

**RICHARD BRESLIN, CARLOS GUZMAN, OSCAR J. FARZENDE,
JOHNNIE IDENCIO, AND ELENOM CUETO, PLAINTIFFS AND
PETITIONERS, VS. LUZON STEVEDORING COMPANY, SOTERO RODAS
AND FELIPE NATIVIDA...**

G.R. No. L-3346 (CA-No. 3121-R). September 29, 1949

Ponente: FERIA, J.

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FERIA, J.:

The plaintiffs, now petitioners, filed an action against the defendant, Luzon Stevedoring Co., now respondent, in the case No. 4609 of the Court of First Instance of Manila, for the recovery of money alleged to be due to the plaintiffs from the defendant in the latter's capacity as agent for and in behalf of the corporation Pacifico Islands Towing Co. Inc. The defendant filed a motion to dismiss on the ground that the complaint states no cause of action, because the defendant is being sued as a mere agent and is not the real party in interest. Before the motion to dismiss had been acted upon the plaintiff filed an amended complaint so as to cure the defect of the complaint by alleging that the defendant was being sued as principal and not as an agent. The first paragraph of the amended complaint reads as follows: "Comes now the plaintiffs in the above entitled case through their undersigned counsel and with the leave of this Hon. Court first had and obtained, beg to amend their complaint before this Honorable Court, respectfully showing: * * *." The amended complaint was accompanied by a notice to the adverse party, through its attorneys, informing them that the plaintiffs will submit the amended complaint for admission by the court on March 27, 1948. The defendant asked for the postponement of the hearing for April 3, 1948, and the court set the hearing and heard the motion on April 10, 1948. The lower court on June 8 denied the admission of said amended complaint on the ground that it has been presented without the court's leave; and on June 22 dismissed the plaintiff's action on the ground that "the defendant is being sued in its capacity as agent of the Pacific Islands Towing Co. Inc." that "there is no allegation in the complaint or elsewhere in the pleading or record, that the plaintiffs were hired by the defendant," and therefore "the plaintiffs have no cause of action against the defendant." A motion for reconsideration was filed by the petitioner and denied by the respondent judge; hence the filing of the petition for certiorari with the Court Of Appeals.

The Court of Appeals, in passing upon the question whether or not the court has original jurisdiction to entertain the petition for certiorari, held the following:

"The main question raised in the pleadings is whether or not an error was made in denying admission of the amended complaint and, accordingly, in ordering the dismissal of the case. This issue, in turn, hinges on whether or not it was absolutely necessary that the leave of the Court be secured prior to the filing of the amended complaint. Apart from the foregoing, although related thereto, is the determination of whether the proper remedy for the petitioners herein, if the orders complained of were erroneous, would be a writ of certiorari or an appeal by writ of error. We do not deem it proper, however, to pass upon any of these questions, for the reasons presently to be stated.

"It should be noted that there were no issues of fact before the lower court at the time of the issuance of the

orders aforementioned. Indeed, both decided purely questions of law, namely, whether or not the leave of court should have been secured, or, at least, requested, before the filing of the amended complaint, and whether the original complaint stated a cause of action. If petitioners herein had sought a review of these orders by appeal or writ of error, the case would have fallen under the exclusive appellate jurisdiction of the Supreme Court, only question of law being involved therein (Art. VIII, section 2, Constitution of the Philippines). Accordingly, the writ of certiorari prayed for herein is not sought in, aid of the appellate jurisdiction of this Court, which it does not have under the facts of the case, for which reason we have no authority to entertain the present petition, pursuant to the rule laid down in the case of *Roldan vs. Villaroman* (38 Off. Gaz., 2299).

"What is more, it appearing that the orders sought to be reviewed by certiorari are the very same orders against which an appeal could be taken, a decision of this Court on the validity or propriety of said orders would, in effect, amount to an encroachment upon the power of the Supreme Court to pass upon the same questions, in the exercise of its exclusive appellate jurisdiction.

"Wherefore, let the record of this case be forwarded to the Supreme Court for appropriate action, pursuant to section 31 of Republic Act No. 296."

