

**FIRESTONE TIRE AND RUBBER COMPANY OF THE PHILIPPINES,
PLAINTIFF-APPELLEE, VS. FERNANDO TEMPONGKO, DEFENDANT
AND THIRD-PARTY PLAINTIFF-APPELLANT, ANTONIO LUNA,
THIRD-PARTY DEFEND...**

G.R. No. L-24399. March 28, 1969

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The only issue of law raised in this appeal from an Order of the Court of First Instance of Manila is: where plaintiff obtained judgment in the Municipal Court against defendant who in turn obtained judgment for reimbursement against the third-party-defendant, but only the latter appealed to the Court of First Instance, may plaintiff's judgment against defendant be deemed to have become final and executory?

The record shows the following facts:

In a collection action instituted in the City Court of Manila, defendant in the course of the presentation of his evidence, obtained leave to file a third-party complaint against the third-party defendant. After proper proceedings, the City Court rendered judgment on the original complaint in favor of plaintiff, and on the third-party complaint in favor of defendant, as third-party plaintiff, as follows:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant Fernando Tempongko, ordering the latter to pay the former the sum of P1,992.40, representing the principal account, plus P200.00 stipulated interest up to January 31, 1964 and 1% interest per month from February, 1964, until the principal and interest are fully paid; ordering the defendant to pay the plaintiff the sum of P400.00 as and for attorney's fees; and the costs of suit.

On the third party complaint, judgment is hereby rendered in favor of the third party plaintiff and against the third party defendant, ordering the latter to pay the former whatever amount the said third party plaintiff is ordered to pay the plaintiff in this case; plus an additional sum of P200.00 as and for attorney's fees.

The third party defendant's counter claim is hereby dismissed. " (Rec. on Appeal, pp. 3-4)

Only the third-party defendant appealed in due course from the judgment rendered against him in the third-party complaint.

When the records were elevated to the Court of First Instance of Manila, plaintiff filed a Motion to Remand Case to the lower court, for execution of its judgment against defendant, alleging in substance that by virtue of defendant's failure to appeal, its judgment against defendant had become final and executory and was in no way affected by the appeal filed by third party defendant from the judgment in favor of defendant in the third-party complaint.[1]

The Court of First instance overruled defendant's opposition to plaintiff's motion and issued an Order granting the

motion for the remand of the case to the City Court for execution of its decision against defendant, directing that thereafter the records be sent back to it 'for trial de novo insofar as the third party plaintiff and the third party defendant are concerned.'"[2]

This Order of execution is the challenged order before this Court.

Defendant and third-party plaintiff-appellant's appeal is without merit. The main prop of his appeal that "(T)he appellant's third party complaint is in effect a defense to the plaintiff's complaint against him" and that "the intimate connection of the issues involved in the principal complaint and in the third-party complaint is sufficient to enable the herein appellant to ventilate before the Court of First Instance his own case without the need of appealing from that aspect of the decision which directly imposes upon him the liability to pay the appellee"[3] is bereft of legal support or basis.

The Court a quo, therefore, correctly issued its order for execution of the judgment on the principal complaint in favor of plaintiff on the strength of this Court's ruling in *Singh vs. Liberty Insurance Corporation*[4] where speaking through Mr. Justice Dizon, this Court similarly disposed of an identical case:

"Appellant admits that it did not appeal from the decision of the Municipal Court but contends that the appeal therefrom taken by the third party defendants inured to its benefit; that said appeal vacated the decision not only as far as the third party defendants were concerned but also with respect to the defendant, although it did not appeal; that on appeal the case should be tried de novo as if it had never been tried before, and finally, that being an appellee itself because of the judgment in its favor against the third party defendants, it did not have to appeal from the decision of the Municipal Court.

