

ENCARNACION M. SIAYNGCO, ASSISTED BY HER HUSBAND, JULIO SIAYNGCO, PETITIONERS, VS. MARTIN COSTIBOLO AND THE HON. COURT OF APPEALS, RESPONDENTS.

G.R. No. L-22506. February 28, 1969

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

This is a petition for review and setting aside of the Court of Appeal's decision affirming a decision of the Court of First Instance of Leyte rendered in favor of private respondent Martin Costibolo as therein plaintiff against petitioners, the spouses Encarnacion M. Siayngco and Julio Siayngco as therein defendants, with prayer that the case be remanded to the trial court to enable the petitioners to present their evidence.

The background of the case follows:-

Respondent Martin Costibolo as plaintiff in the trial court originally sought the annulment on the ground of extrinsic fraud of a decision of the Justice of the Peace Court of Dagami, Leyte, in Civil Case 46 thereof, wherein the Siayngco spouses had obtained a money judgment against said Costibolo by virtue of a confession of judgment entered by Costibolo in favor of the Siayngco spouses. According to Costibolo's complaint in the trial court, he had confessed judgment in favor of the Siayngco spouses in the Justice of the Peace Court case, on the representation, promise and assurance of the latter that they would not ask for a writ of execution of the judgment within five years from the date of the judgment. Costibolo further alleged in his complaint that as soon as he had confessed judgment in favor of the Siayngco spouses and had lost the right to appeal from the judgment or to seek relief therefrom, the Siayngco spouses had secured from the Justice of the Peace Court a writ of execution of the judgment, pursuant to which his properties were attached and advertised for sale. He further averred that he had filed a petition for relief from judgment under Rule 38 of the Rules of Court but his petition was denied because it had been submitted after the reglamentary six-months period; the case involving this petition for relief, which appears to have been first erroneously filed as a motion with the Justice of the Peace Court in Civil Case 46, was appealed to and docketed as Civil Case 1935 of the Court of First Instance which likewise denied the petition for the same reason.[1] Costibolo finally asked for the issuance of a writ of preliminary injunction pendente lite against the execution of the judgment and sheriff's sale of his properties, which was granted by the trial court, and for P5,500.00 by way of actual and moral damages.

In due course, the Siayngco spouses, represented by petitioner Julio Siayngco, a member of the bar, filed an Answer to Costibolo's complaint, denying the alleged fraud, pleading *res adjudicata* by virtue of the judgment of the Justice of the Peace Court in Civil Case 46 as well as the judgment of the Court of First Instance in Civil Case 1935 denying Costibolo's petition for relief, and praying for counter-damages.

Hearing was conducted by the trial court. After Costibolo had submitted his evidence and rested his case, the Siayngco spouses orally moved for dismissal of the complaint on the ground that since the supposed fraud was committed in 1955 and the original complaint had been filed by them against Costibolo in the Justice of the

Peace Court on March 4, 1954 and the judgment of said Court had been rendered two months later on May 31, 1954, the fraud alleged by Costibolo could not have possibly influenced the said judgment and make out a case for its annulment. The Siayngco spouses expressly reserved their right to present their evidence should their motion be denied by the Court. The trial court however informed them that it could not grant such reservation and announced that it would reserve its resolution so that it would have time to peruse and study their motion for dismissal or demurrer to evidence. The trial court thereafter rendered its judgment denying the Siayngcos' motion to dismiss and at the same time annulling the judgments of the Justice of the Peace Court of Dagami, Leyte, in Civil Case 46, and of the Court of First Instance of Leyte in Civil Case No. 1935, in favor of the Siayngcos; it sentenced the Siayngco spouses furthermore to pay to Costibolo the amount of P4,000.00 in actual and moral damages and attorney's fees.

