

CRESCENTE VICTORINO, PETITIONER, VS. FELIX ELLO AND COURT OF FIRST INSTANCE OF MANILA, BRANCH XI, RESPONDENTS.

G.R. No. L-30477. July 22, 1975

Ponente: CASTRO, J.

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CASTRO, J.:

This is a petition for certiorari from an order of the Court of First Instance of Manila in civil case 73526 dismissing the appeal of the herein petitioner Crescente Victorino from the decision of the City Court of Manila in civil case 152555. We reverse the order of dismissal and remand this case for further proceedings.

On September 7, 1966 the herein private respondent Felix Ello filed a complaint for damages in the City Court of Manila against Crescente Victorino and three other persons for alleged injuries sustained by Ello in a vehicular collision between a Marikina bus allegedly owned and operated by Crescente Victorino and a jeepney in which the complainant was a passenger.

Crescente Victorino in his answer specifically denied the allegation that he is the owner and operator of the errant Marikina bus and, in addition, averred "That plaintiff has sued the wrong party."

After trial at which the bus driver, Cesar Estrella, was found guilty of negligence, the city court sentenced him and Crescente Victorino, who both failed to appear at the hearing, to pay Felix Ello the total sum of P1,563.85 representing actual and moral damages and attorney's fees.

From the city court's decision, Crescente Victorino and Cesar Estrella jointly appealed to the Court of First Instance of Manila.

On October 16, 1968, after holding a pre-trial conference, the trial court issued a pre-trial order in which it noted that "from the pleadings the principal issue in this case is whether defendant Victorino is the owner of the Marikina bus or not."

Felix Ello took exception to this by pointing out that Crescente Victorino never alleged in his answer that he is not the owner of the bus in question and asked for the dismissal of the appeal for being frivolous.

On March 11, 1969 the trial court, over Crescente Victorino's objection, issued an order dismissing the appeal on the ground that the latter "is raising the issue that he (Crescente Victorino) is not the owner of the bus which caused the injury to the plaintiff for the first time on appeal."

Hence the present recourse.

In our view the court a quo committed a reversible error. A cursory reading of the answer filed by Crescente Victorino in the City Court of Manila shows that the latter did squarely raise in issue the matter of ownership of the bus in question by specifically denying allegations in the complaint bearing thereon and as well by expressly stating "THAT the plaintiff has sued the wrong party." Moreover, our examination of the transcript of stenographic notes of the pre-trial reveals unequivocally that the issue of ownership of the said bus was indeed

pressed by Crescente Victorino. If a modicum more of attention, an ounce more of effort, a second more of time had been devoted to the study of the basic pleadings in this case by the court below and Felix Ello's counsel, then this case would not have reached this Court at all.

For purposes of preventing a miscarriage of justice and to expedite trial of this case, this Court directs that should a review of the evidence adduced in the City Court of Manila show that Crescente Victorino is not the real owner of the bus in question, the court a quo should forthwith order the impleading of the proper and indispensable parties which appear to be the Marikina Bus Co., Inc. and its insurance carrier, the Universal Insurance, and conduct trial with deliberate speed on the merits for the limited purpose of hearing the defenses that these two parties may offer.[*]

ACCORDINGLY, the order of the Court of First Instance of Manila dated March 1, 1969 is set aside, and this case is ordered remanded to the court a quo which is hereby directed to expeditiously conduct further proceedings in accordance with this opinion. No costs.

Makasiar, Esguerra, Muñoz Palma, and Martin, JJ., concur.

Teehankee, J., on leave.

[*] Cf. Philippine Blooming Mills Employees Organization vs. Philippine Blooming Mills Co., Inc., 51 SCRA 192, 215, and Estrada vs. Sto. Domingo, 28 SCRA 890, 933, where the Supreme Court held that it has "the inherent power to suspend its own rules or to except a particular case from their operation, whenever justice so requires." See also Sacdalan vs. Bautista, 56 SCRA 176, 179, where the Court opted to resolve an interlocutory order otherwise referable to the Court of Appeals "if only to make up for the time lost because of the oft-iterated antics of private respondents and the inexplicable complacency of their correspondent judge, patently prejudicial to the interests of justice."

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