"It is true, as appellant claims that an appeal from the decision of an inferior court (Municipal Court) operates to vacate said decision, thereafter the case to stand trial de novo in the Court of First Instance, but it seems obvious that this applies only to the party who had taken the appeal. As against other parties adversely affected by the decision who did not appeal, the decision must be deemed to have become final and executory. A contrary view would lead to indefensible results."[5]

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"Our conclusions, therefore, are: first, that because the defendant Liberty Insurance Corporation did not appeal from the adverse decision of the Municipal Court, it had no right to file the answer in question, and second, that the decision of the Municipal Court having become final and executory as against said defendant, its execution was in order. This notwithstanding, said defendant is still an active party in the appealed case because of the appeal taken by the third-party defendants from the decision of the Municipal Court in so far as it was in favor of said defendant as third party plaintiff."[6]

A brief discussion of the Rule on third-party complaints and of the nature and object thereof suffices to show the rationale therefor.

Rule 6, section 12 defines a third-party complaint as follows: -

"SEC. 12. Third-party complaint. -- A third-party complaint is a claim that a defending party may, with leave of court, file against a person not a party to the action, called the third-party defendant, for contribution, indemnity, subrogation or any other relief, in respect of his opponent's claim."

The third-party complaint, is therefore, a procedural device whereby a "third party" who is neither a party nor privy to the act or deed complained of by the plaintiff, may be brought into the case with leave of court, by the defendant, who acts as third party plaintiff to enforce against such third-party defendant a right for contribution, indemnity, subrogation or any other relief, in respect of the plaintiff's claim. The third party complaint is actually independent of and separate and distinct from the plaintiff's complaint. Were it not for this provision of the Rules

of Court, it would have to be filed independently and separately from the original complaint by the defendant against the third party. But the Rules permit defendant to bring in a third party defendant or so to speak, to litigate his separate cause of action in respect of plaintiff's claim against a third party in the original and principal case with the object of avoiding circuitry of action and unnecessary proliferation of lawsuits and of disposing expeditiously in one litigation the entire subject matter arising from one particular set of facts.[7] Prior leave of Court is necessary, so that where the allowance of a third party complaint would delay the resolution of the original case, such as when the third-party defendant cannot be located[8] or where matters extraneous to the issue of possession would unnecessarily clutter a case of forcible entry,[9] or the effect would be to introduce a new and separate controversy into the action,[10] the salutary object of the rule would not be defeated, and the court should in such cases require the defendant to institute a separate action. When leave to file the third party complaint is properly granted, the Court renders in effect two judgments in the same case, one on the plaintiff's complaint and the other on the third party complaint. When he finds favorably on both complaints, as in this case, he renders judgment on the principal complaint in favor of plaintiff against defendant and renders another judgment on the third party complaint in favor of defendant as third party plaintiff, ordering the third party defendant to reimburse the defendant whatever amount said defendant is ordered to pay plaintiff in the case. Failure of any of said parties in such a case to appeal the judgment as against him makes such judgment final and executory. By the same token, an appeal by one party from such judgment does not inure to the benefit of the other party who has not appealed nor can it be deemed to be an appeal of such other party from the judgment against him.

ACCORDINGLY, the Order of the Court a quo for the execution of the decision of the City Court of Manila in favor of plaintiff-appellee as against defendant-appellant is hereby affirmed. With costs against defendant-appellant.

Concepcion, C.J., Reyes, JBL, Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Fernando, Capistrano, and Barredo, JJ., concur.

[1] Rec. on App., pp. 6-9.

[2] Rec. on App., p. 16.

[3] Appellant's Brief, p. 4

[4] L-16860, July 31, 1963, 8 SCRA 517.

[5] Idem at pp. 519-510.

[6] Idem at p. 525.

[7] Republic vs. Ramos L-18911, April 27, 1967, 19 SCRA 825; Cf. I Martin's Op. p. 264

[8] Sy vs. Malate Taxicab and Garage, Inc., G. R. L-8937, Nov. 29, 1957.

[9] Del Rosario vs. Jimenez, G. R. L-17468, July 31, 1963; 8 SCRA 547.

[10] Republic vs. Ramos, supra, fn 7.

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