

HELEN SMITH AND SVEN SMITH, PETITIONERS, VS. HONORABLE RUPERTO KAPUNAN, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, HONORABLE RAMON ICASIANO, JUDGE OF THE MUNICIPAL COURT OF...

G. R. No. L-9307. February 09, 1956

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

In civil case No. 30232 of the Municipal Court of Manila, judgment was rendered ordering defendants Helen Smith and Sven Smith to pay plaintiff T. Peyer the total sum of P216 (representing rentals and water charges unpaid by the lessee Smith), plus interest and costs. Defendants appealed to the Court of First Instance of Manila (civil case No. 23688) and on August 7, 1954, were notified to file their answer. They filed their answer with the court on August 17, 1954, but did not serve a copy thereof on the plaintiff. On February 24, 1955, plaintiff moved, with notice to the defendants, for the dismissal of the appeal because of defendants' failure to comply with section 7, Rule 40 of the Rules of Court; and finding that defendants did not serve copy of their answer upon plaintiff within the prescribed period, the then Presiding Judge Vicente Santiago ordered on March 8, 1955 the dismissal of the appeal.

More than two months later, or on May 17, 1955, plaintiff filed with the court a petition alleging that the order dismissing defendants' appeal had become final and executory, and praying that the records be remanded to the court of origin for the execution of the judgment. Defendants opposed the motion, claiming that their appeal to the Court of First Instance had vacated the judgment of the municipal court and deprived it of all jurisdiction over the case. Over defendants' objections, however, presiding judge Ruperto Kapunan, Jr. on May 30, 1955 ordered the remand of the records to the municipal court for execution. Charging that Judge Kapunan's order was issued in excess of jurisdiction and with grave abuse of discretion, defendants brought this petition for certiorari before this court,, asking that the said order be annulled.

After due consideration of the petition, we are of the opinion and so hold that the respondent Judge neither exceeded his jurisdiction nor gravely abused his discretion in issuing his order on May 30, 1955.

Petitioners complain about Judge Kapunan's order of remand of May 30, 1955, but not against the previous order of Judge Vicente Santiago dismissing defendants' appeal on the ground that they did not serve upon plaintiff a copy of their answer within the reglementary period. While this dismissal was clearly erroneous (since the proper procedure in case of failure to answer is to declare the appealing defendant in default, hear the evidence for the plaintiff, and render judgment in accordance therewith), unfortunately, it has become irrevocable, since defendants did not appeal from Judge Santiago's order of dismissal, nor did they seek seasonable relief therefrom under Rule 38. The order dismissing their appeal having thus become final and unreviewable, the respondent Judge Ruperto Kapunan, Jr., who succeeded Judge Santiago, had no jurisdiction left over the case but to remand the same to the inferior court for execution, which he did in his order of May 30, 1955, now sought to be annulled.

It is contended that a perfected appeal operates to vacate the judgment of the inferior court (Rule 40, section 9); that such judgment can be revived only by withdrawal of the appeal, and only the appellant can ask for such withdrawal.[1] But as petitioners failed to appeal from the order of dismissal, or to seasonably ask for relief there-from under Rule 38, their silence and inaction is equivalent to an implied withdrawal of their appeal and an assent to the revival of the judgment of the municipal court. Their assent is made more evident by the fact that, even now, petitioners do not question the validity of the order dismissing their appeal, but only complain against the order of remand for execution.

The writ of preliminary injunction issued in this case is hereby ordered dissolved, and the petition for certiorari is dismissed, with costs against petitioners. So ordered.

Parás, C. J., Padilla, Montemayor, Reyes, A., Jugo, Bautista Angela, Labrador, Concepcion, and Endencia,. JJ., concur.

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