

MATEA RESTAURO, PLAINTIFF AND APPELLEE, VS. DOMINGO FABRICA, DEFENDANT AND APPELLANT.

G.R. No. L-1220. April 21, 1948

Ponente: PERFECTO, J.

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PERFECTO, J.:

On April 1, 1946, Matea Restauro filed a complaint against Domingo Fabrica, claiming ownership of lot No. 2584 of the Talisay-Minglanilla Estate, by inheritance from her uncle Anacleto Restauro.

On April 16, 1946, defendant answered denying the allegations of the complaint and alleging that when Anacleto Restauro died he left a widow, Dalmacia C. de Restauro and two children, Luis and Urbana, who are entitled as forced heirs to inherit the properties of the deceased to the exclusion of collaterals.

On August 7, 1946, the lower court issued an order directing the plaintiff to amend her complaint within ten days from notice by including the Director of Lands, Dalmacia Cauba de Restauro, Luis Restauro and Urbana Restauro, as parties-defendant.

On September 17, 1946, upon defendant's motion, dated September 11, because plaintiff failed to amend the complaint, the court dismissed the complaint and allowed defendant to present in due time his evidence.

On September 23, 1946, plaintiff filed a motion for reconsideration of the order of dismissal. On September 28, 1946, the court issued an order setting aside the order of dismissal and permitting plaintiff to amend the complaint within five days from receipt of the order.

On October 8, 1946, plaintiff filed, accordingly, an amended complaint. On October 12, 1946, the lower court overruled defendant's written opposition to the admission of the amended complaint.

Defendant appealed against the orders of September 28 and October 12, 1946, the first granting plaintiff five days from notice to amend her complaint, and the second, overruling defendant's opposition to the admission of plaintiff's amended complaint.

Defendant advances the theory that the order of August 24, 1946, granting plaintiff ten days from notice within which to amend her complaint, has become final, unappealable and unmodifiable; that the lower court erred in setting aside the order of September 17, 1946, dismissing the complaint, and in granting the motion for reconsideration filed by plaintiff on September 23, 1946.

There should not be any question that the order of September 28, 1946, setting aside the dismissal of the complaint and granting plaintiff five days within which to amend the complaint, and the order of October 12, 1946, overruling defendant's written opposition to the admission of the amended complaint filed in accordance with the order of September 12, 1946, are interlocutory in nature. As interlocutory orders or resolutions do not finally dispose of a case, they are unappealable pending decision. Whatever errors the lower court may have committed in issuing an interlocutory order or resolution, cannot be revised by an appellate court before appeal

against the decision is given due course. Of course, excess of jurisdiction can, before the decision, be corrected by special remedy, the same as with grave abuse of discretion when its nature, the circumstances of the case, and the interests of justice demand a prompt remedy. The questions raised by the defendant-appellant do not come under the above exceptions.

The lower court should not have given due course to the premature appeal filed by defendant-appellant.

The appeal is dismissed, without costs.

Feria, Pablo, and Bengzon, JJ., concur.

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