

**VICENTE CARBAJAL AND ARCADIO QUEMADA,
PLAINTIFFS-APPELLEES, VS. PONCIANA DIOLOLA, MIGUEL
AMOYAN, SILVESTRE AMOYAN AND BENITO ABELLA,
DEFENDANTS-APPELLANTS.**

G.R. No. L-23275. May 29, 1969

Ponente: CAPISTRANO, J.

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CAPISTRANO, J.:

Appeal from the judgment of the Court of First Instance of Samar in favor of plaintiffs in Civil Case No. 956.

On February 25, 1958, plaintiffs filed a complaint alleging that defendants entered a portion of their land situated at San Policarpio, Samar, made copra out of the coconuts gathered from the land, and that, claiming to be owners thereof, the defendants refused to vacate the land in spite of plaintiffs' demands. Plaintiffs prayed, among others, that they be declared the lawful owners of the land; that defendants be ordered to vacate the pre-mises occupied by them and to pay plaintiffs P50.00 as monthly rental value for the use and occupation of the portion occupied by the defendants. Defendants' answer denied the material allegations of the complaint, and, as affirmative defense, alleged that they were the law-ful co-owners of the land mentioned in the complaint, of which the portion occupied by them was part. They prayed, among others, that the complaint be dismissed and that plain-tiffs be ordered to respect their ownership of the land.

After plaintiffs had rested their case, defendants filed a motion to dismiss on the ground of insufficiency of plaintiffs' evidence. The court denied the motion. Plaintiffs then moved that defendants be denied the right to present evidence on the ground that their motion to dismiss did not contain a reservation of their right to present evidence in event their motion would be denied. After the parties had filed their res-pective memoranda, the court, in an order dated July 15, 1959, denied plaintiffs' motion. However, before defendants could present their evidence, the court, on July 28, 1959, revoked its order of July 15, 1959, and granted plaintiffs' motion not to allow defendants to present evidence.

On July 30, 1959 judgment was rendered by the court on plaintiffs' evidence declaring one of the plaintiffs the ab-solute owner of the land described in the complaint, and or-dering defendants to vacate the portion of land occupied by them and to pay P30.00 as monthly rental value from July 1, 1951, until said portion was vacated by them, P300.00 as at-torney's fees, and the costs. Defendants appealed to the Court of Appeals. Said court, however, certified the case to this Court on the ground that it involves only questions of law.

Defendants-appellants contend that the lower court erred in not allowing them to present their evidence. The conten-tion is meritorious. In *Director of Lands vs. Ceniza, etc., et al.*, G.R. No. L-18527, June 29, 1963 (cited with approval in the recent case of *Sia yngco, et al. vs. Costibolo, et al.*, G.R. No. L-22506, February 28, 1969), in setting aside the or-der of March 23, 1961 disallowing the oppositor to submit his evidence after his motion to dismiss on the ground of insuffi-ciency of petitioner's evidence had been denied, Mr. Justice Paredes, speaking for the Court, said:

"At the time the present controversy was being ventilated, the rule governing the subject-matter, which was a clarification of the doctrines on earlier cases (Arroyo vs. Azur, 76 Phil., 495, April 13, 1946; Guido vs. Castelo, L-1613, May 24, 1948, 81 Phil., 81; Ocum et al. vs. Nuñez, et al., L-8018, Oct. 26, 1955; Montelibano, et al. vs. Ba-colod Murcia, etc., L-15092, Sept. 29, 1962), was -

'After the plaintiff has completed the presentation of his evidence, the defendant without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. However, if the motion is granted and the order of dismissal is reversed on appeal, the movant loses his right to present evidence in his behalf.'