The findings of fact and the award made by the trial court, simultaneously with its denial of the Siayngcos' dismissal motion or demurrer to evidence without hearing the Siayngcos' evidence, as reproduced and affirmed by the Court of Appeals in its decision of October 4, 1963 are hereby spread for the record:

"x x x plaintiff Martin Costibolo and his wife Constancia Pasagui obtained on August 29, 1950, a loan of TWO HUNDRED PESOS (P200.00) from defendant Encarnacion Siayngco at 14% interest. In 1952, they paid fully that debt including interests, in the total amount of P312.00, the first payment of P100.00 having been made by the plaintiff Martin Costibolo himself and his wife Constancia Pasagui. They asked for a receipt for that payment but defendant Encarnacion M. Siayngco told that there was no need for it, as they were relatives and there was confidence between them. All that was done was to write a note on the back of the receipt of the said loan, stating that P100.00 was paid by the plaintiff and his wife on that occasion. The next payment was in another amount of P100.00 handed to defendant Encarnacion M. Siayngco by the said Constancia Pasagui who was accompanied by her brother Apolonio Pasagui. Similar note was written on the back of the aforementioned receipt. The third payment was still another P100.00 by the same last two persons. When the latter insisted in having a receipt for the said payment, Mrs. Siayngco repeated that there was no need because they were relatives and they trusted each other. So the third payment was again annotated on the back of the said receipt like the two previous ones. All the annotations were signed by Constancia Pasagui, Apolonio Pasagui saw the annotations written on the back of the receipt for the first, second and third payments of P100.00 each. The last payment in the amount of P12.00 was made by Isabelo Costibolo, brother of the herein plaintiff. All these payments were made during the year 1952. When asked by the Court why did they not require the defendant Encarnacion M. Siayngco to sign the annotations on the back of the said receipt, witness Apolonio Pasagui answered that they did not like to press too much the defendant Encarnacion M. Siayngco, because she was holding fast to the fact that they were relatives and there should be no mistrust between them. As they respect her and her husband, their uncle Atty. Siayngco, they were ashamed and afraid to insist further.

"In spite of the payments made, the defendants filed a complaint for the collection still of the same debt, with the Justice of the Peace Court of Dagami on March 1, 1954, praying for the payment of the said loan of TWO HUNDRED PESOS (P200.00), NINETY-EIGHT PESOS (P98.00) as agreed interests from August 29, 1950 up to March 1, 1954, plus the interests from the latter dated until it is fully paid, and ONE HUNDRED AND TWENTY PESOS (P120.00), as damages together with the costs, making a total sum of FOUR HUNDRED EIGHTEEN PESOS (P418.00), exhibit 'A', page 1 of civil case No. 1935. The plaintiff herein who was defendant in that case, answered the complaint stating that he had already paid fully the said loan, exhibit 'B', page 2 of civil case no. 1935. Meantime, plaintiff sent his brother-in-law Apolonio Pasagui to the herein defendants, who were plaintiffs in that case in the Justice of the Peace Court, to settle amicably the same. While he had already overpaid their debt, but being a teacher and his wife is related to herein defendant Atty. Julio Siayngco who is their uncle, he wanted to avoid litigation which would be more costly for them. Atty. Pasagui conferred with both defendants and Atty. Siayngco told him that if his brother-in-law, the herein plaintiff Martin Costibolo, would just confess judgment, he would not ask for the execution thereof within five

