

**EUSTAQUIO AMOREN AND DOROTEA AMOREN, PETITIONERS, IS,
THE HONORABLE HERNANDO PINEDA, JUDGE OF THE COURT OF
FIRST INSTANCE OF LANA DEL NORTE, AND DIONISIO CANONEO,
MELCHOR APONT...**

G. R. No. L-23666. September 29, 1967

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

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

Petition for "Certiorari and/or Mandamus" to compel respondent Judge of the Court of First Instance of Lanao del Norte to proceed with the contempt proceedings filed by petitioners Amoren against private respondents.

Background of the case is the action for forcible entry and detainer filed by petitioners on February 14, 1957 in the Justice of the Peace Court of Kapatagan, Lanao del Norte, against private respondents (Civil Case No. 75 of that Court). For failure to appear, the defendants were declared in default and after hearing plaintiff's evidence, the inferior court rendered judgment ordering the defendants in said action to vacate the premises; to pay P25.00 per hectare per annum until restoration of possession and to pay the costs.

On January 25, 1960, the defendants in the detainer case (private respondents herein) instituted an action (Civil Case No. 319) in the Court of First Instance against the spouses Amoren (plaintiffs in the detainer case) to annul the previous judgment of the Justice of the Peace Court of Kapatagan as well as the execution issued thereunder, on the ground that the said inferior Court (1) had not acquired jurisdiction over the persons of the plaintiffs (former defendants) for lack of summons, and (2) had no jurisdiction over the subject matter because the land claimed to have been allegedly detained lay in the municipality of Lala, and not in Kapatagan. After trial, the Court of First Instance (then presided by Judge Estipooa) dismissed the complaint. Plaintiffs (private respondents now) appealed to the Court of Appeals (CAG.R. No. 28493R), but their appeal was dismissed for failure of appellants to file their brief.

The decision of the Justice of the Peace having become final, the Sheriff delivered the property to plaintiffs in the detainer case (petitioners Amoren). But defendants (now private respondents) having allegedly reentered the land in question, petitioners sought to have them declared in contempt by the Court of First Instance. Upon respondents' motion, said Court, presided by respondent Judge Hernando Pineda, dismissed the petition for contempt, declaring that —

" . . .

"The Court holds that when it concerns lack of jurisdiction, 'it can be shot at sight! The Municipal Court of Kapatagan, had no jurisdiction to try in his Court a case that involved property situated in another municipality and whatever decision he might have rendered in the case is void ab-initio. If the decision is void, the respondents incurred in no liability when they allegedly reentered the premises after they were ejected by the Sheriff.

"It is not necessary herein to discuss the other grounds advanced by the respondents.

"WHEREFORE, the Court hereby dismisses the petition without pronouncement as to costs."

Unable to secure reconsideration, petitioners Amoren resorted to this Court. Private respondents, in their answer, replead the alleged lack of jurisdiction of the Justice of the Peace Court of Kapatagan, and further aver that their appeal against the previous decision of Judge Estipona had been dismissed because the respondents (then appellants) could not raise money for the printing of their brief.

We agree with the petitioners that Judge Pineda's order is untenable for being contrary to law. The jurisdiction of the Justice of the Peace of Kapatagan, Lanao del Norte, over the disputed property and over the parties defendant, had been upheld by the Court of, First Instance in Civil Case No. 319; and that decision of Judge Estipona having become final, because the appeal therefrom was dismissed, the fact of jurisdiction became *res judicata* and is no longer open to debate. That the appeal was dismissed because of private respondents' insufficient resources does not make its rejection any less final. Appellants could have petitioned to be allowed to prosecute their appeal as paupers, but they did not do so.

It is a consequence of the preceding considerations that the writ of execution was lawfully issued and the proceedings thereunder were good and valid.

Respondents plead that petitioners' remedy was an appeal under section 10 of Rule 71. This is incorrect since that section refers to an appeal by a person adjudged in and sentenced for contempt by the trial Court: Likewise, the ruling that an acquittal from a contempt charge is not appealable, like an acquittal in a criminal case (*Pajao vs. Board of Canvassers*, 88 Phil, 588) does not apply to the case before us, since there has been no adjudication on the merits of the charge, but a ruling upon a motion to dismiss, on jurisdictional ground.

Wherefore, the order complained of is set aside and the records remanded to the Court of origin, directing it to reopen the proceedings and adjudicate the contempt charger its merits. So ordered.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles and Fernando, JJ., concur.

Order set aside.

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