

ENRIQUE ICASIANO, PLAINTIFF AND APPELLEE, VS. FELISA ICASIANO, DEFENDANT AND APPELLANT.

G.R. No. L-16592. October 27, 1961

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal from an order of the Court of First Instance of Manila granting plaintiff's motion to dismiss defendant's first counterclaim and dismissing the latter.

The facts are simple enough. In his complaint, dated July 31, 1959, plaintiff Enrique Icasiano sought to recover P20,000 plus interest and attorney's fees, from the defendant, Felisa Icasiano. Within the reglementary period, or on November 9, 1959, the latter filed an answer admitting some allegations of the complaint, denying other allegations thereof and setting up special defenses, as well as two (2) counterclaims—one for the sum of P150 allegedly borrowed by plaintiff from the defendant, and another for moral and exemplary damages, attorney's fees and expenses of litigation, allegedly suffered and incurred by the defendant in consequence of this suit, in such sum as the court may find just and reasonable.

On November 17, 1959, plaintiff moved (2) to dismiss the first counterclaim; (b) to strike out paragraph (2) of defendant's answer; and (c) to set the case for hearing on the merits. Despite defendant's objection thereto, on December 7, 1959, the lower court granted the first prayer, denied the second prayer and set the case for hearing on a stated date. Notice of the order to this effect was served on the defendant on December 17, 1959, who, three (3) days latter, filed her notice of appeal and appeal bond. Plaintiff countered with a motion to strike out defendant's appeal "in so far as said notice refers to the setting for hearing of the above entitled case on January 7, 1960, at 8:30 a.m., for the simple reason that said order, in so far as it sets a date for the hearing of the above entitled case is interlocutory and, therefore, not appealable, and for the further reason that the intended appeal from said setting order is plainly frivolous and interposed only for the purpose of delay". This motion was denied in an order dated December 19, 1959, which allowed defendant's appeal "from the order of December 7, 1959, in so far as it orders the dismissal of defendant's first counterclaim, and setting the hearing of this case on January 7, 1960, at 8:30 a.m." Upon denial by the lower court of plaintiff's motion for reconsideration of its last order, defendant filed her record on appeal, which, after its amendment, was approved "there being no opposition thereto".

Sometime after the transmittal of the amended record on appeal to this Court or on February 4, 1960, plaintiff filed a motion to dismiss the appeal upon the ground that defendant's appeal "from the order of the trial court dated December 7, 1959, dismissing her first counterclaim is manifestly and palpably frivolous" and that her appeal from said order insofar as it sets the case for hearing is "ostensibly dilatory, aside from the fact that such setting order is interlocutory and, therefore, not immediately appealable". This motion was denied by a resolution of this Court dated February 17, 1960. We, likewise, denied plaintiff's motion for reconsideration of said resolution.

The main issue in this appeal is whether or not the lower court had erred in holding itself without jurisdiction to entertain defendant's first counterclaim. Before passing upon the merits of such question, it should be noted, however, that the order granting plaintiff's motion to dismiss said counterclaim is interlocutory in nature, and, hence, not appealable, until after judgment shall have been rendered on plaintiff's complaint (*Guanco, et al. vs. Monteblanco, et al* 111 Phil., 886; *Villasin vs. Seven-Up Bottling Co., of the Philippines*, 107 Phil., 801; 58 Off. Gaz. (10) 1964; *Caldera, et al. vs. Balcueba, et al.*, 84 Phil. 304).

However, plaintiff did not object to defendant's appeal from said order except insofar only as it set the case for hearing. In other words, it acquiesced to said appeal as regards the dismissal of the aforementioned counterclaim. In fact, plaintiff interposed no objection to defendant's amended record on appeal. Hence, even if the lower court should have disapproved it, for the reason that said order of dismissal is interlocutory in character, its order approving the amended record on appeal entailed, at most, an error of judgment that does not affect our jurisdiction to entertain the appeal (*Gatmaitan vs. Medina*, 109 Phil., 108; 60 Off. Gaz. (17) 2343; *Salazar vs. Salazar*, L-5823, April 29, 1953). It may not be amiss to add that the allegation in the motion, filed by plaintiff with this Court, to dismiss the appeal, to the effect that the same is frivolous insofar as it seeks a review of the order dismissing defendant's first counterclaim, has no merit, not only because a party can not be barred upon such ground from appealing by writ of error, but, also, because we find that the lower court had erred in issuing the order complained of.

Indeed, regardless of whether¹ the court of First Instance may entertain counterclaims for less than P5,000, it must be noted that Article 1278, 1279, 1286 and 1290 of our Civil Code read

"Art. 1278. Compensation shall take place when two persons, in their own right, are creditors and debtors of each other."

"Art. 1279. In order that compensation may be proper, it is necessary:

- (1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;
- (2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;
- (3) That the two debts be due;
- (4) That they be liquidated and demandable;
- (5) That over neither Of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor."

"Art. 1286. Compensation takes place by operation of law, even though the debts may be payable at different places, but there shall be an indemnity for expenses of exchange or transportation to the place of payment."

"Art. 1290. When all the requisites mentioned in Article 1279 are present, compensation takes effect by operation of law, and extinguishes both debts to the concurrent amount, even though the creditors and debtors are not aware of the compensation."

Pursuant to these provisions, defendant would have been entitled to deduct from plaintiff's claim of P20,000—At the latter were established—the sum of P150 involved in her first counterclaim, if the allegations thereof were true, even if no such counterclaim had been set up in her answer, for "when all the requisites mentioned in Article 1279 are present, compensation takes effect by operation of law, and extinguishes both debts to the concurrent amount, even though the creditors and debtors are not aware of"—and, hence, did not plead—"the compensation". Moreover,

it is clear from the record before us that said counterclaim was set up, not so much to obtain a money judgment against plaintiff, as by way of set-off, to reduce the sum collectible by the latter, if successful, to the extent of the concurrent amount (Moore's Federal Practice, Vol. 1, pp. 695-696) (See, also, *Wisdom vs. Guess Dry cleaning Co.*, 5 Fed. Supl., 762-767).

Wherefore, the order appealed from is hereby reversed, insofar as it dismisses defendant's first counterclaim, and the case is, accordingly, remanded to the lower court for further proceedings, not inconsistent with this decision, with costs against plaintiff-appellee, Enrique Icasiano. It is so ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Paredes, and De Leon, JJ., concur.

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