

ENRIQUE AL. CAPISTRANO, PETITIONER AND APPELLANT, VS. HON. FEDERICO CARIÑO, IN HIS CAPACITY AS JUSTICE OF THE PEACE OF CABUYAO, LAGUNA, AND MARIA L. ALIPIT, RESPONDENTS AND APPE...*G.R. No. L-5269. September 08, 1953*

Ponente: REYES, J.

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This is an appeal from an order of the Court of First Instance of Laguna, dismissing appellant's petition for a writ of mandamus. Purpose of the writ was to compel the Justice of the Peace of Cabuyao to allow an appeal in civil case No. 2 of his court, entitled "Maria L. Alipit vs. Enrique Al. Capistrano."

It appears that on June 6, 1951, a decision was rendered by the Justice of the Peace in the said case, sentencing the defendant to pay to plaintiff the sum of P1,000, plus legal interest, attorney's fee and costs. Notified of said decision on June 8, defendant, on June 12, filed his motion for reconsideration and new trial, raising questions of both law and fact. Acting on the motion, the Justice of the Peace, on June 20, rendered another decision dismissing defendant's special defense and counterclaim and sentencing him again to pay to plaintiff the same amount already adjudged in the first decision. Notified of this new decision on June 22, defendant, on July 5, filed his notice of appeal and appeal bond, and remitted the necessary amount for docket fee. But the appeal was disallowed, and so defendant petitioned the Court of First Instance for a writ to compel the Justice of the Peace to elevate the record to that court. This petition was, however, dismissed on the ground that the appeal was out of time. Against this order of dismissal, Capistrano has appealed to this Court, and the question for determination is whether the period for taking the appeal should be counted from the date of notice of the first decision or from that of the notice of the second decision of the justice of the peace.

In the case of *Cuento vs. Paredes, et al.*, (40 Phil., 346), this Court held that where a judgment is amended, the date of the amendment should be considered as the date of the decision for the computation of the period for perfecting the appeal. Considering the second decision of the justice of the peace in the present case as an amendment to the first, there would be no question as to the appeal having been perfected within the time prescribed by the Rules.

It is contended, however, that the second decision of the justice of the peace was a decision only in name, that there was no need for it, and that a mere order denying defendant's motion for reconsideration and new trial would have sufficed. But we note that the second decision goes further than the first in that, unlike the latter, it makes findings of fact with respect to defendant's special defense and counterclaim and adjudicates them by declaring them dismissed for lack of merit. The absence of this adjudication made the first decision incomplete and necessitated the rendering of another decision to cure the defect. The change was sufficiently substantial to give to the second decision the character of an amended decision. In fact that was what it was evidently meant to be, not only because of its title but also because, as appellant points out, it in express terms dismisses his special defense

and counterclaim and sentences him to pay a sum of money, instead of concluding with the usual phrase for denying a motion for reconsideration and new trial. Viewed in that light, we think it would be harsh to bar an appeal from the judgment of the justice of the peace by considering his second decision a mere order denying such motion.

The order appealed from is, therefore, revoked and the case remanded to the court below for proper proceedings. With costs against the appellee Maria L. Alipit.

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

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