years, thereby giving Costibolo that same period to pay gradually the said amount of FOUR HUNDRED EIGHTEEN PESOS (P418.00). Pasagui returned and informed his brother-in-law Costibolo of the proposal of the defendants, and Costibolo agreed, so he submitted a confession of judgment in that case, marked exhibit 'C', page 10 of the record civil case No. 1935. Consequently, the Justice of the Peace of Dagami rendered a decision for the payment of the said amount of P418.00 by the def-endant, page 11, same expediente. Meantime Apolonio Pasagai went to Manila he was away and after the judgment became final, Atty. Siayngco, in violation of his promise and the agree-ment between the parties in that case, requested the execution of the judgment, exhibit 'E', page 12. Execution was issued by the Justice of the Peace on September 21, 1954 exhibits 'F' and 'F-1', pages 13 and 15. The Sheriff complied with the writ of execution, back of page 14 and exhibit 'G', page 16. When the execution was levied by the sheriff, Martin Costibolo was surprised, so he wrote to his brother-in-law Apolonio Pasagui in Manila about the last development of the case. After the latter's return to Dagami, Leyte, he filed a motion to set aside judgment which was denied by the Justice of the Peace as his decision has long become final. The case was brought to this Court on Appeal. This Court also denied the appeal for lack of jurisdiction as the same was filed longafter the judgment of the Justice of the Peace had become final. As a result, the present case, civil No. 1993, was filed for the annulment of judgment of the Justice of the Peace Court of Dagami, Leyte.

"In his desperation the plaintiff filed the present case. He even wrote a complaint to the Secretary of justice against Atty. Julio Siayngco for misconduct. A copy of that complaint was marked as exhibit "E".

"During the presentation of the evidence by the plaintiff, his attorney demanded the pro-duction of the receipt for the aforecited loan by the defendants, but Atty. Julio Siayngco denied their having it in their possession and its annotations.

"From the facts above related, it is clear that the misrepresentations proved had induced defendant Martin Costibolo in civil case no. 1935 of this. Court, now plaintiff in the present case, to confess judgment in the Justice of the Peace Court of Dagami, Leyte, on the agreed condition that it shall not be executed within five years so as to afford time to the defendant to pay the amount of P418.00 within that period. According to the evidence that promise was given because Constancia Pasagui, wife of plaintiff Costibolo is closely related to the def-endants herein, being a niece of defendant Atty. Julio Siayngco, and because Martin Costibolo is a teacher with a modest salary, he preferred to pay that amount gradually and avoid litigation which would be more costly, according to him, although he had already paid fully the original loan of P200.00 with its interests. The payments in the total amount of P312.00 having been established by the plaintiff and his witness brother-in-law, Atty. Apolonio Pasagui, in the absence of evidence disproving them, are facts considered duly proven.

"The plaintiff only came to know the misre-presentations made by Atty. Siayngco that he would not ask for the execution of judgment of the Justice of the Peace Court within five years, when the sheriff levied execution upon the properties of the plaintiff sometime in 1954 and for that reason his brother-in-law Apolonio Pasagui, who was then already an attorney, filed a motion to set aside judgment on April 9, 1955, page 20, record of civil case No. 7935, founded on fraud 'committed by inducing defendant Martin Costibolo to confess judgment.' This misrepresentations which has not been disproved constitute fraud.

"The period within which to file an action based on fraud is four years according to Art. 1146, No. 1 of the New Civil Code. Since the misrepresentations made by the defendant Julio Siayngco, according to the evidence, was only discovered after he had requested the levy of execution against the defendant Martin Costi-bolo in 1954 and this case was filed on August 30, 1955, the action involved herein was presented within the legal period. Hence, the motion to dismiss must be, as it hereby is denied.

"From the nature of the transaction as gleaned from the original complaint, exhibit 'A', filed by the defendants in civil case No. 46 of the Justice of the Peace Court of Dagami, civil No. 1935 of this Court, and considering its terms and conditions there must have neces-sarily been a receipt or memorandum evidencing such loan and

the Court is inclined to believe the evidence of the plaintiffs herein who were defendants then, that such receipt was really executed and actually existed with all its mentioned annotations on the back. But regardless of the demands made by the plaintiff upon the defendants to produce the receipt with its annotations on its back, the defendants denied the existence of such receipt nor that they have it in their possession. For purposes of their own, the defendants did not deem it proper to produce the receipt, undoubtedly, in order not to disclose the annotations repeatedly mentioned. But its non-production merely confirmed the more its execution and existence. The heavy preponderance of evidence, therefore, proved that the original loan of P200.00 was already more than fully paid to the defendants herein.