In the case of *Roldan vs. Villaroman*, 38 Off. Gaz., 2289, this Court held that a petition for certiorari, prohibition, and mandamus arising from an action within the jurisdiction of and pending before a Court of First Instance, may be entertained by the Court of Appeals if it appears from the allegations in the plaintiffs petition, complaint or information that the parties have a right to appeal, according to law, from the final orders or decisions of the lower court to the Court of Appeals, irrespective of whether an appeal has already been or will actually be taken, or not. In the said case this Court held, among others, the following:

"The petitioners contend that the Court of Appeals has no original jurisdiction to take cognizance of the certiorari proceedings instituted by the respondents Villaroman and Cuevas because the decision to be rendered in the criminal case against the latter, if appealed, would have to be passed upon by the Supreme Court because of the death penalty which has to be imposed in view of the allegations of the information and the evidence presented. In opposition the respondents contend that the appeal which may be interposed should not be the basis in the determination of the original jurisdiction of the Court of Appeals to entertain the petition for certiorari, because if no appeal is taken from the decision to be rendered, there would be no way of determining if the Court of Appeals has original jurisdiction to act upon the certiorari proceedings, following the ruling in the case of *Re Barber Asphalt Pav. Co.* (67 L. R. A., 761, 768, 769), cited in the memorandum of counsel for the respondents, we hold that the basis of the original jurisdiction of the Court of Appeals should not be the appeal which may be interposed in the criminal case against the respondents Villaroman and Cuevas, but the right to appeal. Otherwise stated, the original jurisdiction of the Court of Appeals to try and decide the petition for certiorari instituted by Villaroman and Cuevas should be determined by the existing right of appeal from the decision to be rendered in the criminal case and not by the contingency of whether or not such appeal will be taken." (*Roldan vs. Villaroman*, 38 Off. Gaz. 2298, 2203.)

A writ of mandamus, prohibition or certiorari against a lower court is said to be in aid of the appellate jurisdiction of the Court of Appeals within the meaning of section 30 of Republic Act No. 296, known as "the Judiciary Act of 1948," and the corresponding provision of the former Organic Act of the Court of Appeals, if the latter has jurisdiction to review, by appeal or writ of error, the final orders or decisions of the former, and said writs are issued by the Court of Appeals in the exercise of its supervisory power or jurisdiction over the wrongful acts or omissions of the lower court that are not appealable. But if the Court of Appeals has no appellate jurisdiction it could not issue writs of mandamus, prohibition or certiorari in aid of an appellate jurisdiction which it does not have. In other words, the supervisory power or jurisdiction of the Court of Appeals to issue mandamus, prohibition, or certiorari in aid of its appellate jurisdiction, must coexist with and be a complement to its appellate jurisdiction to review, by appeal or writ of error, the final orders and decision of the lower court, in order to have

a complete supervision over the acts of the latter.

It follows, therefore that a petition for mandamus, prohibition or certiorari against acts or omissions of inferior courts in a case cannot be entertained by the Court of Appeals, because the latter has no appellate jurisdiction over the final orders and decisions of the justice of the peace and municipal courts; that the Court of Appeals can not originally issue said writs in civil or criminal cases cognizable by the Court of First Instance and appealable to the Supreme Court (*Roldan vs. Villaroman*, *supra*); and that writs of mandamus, prohibition or certiorari can not be originally secured from the Court of Appeals against boards, corporations or persons who unlawfully neglected, to perform their ministerial duty, for example against a register of deeds, or who acted or are about to act without or in excess of its jurisdiction in the exercise of their semi-judicial or ministerial functions, for there is no right of appeal to the Court of Appeals from their acts or decisions that may be aided or complemented by said writs.

The argument or reason in support of the resolution of the Court of Appeals that if the petitioners herein had sought a review, by appeal or writ of error, of the order of the lower court dismissing the plaintiffs' complaint (because the order denying the admission of the amended complaint is not appealable), the case would have fallen under the exclusive appellate jurisdiction of the Supreme Court, has no bearing on the question whether or not the writ of certiorari prayed for herein is sought in aid of the appellate jurisdiction of the Court of Appeals; because the determining factor for the solution of that question is, as above stated, whether the Court of Appeals has appellate jurisdiction to review the final decision of the Court of First Instance on the merits of the petitioners' action for recovery of money, in view of the nature of the action alleged in the complaint.

It is evident that the Court of Appeals has appellate jurisdiction. According to section 29 of Republic Act No. 296, "the Court of Appeals shall have exclusive appellate jurisdiction over all cases, actions, and proceedings properly brought to it from the Courts of First Instance" except those enumerated in section 19 of the same Act which are within the exclusive appellate jurisdiction of the Supreme Court, and must be determined by the allegations in the pleadings. As to whether on appeal the question of jurisdiction of the inferior court or only question of law will be raised, unless the pleadings show otherwise, it is to be presumed that no such question of jurisdiction and questions of fact and law will be raised and, therefore, the parties have the right to appeal to the Court of Appeals; because the presumption is that Courts of First Instance as court of general jurisdiction have jurisdiction over the subject matter of the case, and that "things have happened according to the ordinary course of nature and the ordinary habits of life. (68 [z], Rule 123, of the Rules of Court.)

