

LOPE SARREAL, PETITIONER, VS. BIENVENIDO TAN, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, AND FELICIANO SAMONTE, RESPONDENTS.*G. R. No. L-5429. February 19, 1953*

Ponente: LABRADOR, J.

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This is an original action of certiorari instituted in this court to annul an order and a judgment rendered by the respondent judge in civil case No. 1444 of the Court of First Instance of Rizal, entitled Lope Sarreal, plaintiff, vs. Feliciano Samonte, defendant. The record discloses the following facts: Petitioner herein Lope Sarreal brought an action in the Justice of the Peace Court of Tanay, Rizal, to recover from defendant, respondent herein, the sum of P1,300 for breach of contract to deliver logs and P200 as attorney's fees. As the defendant failed to appear on the day of the trial, the court heard the case, and thereafter rendered judgment sentencing him to pay P1,300 as damages and P200 as attorney's fees. There-upon, the defendant appealed to the Court of First Instance and after a motion to dismiss filed by him was denied, he filed on July 9, 1951, an answer to the complaint, to which he added a counterclaim for the unpaid balance of the price of the logs delivered under the contract, and for unrealized profits. Plaintiff did not file an answer to this counterclaim, and upon petition of the defendant dated September 6, 1951, he was declared in default in an order dated September 15, 1951. On September 11, however, he filed an answer to the counterclaim (Annex 3 to Answer). This answer contains mere denials of the allegations of the counterclaim. He did not ask to have the counterclaim dismissed on the ground that the same was not presented in the Justice of the Peace Court. On September 17, 1951, plaintiff moved the court to set aside the order of default, but his motion was denied on the same date. On September 19, 1951, he again filed another motion praying the court to disregard or strike out certain new matters raised by the defendant in his answer. But he again failed to ask that the counterclaim be stricken out from defendant's answer.

On September 22, his counsel asked for postponement of the hearing, which had previously been set for September 28, and on September 25 the defendant also presented an ex parte motion for transfer of the hearing, but the court denied both petitions, for transfer and called the case for hearing on the date designated therefor. Neither the petitioner nor his lawyer appeared during the trial, but the defendant and his counsel did, and the court, upon motion of the defendant, dismissed the complaint and defendant was ordered to produce evidence on his counterclaim. On October 16 judgment was rendered against plaintiff on this counterclaim, and execution of the judgment thereafter entered.

The petition for certiorari is lodged against the following proceedings of the trial court: (1) its refusal to grant petitioner's motion for the postponement of the hearing and the dismissal of his complaint upon his failure to appear on the date of the hearing; and (2) its order declaring plaintiff in default on defendant's counterclaim, in view of the fact that the said counterclaim was not presented in the Justice of the Peace Court.

Postponements of trial are addressed to the sound discretion of the court, and this discretion should not be

interfered with unless it has been abused. While petitioner's request for postponement was not entirely groundless, he had no reason to assume that the court would grant it, and that he could, therefore, afford to be absent at the trial. Plaintiff was consequently guilty of carelessness and neglect when he failed to appear at the trial. We are not prepared, therefore, to find that the trial judge abused his discretion in refusing to grant the postponement.

As to defendant's counterclaim, it is true that the same could not have been entertained in the Court of First Instance on appeal, if it clearly appears that it was not presented in the Justice of the Peace Court. (*Bernardo vs. Genato*, 11 Phil., 603; *Yu Lay vs. Galmes*, 40 Phil., 651.) In the case at bar, however, the defendant had no opportunity to present an answer, as the trial was held in his absence and without any opportunity for him to answer verbally or in writing. And petitioner herein, as plaintiff below, never objected to the court taking cognizance of the counterclaim until almost three months after it was filed, in the meantime asking that the order of the court declaring him in default as to the counterclaim be lifted and his answer thereto (which he calls a reply) admitted. On September 19, more than two months after defendant's counterclaim was filed, petitioner submitted a motion to disregard and to strike out issues and points not raised in the court of origin, but this motion never touched upon the counterclaim. It was only on October 5, almost three months after the filing of the counterclaim, that he objected to the counterclaim. But on this date the court had already dismissed his complaint and had ordered a hearing on the counterclaim.

The legal issue presented by the above facts, is whether the rule laid down in *Bernardo vs. Genato* (11 Phil., 603), *Yu Lay vs. Galmes* (40 Phil., 651), and other subsequent cases, to the effect that in a case appealed from the Justice of the Peace Court to the Court of First Instance the parties may not present new issues not raised in the Justice of the Peace Court, is applicable to the case at bar, and deprived the Court of First Instance of the power to consider the counterclaim, within the jurisdiction of the Justice of the Peace Court, raised for the first time on appeal to the Court of First Instance, to the consideration of which no opportune objection was interposed by the adverse party. Our answer must be in the negative. In the first place, as defendant did not have the opportunity to present an answer, verbal or written, it can not be said that he raised any issue at all, and so he may not be said to have changed the issues on the appeal. In the second place, the right to demand the limitation of the issues to those presented in the Justice of the Peace Court is purely a procedural privilege or right, lodged in the party adversely affected, and, like any other procedural or statutory right not involving a public policy, subject to waiver by him. The party accorded the privilege must raise it at the first opportune time, and his failure to do so amounts to a waiver thereof. (Section 8, Rule 26, Rules of Court.) Lastly, the objection to the counterclaim had no legal standing in court as it was filed after he was declared in default and was never accepted by the court.

Besides, there is nothing sacred in the pleadings and proceedings of an inferior court not of record. A case appealed therefrom is to be tried anew (*trial de novo*) upon its merits as if the same has been originally commenced in the Court of First Instance. Once in this court the rules applicable thereto govern. In accordance therewith, amendments are allowed freely in the discretion of the court in order to render substantial justice, and more especially to the end that the real matter in dispute and all matters in the action in dispute may, as far as possible, be completely determined in a single proceeding (Section 2, Rule 17, Rules of Court). The counterclaim presented by defendant in the case at bar is directly connected with plaintiff's action. Plaintiff is seeking damages for failure of defendant to furnish all the logs he had promised to deliver, while defendant in his counterclaim demands the actual cost of the logs he delivered. Defendant's counterclaim is a perfectly fair, legitimate, and valid one, directly related to plaintiff's cause of action. The admission of the counterclaim, therefore, especially without the timely objection of the plaintiff, petitioner herein, and the refusal of the court to strike it out, after he had once answered it and upon his subsequent belated motion to disregard it, can not be said to be an abuse of discretion.

The petition is, therefore, denied, with costs against the petitioner.

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

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