"But the question may be raised that if the original loan of P200.00 was fully paid, why did Martin Costibolo agree to the payment of the additional amount of P418.00? He answered that he wanted to avoid litigation between relatives which would have been more costly for him because he is a teacher of meager salary and with a big family to support, and also out of respect to the defendants who are his elder relatives. So he preferred paying it gradually or precisely within five years in order not to destroy their family relationship.

"It may be argued also that if plaintiff Martin Costibolo was willing to pay P418.00 demanded by the defendants in civil case No. 46 of the Justice of the Peace Court of Dagami, Leyte, civil case No. 1935 of this Court, is there any ground or necessity to annul said judgment of the Justice of the Peace for that amount? As stated above, the payment of the original loan of P200.00 was already made in 1952 together with the interests amounting in all to P312.00. If this amount was really paid to the defendants, as the evidence showed without any contradiction nor refutation, then such willingness on the part of the plaintiff to pay the additional amount of P418.00 would be absurd and illegal and the Court cannot be made a tool for, and cannot sanction, such illegality.

"On the other hand, it is not correct, as the plaintiffs herein testified, that the defendants were asking high rates of interests on the original loan of P200.00, because the complaint in the Justice of the Peace Court praying for the payment of P418.00 or more breaks that amount into P98.00 interests from August 29, 1950 to March 1, 1954, at the rate of 14% interest yearly. However, as the original loan of P200.00 was fully paid, as proved, with P312.00 including interests, the paid amount of P418.00 would be a duplication of the payment of the aforesaid P200.00 plus P98.00 as its interest, over and above the original payment of P312.00. In this sense the complaint in the Justice of the Peace Court of Dagami may be considered as requiring not only over payment, but also excessive interests. But since the defendants did not deem it proper for them to present their proofs in the present case, the Court refrains from making any pronouncement as regards the amount representing interests or the rate thereof.

"The plaintiff has proved that he had suffered humiliation and pain and anguish because of the case filed against him by the herein defendants who were plaintiffs then and, as a teacher in the public service, he was ashamed and humiliated, suffering moral damages in the amount of FIVE THOUSAND PESOS (P5,000.00) and actual damages for expenses incurred in maintaining the previous case and the present in the amount of FIVE HUNDRED PESOS (P500.00), plus attorney's fees of FIVE HUNDRED PESOS (P500.00). Considering all attending circumstances and the facts of the case, the Court believes that the plaintiffs are entitled to THREE THOUSAND PESOS (P3,000.00) moral damages, FIVE HUNDRED PESOS (P500.00) actual damages and FIVE HUNDRED PESOS (P500.00) attorney's fees, making a total of FOUR THOUSAND PESOS (P4,000.00)."[2]

The Siayngco spouses timely filed their appeal from the trial court's judgment to the Court of Appeals which affirmed it in toto, with costs.

The crucial ruling of the trial court as well as of the Court of Appeals concerns the legal effects and consequences of the Siayngcos' motion to dismiss or demurrer to plaintiff's evidence.

The trial court ruled that the Siayngcos, after moving to dismiss the case after the presentation of therein plaintiff

Costibolo's evidence, were understood to have waived their right to present their evidence, notwithstanding their reservation, and plaintiff could take judgment according to the evidence already on record, holding that:

"It is, therefore, the considered opinion of this Court that the herein defendants cannot reserve their right to present their evidence after their motion to dismiss is or shall have been denied." [3]

On the same specific issue, the Court of Appeals upheld the trial court's ruling thus: -

"At the outset we must express our concurrence in the position taken by the court a quo that the defendants could not legally reserve their right to present evidence in case their last motion to dismiss was denied. This last motion to dismiss assumed the correctness of the evidence adduced for the plaintiff, and it is the defendant's stand thereunder that such evidence does not establish sufficient facts to constitute a valid cause of action. It has been repeatedly held in this jurisdiction that a defendant who, after the plaintiff has submitted his evidence, elects to stand on the insufficiency of the plaintiff's case, must be understood to have waived his right to present evidence, and the plaintiff can take judgment according to the evidence adduced by him." [4]