Of course the Court of Appeals is right when it states that "If the petitioners herein had sought a review of these orders by appeal or writ of error, the case would have fallen under the exclusive appellate jurisdiction of the Supreme Court, only question of law being involved therein." But it does not follow, as the Court of Appeals concludes, that "the writ of certiorari prayed for herein is not sought in aid of the appellate jurisdiction of this court (Court of Appeals), which it does not have under the facts in the present case."

The plaintiffs in the civil case No. 4609 do not seek to have the orders of the lower court reviewed by appeal or writ of error by the appellate court, but to compel the lower court to admit the amended complaint and decide the case on the merits; and they or the defendant have the right to appeal from the final decision of the Court of First Instance on the merits to the Court of Appeals, and not to the Supreme Court in view of the nature of the action or the amount involved.

In view of the foregoing, we hold that the Court of Appeals has original jurisdiction to entertain the petitioners' petition for a writ of certiorari or mandamus as the case may be, and erred in forwarding the case to this Court for appropriate action. But, in view of the fact that we have also original jurisdiction to entertain the petition, became the Court of Appeals has no exclusive original jurisdiction to issue mandamus, prohibition and certiorari in aid of

its appellate jurisdiction, in order to save time we shall pass upon the merits of the petition, instead of remanding this case to the Court of Appeals for action.

It is obvious that the lower court erred in denying the petition for amendment of the complaint on the ground that the amended complaint was presented without the court's leave, because the above quoted statement in the first paragraph of the amended complaint and the fact that a date was set by the plaintiffs for the admission of the amended complaint, is a compliance with the requirement of section 2, Rule 17, of the Rules of Court. The filing of the amended complaint together with the petition for its admission, far from being against, is in accordance with the provision of the law, because the court must have before it the amended complaint, and a mere statement that it shall be presented after the leave had been granted would not be sufficient, in order that the court may properly determine whether or not the amendment is presented with the intent to delay the action, and whether the new copy of the pleading filed with the court incorporating the amendments are indicated by appropriate marks, as required by section 3 of said Rule 17 in amendments by leave of court under section 2 of the same Rule. Besides it saves time, because in such case the amended pleading shall be considered as ipso facto filed from the time the court allows its admission; otherwise, the plaintiff shall have to file his amended pleading within the period of time to be fixed by the court and computed from and after the court's order granting the motion to file it.

But for the purpose of the present special civil action it is not necessary to consider the error of the lower court above indicated. Although the petitioners' petition is for certiorari, in order to promote the object of the Rules of Court and to assist the parties in obtaining just, speedy and inexpensive determination of every action or proceeding according to section 2, Rule 1, of said Rules, we shall consider the present special civil action as of mandamus in view of the facts alleged in the petition, as we have done in previous similar cases. Therefore, the only question for us to determine in the present case is whether or not the respondent judge has unlawfully neglected to perform an act which the law specifically enjoins as a duty resulting from his office, or excluded the plaintiffs from the enjoyment of a right to which they are entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law.

According to the facts in the record, the amendment of their complaint by the plaintiffs in the civil case No. 4609 of the Court of First Instance of Manila is the first they have filed before the defendant has served his answer upon the plaintiffs because no answer has yet been filed, and under section 1 of Rule 17 "a party may amend his pleading once as a matter of course at any time before a responsive pleading is served," that is, the plaintiff has the right to amend once his petition before the defendant has filed his answer, which is the responsive pleading to a complaint within the meaning of the said section 1 of Rule 17. Therefore, it is obvious that, as the plaintiffs have the right to amend their complaint, it is the correlative duty of the respondent judge to accept the amended complaint; and said respondent, in refusing to permit the amendment of the plaintiffs' complaint, unlawfully neglected to perform an act which the law specifically enjoins as a duty resulting from his office, or excluded the plaintiffs from the enjoyment of a right to which they are entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law.

In view of all the foregoing, the respondent judge is ordered to admit the amended complaint filed by the petitioners in the case No. 4609 of the Court of First Instance of Manila, with costs against the other respondent Luzon Stevedoring Co. So ordered.

Moran, C.J., Ozaeta, Bengzon, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

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