This rule is now embodied in the Revised Rules of Court, section 1, Rule 35, captioned Judgment and Demurrer to Evidence, which will take effect on January 1, 1964. It is, therefore, evident that the respondent court, in the case at bar, after denying the motion to dismiss, for insufficiency of evidence, (demurrer to the evidence), should have permitted the petitioner-defendant to present his own evidence, notwithstanding its failure or omission to make a reservation to that effect; more so, as in this particular case, when the petitioner-defendant had asked to be given a day in court, in order to defend the government's title to a 78 hectare parcel of land."

Rule 35, Revised Rules of Court, provides:

"Section 1. Effect of judgment on demurrer to evidence. - After the plaintiff has completed the presentation of his evidence, the defendant without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. However, if the motion is granted and the order of dismissal is reversed on appeal, the movant loses his right to present evidence in his behalf."

Under this rule, what extinguishes defendant's right to present evidence is the waiver or renunciation thereof. Reservation by the defendant of the right to present evidence is not necessary because the rule itself reserves such right to the defendant.

In the instant case, the defendant moved to dismiss on the ground of insufficient evidence but did not waive his right to present evidence in event his motion would be denied. He therefore had the right to present his evidence after his motion to dismiss had been denied, because the rule itself reserved his right to do so. It was not necessary for him to make the reservation.

The rationale of Rule 35, Revised Rules of Court, is given in *Siyngco, et al. vs. Costibolo, et al.*, supra, where this Court, speaking thru Mr. Justice Teehankee, said:

"2. The rationale behind the rule and doctrine is simple and logical. The defendant is permitted, without waiving his right to offer evidence in the event that his motion is not granted, to move for a dismissal (i.e. demur to the plaintiff's evidence) on the ground that upon the facts as thus established and the applicable law, the plaintiff has shown no right to relief. If the trial court denies the dismissal motion, i.e., finds that plaintiff's evidence is sufficient for an award of judgment in the absence of contrary evidence, the case still remains before the trial court which should then proceed to hear and receive the defendant's evidence so that all the facts and evidence of the contending parties may be properly placed before it for adjudication as well as before the appellate courts, in case of appeal. Nothing is lost. This doctrine is but in line with the established procedural precepts in the conduct of trials that the trial court liberally receive all proffered evidence at the trial to enable it to render its decision with all possibly relevant proofs in the record, thus assuring that the appellate courts upon appeal have all the material before them necessary to make a correct judgment, and avoiding the need of remanding the case for retrial or reception of improperly excluded evidence, with the possibility thereafter of still another appeal, with all the concomitant delays. The rule, however, imposes the condition by the same token that if his demurrer is granted by the trial court, and the order of dismissal is reversed on

appeal, the mov-ant loses his right to present evidence in his be-half and he shall have been deemed to have elected to stand on the insufficiency of plaintiff's case and evidence. In such event, the appellate court which reverses the order of dismissal shall pro-ceed to render judgment on the merits of plain-tiff's evidence.

"Simply restated, a defendant who presents a demurrer to plaintiff's evidence retains the right to present his own evidence, if the trial court disagrees with him; but if the trial court agrees with him, and on appeal, the appellate court disagrees with both of them and reverses the dismis-sal order, he has lost the right to present his own evidence."

The contrary ruling in *De los Santos vs. Court of Ap-peals, et al.*, G.R. No. L-18682, June 30, 1965, was based upon procedural jurisprudence up to 1953, while the ruling in *Di-rector of Lands vs. Ceniza, etc., et al.*, supra, followed in *Sia yngco, et al. vs. Costibolo, et al.*, supra, and in the in-stant case, was based upon procedural jurisprudence as clari-fied in later decisions up to 1962.

IN VIEW OF ALL THE FOREGOING, the judgment appealed from is set aside and the case is remanded to the court of origin for further proceedings. Costs against the plaintiffs-appellees.

Reyes, J.B.L. (Acting C.J.), Dizon, Makalintal, Zaldivar, Sanchez, Fernando, and Teehankee, JJ., concur.

Barredo, J., took no part.

Concepcion, C.J., and Castro, J., are on official leave.

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