Petitioners in their petition at bar complain that they have been thus deprived of their day in court and invoke in their favor two principal grounds: first, that upon denial of their motion to dismiss or demurrer to plaintiff's evidence, they should have been granted the right to present their evidence in accordance with their express reservation; and second, that in actions for relief under Rule 38 of the Rules of Court as well as in actions to annul judgment on the ground of fraud, the procedure established by the Rules of Court and by this Court's jurisprudence [5] is that two hearings should be conducted by the trial court, (1) a hearing to determine whether the judgment or order complained of was rendered through fraud and should therefore be set aside; and (2) if the decision thereon is in the affirmative, a second hearing on the merits of the principal case.

We find merit in the petition.

1. This Court in the case of *Director of Lands vs. Hon. Patricio V. Ceniza*, G. R. No. L-18527, June 29, 1963, already had occasion, in an analogous case, to restate the rule governing judgments on demurrers to evidence, by way of collation and clarification of the doctrines enunciated in earlier cases, as now embodied in Rule 35 of the new Rules of Court, which provides in its sole section, as follows:

"Rule 35

"Judgment on Demurrer to Evidence

"Section 1. Effect of judgment on demurrer to evidence. -- After the plaintiff has completed the presentation of his evidence, the defendant without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. However, if the motion is granted and the order of dismissal is reversed on appeal, the movant loses his right to present evidence in his behalf."

In the cited case, applying the rule on demurrer to evidence as thus restated, this Court held that the trial court after denying the motion to dismiss for insufficiency of plaintiff's evidence or demurrer to the evidence, should permit the defendant to present his own evidence and give him his day in court, regardless of whether or not the defendant has made a reservation of his right to present his evidence in the event of denial of his motion or demurrer. [6] We reaffirm the doctrine then stated by this Court, in the light of the general provision in Rule 144 that the new Rules of Court, which took effect on January 1, 1964 "shall govern all cases brought after they take effect and also all further proceedings in cases then pending", as follows:

"At the time the present controversy was being ventilated, the rule governing the subject-matter, which was a clarification of the doctrines on earlier cases (*Arroyo v. Azur*, 76 Phil. 495, April 13, 1946; *Guido v. Castelo*,

G.R. No. L-1613, May 24, 1948, 81 Phil. 81; *Ocum et al. v. Nunez, et al.*; G.R. No. L-8018, Oct. 26, 1955; *Montelibano, et al. v. Bacolod Murcia, etc.*, G.R. No. L-15092, Sept. 29, 1962), was -

'After the plaintiff has completed the pre-sentation of his evidence, the defendant without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief, however, if the motion is granted and the order of dismissal is reversed on appeal, the movant loses his right to present evidence in his behalf.'

This rule is now embodied in the Revised Rules of Court, section 1, Rule 35, captioned Judgment and Demurrer to Evidence, which will take effect on January 1, 1964. It is, therefore, evident that the respondent court, in the case at bar, after denying the motion to dismiss, for insufficiency of evidence, (demurrer to the evidence), should have permitted the petitioner-defendant to present his own evidence, notwithstanding its failure or omission to make a reservation to that effect; more so, as in this particular case, when the petitioner-defendant had asked to be given a day in court, in order to defend the government's title to a 78 hectare parcel of land."

