

**ELISA MEDINA CUE, PLAINTIFF-APPELLEE, VS. PILAR DOLLA,  
DEFENDANT-APPELLEE. PHILIPPINE SAVINGS BANK,  
INTERVENOR-APPELLANT.**

*G.R. No. L-27598. May 27, 1968*

Ponente: SANCHEZ, J.

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**SANCHEZ, J.:**

Challenged on appeal is the correctness of the order of the Court of First Instance of Manila denying appellant's motion to intervene in a case of unlawful detainer.

The controlling facts are:

Since August, 1958, defendant Pilar Dolla has been the lessee of two doors of plaintiff's building located at 362-364 Quezon Boulevard, Quiapo, Manila. The lease was on a month-to-month basis. Latest rental was P1, 500 per month. Defendant utilized the premises for her bakery business.

By a deed of sale of February 14, 1966 for P700,000.00, plaintiff Elisa Medina Cue sold to Philippine Savings Bank (PSB, for short) the land and building which included the premises leased by defendant. That deed covenanted that plaintiff was to deliver possession of the premises sold, free from all tenants and occupants, on or before

May 31, 1966, failing which the sum of P80,000.00 retained by the bank shall be forfeited to the latter.

On the same date, February 14, 1966, plaintiff wrote defendant advising her of the foregoing sale to PSB and acquainting her of the conditions thereof. Request was there made that defendant signify her willingness to vacate the premises before May 31, 1966. This request was refused. Plaintiff, on March 7, 1966, notified defendant of the termination of the lease as of the end of March, 1966 and demanded that she vacate on or before said date.

Upon defendant's failure to vacate, ejectment suit was, by a complaint dated May 4, 1966, lodged against defendant in the city court.[1] Defendant's answer, inter alia, sought protection of Article 1687 of the Civil Code.

The city court, on June 18, 1966, rendered judgment "allowing the defendant to stay and continue occupying the premises for one year from the date of this judgment and to vacate the premises after said period, provided she continues to pay the agreed rentals" and "should the defendant fail to pay the agreed monthly rentals, she will lose her right to the one year period allowed her to stay in the premises and she shall be ordered to vacate the premises." Both parties appealed to the court of first instance.[2]

Before trial proceeded in the last named court came PSB's motion to intervene, to which was annexed its complaint in intervention, both filed on November 10, 1966. In its said complaint, PSB joined in plaintiff's prayer to eject defendant. But because of the purchase price (P700,000.00) and the increased value of real estate in general, PSB sought as reasonable compensation for the use and occupation of the premises, P14, 000.00 per month.

On defendant's opposition, the court rejected the intervention in its order of December 15, 1966. Advanced by the trial court as reasons for denial are that: (1) failure to intervene in the city court is fatal; and (2) intervention "at this stage would be creating new issues which were not passed upon by the lower Court."

PSB's motion to reconsider failed of its purpose; the court below denied it on February 24, 1967. PSB then appealed direct to this Court.

1. There is no denying the fact that intervention was sought while the case was on appeal, but before trial, in the court of first instance. But would this situation bar intervention?

This brings us to the question of whether the term trial mentioned in Section 2, Rule 12 of the Rules of Court encompasses trial de novo conducted by a court of first instance in a case on appeal from the city court. Our view is that it does. For, under Section 9, Rule 40 of the Rules of Court, a "perfected appeal" from the city court to the court of first instance "shall operate to vacate the judgment" of the city court, "and the action when duly docketed in the Court of First Instance shall stand for trial 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." [3] This simply means that "all the proceedings had" in the city court, "including the judgment, do not in contemplation of law exist, they having been vacated." [4] If in fact, in the court of first instance the appealed case is to be tried without regard to the evidence presented in the inferior court, or for that matter, the conclusions reached by the judge thereof. Evidence must be presented anew. And, it is solely on this evidence that judgment of the court of first instance is to be predicated. [5]

Since all the proceedings in the inferior court including the judgment are inexistent, and trial de novo must be held, common sense dictates that before trial in the court of first instance, PSB may be permitted to intervene.

2. The lower court misconceives the effect of intervention. Such intervention will not, contrary to its view, change the nature of the cause of action. Intervenor merely joined hands with plaintiff. Plaintiff's cause of action, namely, that of ejectment, is there. It remains the same - even with the intervention.

It is defendant's insistent plea, however, that the amount demanded as reasonable compensation cannot be increased from P1, 500 per month as sought by plaintiff, to P14, 000 per month as asked by intervenor PSB. *Mapua vs. Suburban Theaters, Inc.*, 87 Phil. 358, is a sufficient answer to defendant's contention. There, plaintiff was allowed to increase the amount of damages it prayed for in the inferior court. And this, because the cause of action remains the same - that of ejectment, and the money claim is "merely an incident to and flows from the cause of action" litigated in the inferior court. [6] It will not avail defendant any to say that in *Mapua*, it was plaintiff, not an intervenor, who was authorized to increase the amount of damages averred. The point is that such increase by a party can be made without in any way affecting the cause of action. It bears remembering that in ejectment it is not the amount of rentals or damages for occupancy that confers jurisdiction on the inferior court but the nature of the action.

No one may quibble over the existence of the court's discretion on whether to admit or reject intervention. [7] But such discretion is not unlimited. As we assess the bank's position: its desire to obtain prompt possession of the premises to construct a branch office therein, its investment thereon, and the prejudice it will suffer by a delay in the delivery of the premises under its deed of sale, we reach the conclusion that the discretion of the trial court had not been here prudently exercised.

CONFORMABLY TO THE FOREGOING, the order of the court below of December 15, 1966 refusing intervention of the Philippine Savings Bank, and that of February 24, 1967 denying said bank's motion for reconsideration, are hereby reversed and set aside; and said court is hereby directed to allow the intervention of the said bank and to admit its complaint in intervention.

Costs against defendant Pilar Dolla.

**SO ORDERED.**

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, and Angeles, JJ., concur.

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[1] Civil Case 148391, City Court of Manila, entitled "Elisa Medina Cue, Plaintiff, vs. Pilar Dolla, Defendant."

[2] Civil Case 66060, Court of First Instance of Manila, entitled "Elisa Medina Cue, Plaintiff, vs. Pilar Dolla, Defendant.

[3] Lizo vs. Carandang, 73 Phil. 649; Royal Shirt Factory, Inc. vs. Co Bon Tic, 94 Phil. 994, 997-998; Arambulo vs. Court of Appeals, L-15669, February 28, 1962.

[4] 2 Moran, Comments on the Rules of Court, 1963 ed., p. 343.

[5] Id., p. 344, citing Crisostomo vs. Director of Prisons, 41 Phil. 368, 370-371; Opinion of Mr. Justice Street in Colegio de San Jose vs. Sison, 56 Phil. 344, 351-352; Lizo vs. Carandang, supra.

[6] At p. 366.

[7] Section 2, Rule 12; Santarromana vs. Barrios, 63 Phil. 456, 459-460.

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