

FRANCISCA QUIZAN, PETITIONER, VS. FRANCISCO ARELLANO, AND ANGEL GARRIDO, RESPONDENTS.*G.R. No. L-4461. December 28, 1951*

Ponente: TUASON, J.

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This is a petition for certiorari directed to Judge Francisco Arellano of the Court of First Instance of Negros Occidental, to review an order of His Honor dismissing the herein petitioner's appeal from a justice of the peace's judgment and ordering the answer filed in the Court of First Instance stricken out.

It appears that Angelo Garrido, one of the respondents herein, brought an action for forcible entry and damages in the justice of the peace court of Ilog, Negros Occidental, against the present petitioner and three others. Summons having been served on the defendants to appear, answer the complaint, and produce evidence on July 17, 1950 at 8:30 a.m., the parties with their respective attorneys were on hand on the stated date and hour. Then and there, the defendants' attorney made a motion to dismiss on the ground that another action between the same parties was pending in the Court of First Instance. That motion was denied, whereupon counsel for the defendants walked out and announced that he would appeal any adverse judgment that might be rendered against his clients.

The Justice of the peace went ahead with the trial and handed down his decision sentencing the defendants to restore the possession of the land in question to the plaintiff and to pay him a monthly rental of P50, P100 as attorney's fee, P60 damages, and the costs of suit. From this judgment Francisca Quizan, one of the four defendants' appealed in the form and within the time provided by the Rules of Court.

In the Court of First Instance, where the complaint filed with the justice of the peace was deemed reproduced (Sec. 7, Rule 40), the appellant docketed a long written answer with counterclaims for P7,700. The plaintiff moved to throw out that answer and the appeal, and the motion was granted, as stated in the opening paragraph of this decision. Judge Arellano ruled that in a civil case appealed from the justice of the peace, the appellant may not raise in the Court of First Instance questions essentially distinct from those raised in the court below.

The discarded answer, which is too long to be conveniently reproduced or restated in detail, made a recital of the acquisition (as homestead) of the land in question by defendant's husband, now deceased; charged frauds and forgeries in the transactions whereby the plaintiff claimed title to that land; admitted that the plaintiff had been in possession of the property but alleged that he had vacated it fearful of being prosecuted for falsification. These allegations were bundled together under the headings of special defenses, affirmative defenses, or counterclaims. Some of them were undeniably special defenses and others, counterclaims, but many were just special denials, not special or affirmative defenses, directly or indirectly traversing the plaintiff's own allegations or alleged right of possession.

By the order sought to be reviewed the appellant in effect was treated as though she had been in default. She had not been in default. She had put in an appearance in the justice of the peace court where failure to appear, not failure to answer, is the sole ground for judgment by default (Section 13, Rule 4), and she had answered the

complaint in the Court of First Instance on time.

The inclusion in the answer of special defenses not pleaded in the justice of the peace court and of counterclaims did not nullify the parts of the pleading which were in reality special denials. The fact that the pleader qualified them as special or affirmative defenses did not make them so. The most that the court should have done was to have eliminated from the pleading the special defenses and counterclaims and allow the special denials to remain. Such special denials are deemed to have been interposed in the court of origin since written answer is not required in the justice of the peace courts, and since the defendant was not in default and was not so declared,

In the Court of First Instance the appellant was not in default any more than she had been in the justice of the peace court. She had filed an answer in the former court, and the mere fact that the answer was defective did not outlaw her from the case. Even if she had been in default in the Court of First Instance, the correct practice should have been, not to dismiss the appeal because the appeal had duly been taken, but to hear the plaintiff's evidence in the absence or without the intervention of the adverse party and decide the case on the merits as the allegations and evidence warranted, let it be noted that by Section 9, Rule 40, an appeal vacates the justice of the peace's judgment and the case stands as if it had been originally commenced in the Court of First Instance. This rule also provides that "If the appeal is withdrawn, the judgment shall be deemed revived and shall forthwith be remanded to the justice of the peace or municipal court for execution," The express mention in this Rule of withdrawal of the appeal as the cause of revival of the justice of the peace's judgment, excludes by implication failure to answer as ground for executing the judgment.

We are therefore of the opinion that the respondent Judge erred in dismissing the appeal, and should proceed to hear the case after ordering the exclusion from the answer of such allegations as are special or affirmative defenses and counterclaims.

In this ruling the Court is unanimous. There is divergence of view on the question of procedure open to the herein petitioner to correct the error. The writer of this decision believes that appeal and not certiorari is the proper remedy and that the present application should be dismissed on that account. The majority, on the other hand, holds that the petition partakes of the nature of a mandamus and may be so regarded, and that His Honor, Judge Arellano should be commanded to try the case on the merits in the manner hereinbefore outlined. The latter is our final decision.

The application is therefore granted and the respondent Judge is directed to proceed with the case according to the tenor of this decision. Costs of this proceeding will be charged against the respondent Angelo Garrido.

Paras, C.J., Pablo, Bengzon, Padilla, Reyes, Jugo, and Bautista Angelo, JJ., concur.

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