2. The rationale behind the rule and doctrine is simple and logical. The defendant is permitted, without waiving his right to offer evidence in the event that his motion is not granted, to move for a dismissal (i. e. demur to the plaintiff's evidence) on the ground that upon the facts as thus established and the applicable law, the plaintiff has shown no right to relief. If the trial court denies the dismissal motion, i. e., finds that plaintiff's evidence is sufficient for an award of judgment in the absence of contrary evidence, the case still remains before the trial court which should then proceed to hear and receive the defendant's evidence so that all the facts and evidence of the contending parties may be properly placed before it for judication as well as before the appellate courts, in case of appeal. Nothing is lost. This doctrine is but in line with the established procedural precepts in the conduct of trials that the trial court liberally receive all proffered evidence at the trial to enable it to render its decision with all possibly relevant proofs in the record, thus assuring that the appellate courts upon appeal have all the material before them necessary to make a correct judgment, and avoiding the need of remanding the case for retrial or reception of improperly excluded evidence, with the possibility thereafter of still another appeal, with all the concomitant delays. The rule, however, imposes the condition by the same token that if his demurrer is granted by the trial court, and the order of dismissal is reversed on appeal, the movant loses his right to present evidence in his behalf and he shall have been deemed to have elected to stand on the insufficiency of plaintiff's case and evidence. In such event, the appellate court which reverses the order of dismissal shall proceed to render judgment on the merits on the basis of plaintiff's evidence.

Simply restated, a defendant who presents a demurrer to plaintiff's evidence retains the right to present his own evidence, if the trial court disagree with him; but if the trial court agrees with him, and on appeal, the appellate court disagrees with both of them and reverses the dismissal order, he has lost the right to present his own evidence.

3. The case before the trial court was one for annulment of judgment on the ground of fraud. As earlier stated, private respondent Costibolo as defendant in the original case filed by the Siayngcos before the Justice of the Peace Court of Dagami, Leyte, where he entered a confession of judgment had unsuccessfully tried to secure relief from said judgment under Rule 38 of the Rules of Court. Sections 6 and 7 of Rule 38 govern the proceedings for setting aside or annulment of judgments on the grounds of fraud, accident, mistake or excusable negligence, as follows:

"SEC. 6. Proceedings after answer is filed -- Once the answer is filed, or the time for its filing has expired, the court shall hear the petition and if after such hearing, the court finds that the allegations thereof are not true, the petition shall be dismissed; but if it finds said allegations to be true, it shall order the judgment, order or other

proceedings complained of to be set aside, upon such terms as may be just, and thereafter the case shall stand as if the judgment, order or other proceeding set aside had never been issued or taken. "

"SEC. 7. Procedure where a judgment is set aside. -- Where the judgment set aside is that of a Court of First Instance, such court shall proceed to hear and determine the case as if timely motion for a new trial had been granted therein. Where the judgment set aside is that of an inferior court, the case shall be tried in the Court of First Instance as if the same had been regularly brought up by appeal, and the judge of the inferior court may be required by the Court of First Instance to attend and produce at the trial all the papers in the original case. "

Here while the complaint filed by Costibolo for the annulment of the Justice of the Peace Court judgment against him on the basis of extrinsic fraud was a separate action independent of Rule 38 for relief from judgment, still we hold that the above quoted provisions of Rule 38 should govern the procedure to be followed by the trial court in such separate action for annulment of the judgment of an inferior court. The Court of First Instance would be exercising its appellate jurisdiction, as contemplated in Rule 38, section 7, which expressly provides that where the judgment set aside is that of an inferior court, the case shall be tried in the Court of First instance as if the same has been regularly brought up by appeal. "

This Court, speaking through the now Chief Justice, has already laid down in *Villanueva v. Alcoba*,^[7] the procedure to be followed in such proceedings, which contemplates two hearings: first, a hearing to determine whether the judgment or order complained of should be set aside, for as provided in Rule 38, section 6, if the court finds that the allegations of fraud are not true, the petition shall be dismissed and the entire proceedings terminate; and second, if the court finds the allegations to be true, however, then the same rule provides that it shall set aside the judgment complained of and shall proceed to hear and determine the case on its merits, for the case will then stand as if the judgment set aside had never been issued. Thus, this Court pointed out in the cited case: -

"It is clear from these provisions that in proceedings for relief from judgment under said Rule 38, there may be two (2) hearings, namely: (1) a hearing to determine whether the judgment or order complained of should be set aside, and (2) if the decision thereon is in the affirmative, a hearing on the merits of the Principal case.

