

**MARIANO S. RAMIREZ Y LOCSIN, PETITIONER AND APPELLANT, VS.
HON. DAMIAN L. JIMENEZ, AS JUDGE OF BRANCH III OF THE
MUNICIPAL COURT OF QUEZON CITY, THE SHERIFF OF QUEZON
CITY AND J...**

G. R. No. L-17062. October 31, 1962

Ponente: PAREDES, J.

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PAREDES, J.:

On November 28, 1958, J.M. Tuason & Co. Inc. filed a suit before the Municipal Court of Quezon City, Branch III, (Civil Case No. 5466) for forcible entry and damages against Mariano Ramirez y Locsin who answered in January 13, 1959. On October 23, 1959, the first witness for plaintiff testified. The trial was reset for November 4, 1959. Before the arrival of this date, however, Ramirez filed before the CFI of Quezon City a petition for certiorari and prohibition (Sp. Civil Case No. Q-4786) against Judge Damian L. Jimenez and the plaintiff, which forced the postponement of the scheduled hearing to February 25, 1960. On November 4, 1959, Judge Nicasio Yatco dismissed the petition for certiorari, stating that the said petition was not sufficient in form and substance and that appeal and not certiorari was the remedy. No appeal was interposed against this order.

At the continuation of the hearing of Civil Case No. 5466 on February 25, 1960, neither Ramirez nor his counsel appeared, notwithstanding due notice to them. Upon its motion, plaintiff was allowed to adduce its additional evidence in court. On March 19, 1960, the case was decided by Judge Jimenez, ordering the defendant Ramirez, among other things, to vacate the premises. As no appeal was taken from this decision, the same became final and the corresponding writ of execution was issued on May 12, 1960, upon plaintiff's motion.

It appears that on February 25, 1960, Ramirez filed a second petition "for certiorari and prohibition with preliminary and mandatory injunction" against the same plaintiff, the Municipal Court and Sheriff, Quezon City (Sp. Civil Case No. Q-5030) before the same CFI (Quezon City), to review, orders and resolutions of the Municipal Court and suspend proceedings. On March 2, 1960, Judge Yatco dismissed the petition. A motion for reconsideration presented, was denied on March 19, 1960. Notice of appeal to this Court (Supreme Court) from these two orders was filed, which was given due course by the lower court on May 26, 1960.

While Judge Yatco was considering approval of the appeal in case No. Q-5030, Ramirez, on April 12, 1960, filed before the CFI of Quezon City, Branch IV, Civil Case No. 5492, a "Petition for Relief" from the aforesaid judgment of the municipal court in Civil Case No. 5466. A motion to dismiss was presented by plaintiff on May 30, 1960, and Judge Caluag issued an Order on June 18, 1960 stating: "For lack of merit, and on the grounds set forth in the motion to dismiss which the court finds to be well-founded, this petition for relief from judgment is hereby dismissed, with costs against the petitioner". This order was not appealed by Ramirez and same became final and executory.

The appeal now under consideration refers to the correctness or validity of the Orders issued by the CFI of Rizal, Branch V (Quezon City), dated March 2, 1960, in Special Civil Case No. Q-5030, dismissing the petition for

certiorari and prohibition, presented by Ramirez, and from its subsequent order dated March 19, 1960, denying his motion for reconsideration.

In dismissing the petition for a writ of certiorari and prohibition with preliminary and mandatory injunction, the trial court in its Order of March 2, 1960 stated "that the relief prayed for in the petition is only proper when there is no speedy and adequate remedy in the ordinary course of law. From a reading of the petition it appears that there is the remedy of appeal available to the petitioner". The trial court was correct. The motion for relief from judgment presented before the municipal court, was denied, but no appeal therefrom was interposed. Instead, defendant filed certiorari proceedings in the Court of First Instance, after the judgment had long become final and in the process of execution. Section 1, Rule 67, provides that certiorari will lie when a tribunal has acted without or in excess of its jurisdiction or with grave abuse of discretion and there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law. Municipal Court Civil Case No. 5466 is one for forcible entry and the same is within the exclusive cognizance of the Municipal Court. That court had jurisdiction over defendant's person, as he had filed his Answer to the complaint. Having jurisdiction over the subject-matter and the person, the decision upon all questions pertaining to the case are within its jurisdiction and they cannot be corrected by certiorari, irrespective of the irregularity or errors therein (*Fideldia vs. Carlos, et al.*, 64 Phil., 1052). The Order dismissing appellant's petition for certiorari and prohibition in Civil Case No. Q-5030, was issued on March 2, 1960 and the decision in the municipal court case No. 5466 was rendered on March 19, 1960. Appellant could have timely appealed from the latter decision. Wittingly or unwittingly, however, he allowed the judgment to lapse into finality which paved the way for the issuance of the writ of execution on May 12, 1960. Certiorari will not lie as a substitute for appeal (*Profeta vs. Gutierrez David*, 71 Phil., 582).

Petitioner-appellant (1) invokes the case of *Mendez vs. Kiam*, 108 Phil, 109; and (2) invited our attention to the value of the affidavit of merits submitted by him in the "petition for relief" in case No. 5092. The *Mendez-Kiam* case is not applicable to the present case. What was involved therein was a defaulting defendant. In the case at bar, defendant Ramirez filed his Answer; he was all along represented by his counsel who cross-examined plaintiff's witnesses. Moreover, this showing of dissimilarity is unnecessary, because the present appeal is confined only to the Orders of March 2, 1960 and March 19, 1960 in case No. Q-5030. The judgment on the merits, in Case No. 5466 of the Municipal Court, was not an object of appeal.

We notice the herculean efforts exerted by appellants counsel to weave a tapestry of defense around the cause of appellant, by filing several cases against the appellee; but he had invariably made a wrong choice of remedy in each move.

In view hereof, the Orders of the court a quo dated March 2, 1960 and March 19, 1960, in Special Case No. Q-5030, appealed from are affirmed, with costs against appellant.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Dizon, Regala and Makalintal, JJ., concur.

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