintiff, declared petitioners in default. Petitioners filed a motion for reconsideration upon the ground that the answer filed in the justice of the peace court should have been deemed reproduced also in the Court of First Instance, but the motion was denied. The Court, after receiving the evidence for the plaintiff, rendered judgment against petitioners ordering them to vacate the property and to pay the rents thereof to plaintiff. Whereupon, petitioners, instead of appealing from this decision and from the order of default filed this special civil action for certiorari in this Court.

The only ground alleged by petitioners against the order of default issued against them is that, upon the docketing of the case in the Court of First Instance, not only the complaint but also the answer filed in the justice of the peace court should have been deemed reproduced. However, this contention is contrary to Rule 40, section 7, which reads as follows:

"Upon the docketing of the cause under appeal, the complaint filed in the justice of the peace or municipal court shall be considered reproduced in the Court of First Instance and it shall be the duty of the clerk of the

court to notify the parties of that fact by registered mail, and the period for making an answer shall begin with the date of the receipt of such notice by the defendant."

According to this provision, what is deemed reproduced in the Court of First Instance upon the docketing of the case therein, is only the complaint, but not the answer, filed in the justice of the peace or municipal court. The reason is that there may be no answer filed in the justice of the peace court, or that if there is any filed therein, it may be changed in the Court of First Instance where a trial de novo, is to be held. Although neither the plaintiff nor the defendant may change on appeal in the Court of First Instance the questions raised by the pleadings in the inferior court, a denial that may have been made in the justice of the peace court may be changed into an admission, or a special defense interposed therein may be withdrawn in the Court of First Instance. It is then necessary for the defendant to re-define his stand in the Court of First Instance by filing an answer in due time, and his failure to do so is ground for default.

Petition is dismissed, with costs against the petitioners.

Paras, Feria, Pablo, Bengzon, Briones, Tuason, Montemayor, and Reyes, JJ., concur.

CONCURRING

PERFECTO, J.:

We concur in the decision as a correct exposition and interpretation of section 7 of Rule 40.

We feel, however, that it is our duty to express our opinion to the effect that the said section should be amended as being unreasonable and unfair to the defendant. We do not see any reason why the defendant should be compelled to file a new answer or reproduce his answer as filed in the municipal court, while plaintiff is relieved from the obligation of reproducing his complaint.

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