"Referring to the present case, it is obvious that, at the hearing held on August 8, 1953, the court was not supposed to receive evidence on the truth of petitioners' allegations relative to the alleged debts of respondents herein. This matter affects already the merits of the principal case, which is not to be inquired into until the Court has decided, after the first hearing, to set aside the judgment or order complained of. Otherwise, the second hearing above referred to would be useless." (at p. 285)

The procedure thus laid down is but national. As petitioners correctly contend in their brief, the trial court in allowing respondent Costibolo to present simultaneously at the first hearing his evidence relating to the merits of the principal case, subject of the judgment which was yet to be annulled, in effect already prejudged or erroneously assumed that the alleged fraud which was the very basis of Costibolo's action for annulment of judgment was already duly proven and that said judgment had been set aside. As pointed out by this Court in the *Villanueva* case, *supra*, the merits of the principal case, subject of the judgment sought to be annulled, should not be inquired into until the court has decided, after the first hearing, to set aside the judgment complained of.

So it is that even if we were to apply in the case at bar the rule in earlier doctrines already discarded that a defendant who moves to dismiss or presents a demurrer to plaintiff's evidence must be deemed to have waived his right to submit his own evidence in the event of the court's denial of his motion or demurrer, the outcome here would not be affected. For this case is one to set aside a judgment on the ground of fraud, which involves two hearings, as already stated. Such waiver would properly apply only to the first hearing, i. e., the hearing to determine whether the judgment complained of should be set aside on the ground of fraud. But petitioners could

not be deemed to have also waived the right to present their evidence at the second hearing on the merits of the case, after the Court shall have denied their motion to dismiss and therefore shall have accordingly set aside the judgment sought to be annulled; for it is only then that the second hearing on the merits of the case would be called and held for the reception of plaintiff's evidence as well as of defendant's evidence.

But under the rule of demurrer to evidence now formally incorporated in Rule 35, supra, since the trial court denied the petitioners' motion to dismiss or demurrer, petitioners could not be held to have waived their right to present their own evidence, to refute respondent Costibolo's evidence, both on issue of the alleged fraud as well as on the merits of the principal case.

WHEREFORE, the decision appealed from is hereby reversed and another one is hereby entered, directing the remand of the case to the Court of First Instance of Leyte for further proceedings in accordance with this decision. With costs against the private respondent.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Feernado, and Barredo, JJ., concur.

Sanchez, J., did not take part.

Ruiz Castro, and Capistrano, JJ., took no part.

[1] Rec. on Appeal, p. 52.

[2] Court of Appeals decision, pp. 3-9; Rollo pp. 12-18.

[3] Rec. on Appeal, p. 48

[4] Court of Appeals decision, pp. 2-3, Rollo, pp. 11-12

[5] Villanueva vs. Alcoba, 101 Phil. 277.

[6] In Nicolas de los Santos vs. Court of Appeals G. R. No. L-18682, June 30, 1965, this Court upheld the lower court's judgment of December 27, 1958 and ruled that "a defendant who filed a demurrer to the plaintiff's evidence without reservation in effect submitted the case for decision and if the result be adverse to him he could not claim, as a matter of right, that the decision be vacated so that he might adduce his own evidence." This Court in said decision, expressly noted that "by way of advertence to the bench and the bar, it need only be added that similar questions arising after the promulgation of the revised Rules of Court are expressly governed by Rule 35, Section 1" thereof. Said case is easily differentiated from the case at bar in that here, the petitioners, as defendants in the trial court, expressly reserved the right to submit their evidence in the event of the denial of their demurrer to plaintiff's evidence.

[7] 101 Phil. 277.

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