

SANTIAGO JIMENEZ, COMPLAINANT, VS. HON. DIMALANES BUISSAN, DISTRICT JUDGE, COURT OF FIRST INSTANCE, ZAM-BOANGA DEL NORTE, BRANCH III, DIPOLOG CITY, RESPONDENT.

A.M. No. 1837-CFI. November 21, 1978

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is a sworn complaint filed by Santiago Jimenez dated February 9, 1978, charging respondent, Hon. Dimalanes Buissan, District Judge of the Court of First Instance of Zamboanga del Norte, Branch III, with partiality, gross ignorance of the law and knowingly rendering an unjust interlocutory order.

It is alleged that although respondent judge had already lost control and jurisdiction over a case by virtue of a perfected appeal, he nevertheless acted on a motion ex-parte of a person who is a complete stranger to the case, allowing said person to intervene in the case. The respondent judge issued orders which affect the property subject of the litigation.

The facts are:

1. Complainant Santiago Jimenez is the predecessor-in-interest of one Pacifico Cimafranca, plaintiff in Civil Case No. B-1634, for ejectment, filed with the City Court of Dipolog City, Branch II, against Lucia E. Torregiani. Judgment was rendered in favor of Cimafranca. The defendant Lucia E. Torregiani was ordered to vacate the property in question, a house and lot; to pay plaintiff a monthly rental of P200.00 for her occupancy of the property commencing August, 1972 until she shall have completely vacated the premises; to pay attorney's fee in the amount of P500.00; and, to pay the costs of the suit;[1]
2. The aforesaid decision was appealed to the Court of First Instance, Zamboanga del Norte, Branch III, Dipolog City, presided by respondent judge, which reversed it, and dismissed the complaint as well as the counter-claim of defendant Lucia Torregiani, on the ground that plaintiff therein failed to allege and prove "prior physical possession" of the property subject of the suit, by himself and his vendor and predecessor-in-interest, Eda T. Jimenez;[2]
3. Elevated to the Court of Appeals, the appellate court reversed the aforesaid decision of respondent judge and ordered the case remanded to the court a quo "for proper disposition on the merits of the appeal from the decision of the City Court of Dipolog, viewing the case as one for unlawful detainer, not one for forcible entry as the court a quo did, which led said court mistakenly to dismiss it on an unfounded technicality." [3]
4. Respondent, pursuant to the order of the Court of Appeals, rendered another decision on the case dated February 1, 1977, again dismissing the complaint as a consequence of which Pacifico Cimafranca went to the Court of Appeals once more on March 4, 1977; [4]
5. On the same day of March 4, 1977, when the aforesaid appeal had already been perfected, respondent Judge Buissan acted on and granted a motion ex-parte of one Oreste Torregiani, a stranger in both the ejectment case

(Civil Case No. B-1634) in the City Court and in the Court of First Instance (Civil Case No. 2610), for the appointment of a lawyer as his counsel to prosecute the motion and to be allowed to collect rentals on the property under litigation; [5]

6. Despite opposition, [6] the motion was granted. The movant, Oreste Torregiani, was allowed to employ the services of a lawyer in an order dated March 17, 1977. [7] On May 11, 1977, Oreste Torregiani was authorized to collect rentals from occupants of the building in question.[8]

The plaintiff Pacifico Cimafranca filed a motion to set aside the two aforesaid orders. The respondent judge denied said motion. Hence, the present complaint.

The two questions to be resolved are:

- When an appeal has already been perfected, may the court still issue orders related to the appealed case?
- May a person not a party to the litigation, whether in the lower court or in the appellate court, be allowed to intervene in the case and seek affirmative relief?

Upon the perfection of an appeal, the trial court loses its jurisdiction over the case, except to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, to approve compromises offered by the parties prior to the transmittal of the record on appeal to the appellate court, and to permit the prosecution of pauper's appeals.[9] The appeal having been perfected, the trial court presided by the respondent was divested of jurisdiction over the matters litigated by the appeal except to give orders for the protection and preservation of rights of parties which do not involve matters litigated in the appeal. The order issued by respondent Judge allowing a stranger, Oreste Torregiani, to be impleaded as a party to the suit through an attorney in an ex-parte motion, even if he happens to be the husband of the defendant, and the later order authorizing the said Oreste Torregiani to collect rentals from the occupants of the property under litigation are not for the protection or preservation of the rights of the parties.

The explanation of respondent that he allowed Oreste Torregiani to litigate as a party to the suit because he is after all the husband of the defendant in the case has no merit. In *Legaspi Oil Co., Inc. vs. Hon. Geronimo et al.*, G.R. No. L-28101, 76 SCRA 174, We ruled that in an appeal from an inferior court to the Court of First Instance, the latter court cannot, in the exercise of its appellate jurisdiction, bring in a new party for the first time on appeal. When the complaint originally filed in the City Court of Manila was amended by plaintiff, impleading the petitioner Legaspi Oil Co., Inc. as a party defendant and alleging that either the latter or the defendant Liberation Steamship Co., Inc. is liable for the payment for the service subject of the complaint, the plaintiff had in effect alleged a new cause of action not set up in the City Court of Manila and changed its theory of the case as tried and decided by the inferior court. Civil Case No. 2610 of the Court of First Instance of Zamboanga del Norte, Branch III of Dipolog City is the same Civil Case No. B-1634 of the City Court of Dipolog City, Branch II elevated before it on appeal. Movant Oreste Torregiani was not a party in said original Civil Case No. B-1634 in the inferior court. The respondent judge erred when he acted on the ex-parte motion of a stranger at the time when he no longer had jurisdiction of the case by reason of the perfected appeal.

WHEREFORE, the Court hereby admonishes the respondent, Hon. Dimalanes Buissan, presiding Judge of the Court of First Instance of Zamboanga del Norte, Branch III, Dipolog City, to be more careful and circumspect in his actuations as a judge.

SO ORDERED.

Makasiar, Muñoz Palma, and Guerrero, JJ., concur.

Teehankee, J., (Chairman), concur in a separate opinion.

[1] Decision, Civil Case No. B-1634, Folder, pp. 8-18.

[2] Decision, Civil Case No. 2610, CFI, Zamboanga del Norte, Branch II, Folder, pp. 19-29.

[3] Decision, CA-G.R. No. 04408-SP, Special First Division, Court of Appeals, Dec. 18, 1975, Folder, pp. 30-35.

[4] Annex "K" of Complaint, Folder, p. 62.

[5] Annex "E" of Complaint, Folder, p. 48.

[6] Annex "F", Ibid., Folder, p. 50.

[7] Annex "G", Ibid., Folder, p. 53.

[8] Annex "H", Ibid., Folder, p. 54.

[9] Sec. 9, Rule 41, Rules of Court.

CONCURRING OPINION**TEEHANKEE, J.:**

I concur in the result and wish to add only that the disposition of this case is solely on the charge, as found substantiated by the Court, that respondent manifestly acted wrongfully in acting on and granting the ex-parte motion of a stranger in Civil Case No. 2610 of his court when he no longer had jurisdiction over the case by reason of an appeal to the Court of Appeals from his adverse decision having been already perfected.

It should be understood that this disposition of the present complaint is, under the background facts, without prejudice to such other administrative complaint as may be warranted and properly filed against respondent judge, should it appear from the determination of the said appealed case, say, that his second dismissal of the ejectment case - like the first which he dismissed "on an unfounded technicality" - was likewise unfounded or arbitrary.

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