

BASILIA COLOMA VDA. DE VALDEZ, PETITIONER, VS. CONSTANTS L. FARIÑAS, ET AL., ETC., RESPONDENTS.*G.R. No. L-6323. April 29, 1954*

Ponente: LABRADOR, J.

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This is a petition for certiorari to annul an order of the Court of First Instance of Ilocos Sur remanding Civil Case No. 19 of the justice of the peace court of Candon, Ilocos Sur, to said justice of the peace court for trial and further proceedings.

It appears that on February 20, 1952, petitioner herein Basilia Coloma Vda. de Valdez filed an action against respondent Constante L. Farinas to recover from him the sum of P2,000, the value of a promissory note attached to the complaint as Annex A. The case was set for, hearing on March 10, 1952, and as on that date the defendant Farinas did not appear, the justice of the peace court declared him in default and rendered judgment in favor of the plaintiff for the sum of P1,900 and for P100 as attorney's fees. On March 11, 1952, the court received two motions of defendant, one for postponement and another for dismissal. These motions were dated March 6, 1952, but evidently they failed to reach the court on or before the date set for the trial. The defendant received copy of the judgment against him on March 14, 1952, and ten days thereafter, on March 24, 1952, he filed an undated motion to lift the order of default and set aside the judgment. This motion (to set aside the order of default and judgment), as well as the motions for postponement and dismissal, was denied by the justice of the peace. On April 17, 1952, defendant appealed from the judgment of the justice of the peace court to the Court of First Instance, and on April 21, 1952, the case was transmitted to the latter court. On June 5, defendant presented a motion in the Court of First Instance, praying that the ruling of the justice of the peace court on the three motions he had presented be reviewed, and that if the said ruling be reversed, the case be remanded to the court of origin. On October 21, 1952, plaintiff also filed a motion to dismiss the appeal. After hearing this motion, the respondent judge denied it, but reversed the judgment by default rendered by the justice of the peace court and remanded the case to the latter court for further proceedings. It is against this order that this petition has been filed.

The Court of First Instance held that it was error for the justice of the peace court to have rendered a judgment by default in view of the fact that the defendant had presented a motion for postponement of the trial, because the lawyer had to attend to a case in which the life of an individual might have been at stake. It further held that the judgment by default is not a judgment upon the merits of the controversy. In consequence, it reversed the judgment by default and ordered the case remanded to the justice of the peace court for further proceedings.

There seems to be some confusion as to the date when the motion for postponement was considered as filed in the justice of the peace, court. The judge of the Court of First Instance states that it was already in the court at the time of the trial; but the petitioner alleges in his complaint that it was received by the justice of the peace court only on March 11, 1952. This does not affect the result of this case, however.

A study of the record shows that the order of the Court of First Instance complained of was issued upon an ex

parte motion presented by the defendant entitled, "Motion Ex Parte for a Ruling on the Decision Appealed From," wherein it is alleged that the appeal involves only a question of law, because the question raised is whether or not the inferior court erred in denying the motion for postponement, the motion for dismissal, and the motion to set aside the order of default and the judgment. The said motion, therefore, seeks to review the order of the justice of the peace court merely. The Court of First Instance evidently agreed with the movant, and pursuant to the movant's request it remanded the case to the court of origin for trial and for further proceedings.

It is evident that the procedure adopted by the Court of First Instance is not permitted or sanctioned by the rules. An appeal from the justice of peace court to the Court of First Instance, once perfected, operates to vest in the Court of First Instance the jurisdiction to try the case "de novo upon its merits in accordance with the regular procedure in that court, as though the same had never been tried before and had been originally there commenced." (Section 9, Rule 40, Rules of Court.) The jurisdiction of the Court of First Instance on the appeal may not be limited only to a consideration of the errors of law committed by the inferior court. The only instance in which such a review may be allowed is when the conditions specified in section 10 of the same rule are present i.e., "where the action has been disposed of by an inferior court upon a question of law and not after a valid trial upon the merits," the instances of which are those where the court dismisses a case without trial for improper venue, or for lack of jurisdiction, or for insufficiency of the complaint, in all of which there would be no trial upon the merits.

When a judgment by default is rendered by a justice of the peace court, and thereafter, pursuant to the rules, plaintiff adduces his evidence in support of the allegations of the complaint, it can not be said that there is no trial upon the merits, and neither can it be said that the case is disposed of on a question of law. In such a case, the court investigates the allegations of the complaint, and renders a judgment on the merits of the case. Section 10 of Rule 40 is, therefore, not applicable.

In the case at bar, it seems that the judge a quo was of the opinion that in a case pending in the Court of First Instance on appeal any party may ask for a review of any order of the court a quo on a question of law. It was evidently under this belief that the motion ex parte to review the three orders of the justice of the peace court was granted. This procedure is applicable to appeals in the Supreme Court from a Court of First Instance, but it is never applicable to an appeal from the justice of the peace court to the Court of First Instance. In this latter appeal, the rule applicable is section 9 of Rule 40, as already explained above. If, as section 9 of Rule 40 provides, the case stands in the Court of First Instance for a trial de novo, as if there it had been originally commenced, it follows that no order of the justice of the peace court may be brought to the consideration of said Court of First Instance for review, and the latter, if it decides any of the said questions, would be acting in violation of section 9 of Rule 40.

A reading of sections 10 and 11 of Rule 40 readily confirms the application of the rule as above set forth. Under section 9, once the appeal has been perfected, it stands for trial de novo, unless in accordance with section 10 the case is disposed of on a question of law and without a valid trial on the merits. (*Algarin et al. vs. Navarro*,[*] G. R. No. L-5257, April 14, 1954.) The intention of the rule is to allow the remand of a case appealed to the justice of the peace court only when there has been no valid trial thereon in that court. These circumstances do not exist in the case at bar.

Only one minor point needs be considered, although the same has not been put in issue or raised, because it is essential to the determination of the question of whether or not the case was properly brought in the Court of First Instance on appeal, as required by section 9 of Rule 40, for the Court of First Instance acquires jurisdiction to try the case on the merits only if the appeal has been legally perfected. The record discloses that the defendant had presented in the justice of the peace court a motion to set aside the judgment by default, and that he appealed only

after the said motion had been denied. This is the correct procedure as held in *Sitchon, et al. vs. The Provincial Sheriff of Occidental Negros and Luzon Surety Co., Inc.*, 45 Off. Gaz. (Supp. No. 9) 25, 80 Phil., 397. (I Moran, 896, 1952 Rev. ed.)

For the foregoing consideration, we declare that as the appeal to the Court of First Instance has been duly perfected, the case stands in that court for trial de novo upon its merits. The order appealed from is hereby reversed, and the case returned to the Court of First Instance for further proceedings, with costs against the respondent Constante L. Fariñas.

Paras, C, J., Pablo, Bengzon, Montemayor, Reyes, Jugo, Bautista Angelo, and Concepcion, JJ., concur.

[*] Supra, p. 764

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