

JOSE L. LAGRIMAS, PROVINCIAL FISCAL OF ANTIQUE, PETITIONER VS. HON. ROBERTO ZURBANO, JUDGE OF THE COURT OF FIRST INSTANCE OF ANTIQUE, RESPONDENT.

G.R. No. L-12508. November 29, 1960

Ponente: PAREDES, J.

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PAREDES, J.:

In an amended complaint for Damages, resulting allegedly from a violation of contractual rights over fish corrals, filed by Florentino Importante against the municipality of Tabiao, Antique, its Mayor, members of the council and four (4) private individuals, petitioner Jose L. Lagrimas, Provincial Fiscal of Antique, was included as defendant, in his capacity as such (CFI Case No. 836). The basis of his inclusion as a co-defendant, may be gleaned from the following allegations in the amended complaint, signed by Attys. Buenaventura Tolentino, Esdras F. Tayco and Calixto O. Zaldivar.

"14. That on January 28, 1966, the Chief of Police of Tibiao, Antique, filed Criminal Case No. 1185, in the Justice of the Peace of Tibiao, Antique, entitled 'People of the Philippines vs. Lydia Sarmiento, Felipe Sarmiento, Victor Gindap and Norberto Faren, accused, for violation of Paragraph (b) Section 26, of Ordinance No. 9, in connection with Schedule G-1-Y, of Ordinance No. 6, Series of 1954, of the Municipality of Tibiao, Antique, but on February 25, 1966, the Provincial Fiscal personally citing his opinions of December 24, 1955, end February 8, 1966, respectively filed a Motion for the Dismissal of the above-entitled ease, and the same was dismissed;

15. That Criminal Case No. 1185 against the defendants Lydia Sarmiento, Felipe Sarmiento Victor Gindap and Norberto Faren was a meritorious case and had it been prosecuted the fish corral of the defendants would have been removed or demolished and the rights of plaintiff safeguarded."

On December 22, 1956, the petitioner Provincial Fiscal presented his Answer to the amended complaint with a Counterclaim. On March 13, 1957, believing that counsel for plaintiff Importante were responsible for his (Petitioner's) inclusion in the amended complaint, the petitioner caused to be filed a Third-Party complaint for damages against said lawyers, alleging among others,, the following:

"6. That third-party defendants, Attys. Buenaventura Tolentino, Esdras F. Tayco and Calixto O. Zaldivar, through mutual understanding and combination with the original plaintiff-Florentino Importante know full well that the amended complaint,, with particular reference to the third-party plaintiff Fiscal Jose L. Lagrimas, is not only frivolously grounded and devoid of merit based on bad faith, but same is designed to further third-party defendants' professional propaganda, and wanton desire to cause insult, indignity, social humiliation, wounded feelings and mental suffering of the latter (Fiscal Lagrimas), and to besmirch his reputation, integrity, good name and standing of said third-party plaintiff, both in his private capacity as a lawyer and official capacity as Provincial Fiscal of Antique thereby causing him endless professional and official embarrassment, and in contempt and public ridicule."

On March 19, 1957, the trial court denied admission of the third-party complaint, stating that it did not meet the

requirements of Sections 1 and 2, Rule 12 of the Rules of Court, as his claim for damages was not in any manner related to the claim of the plaintiff. In support of its ruling, the respondent judge cited the case of Cayapas vs. Court of First Instance of Albay, 77 Phil., 181, holding that it is not a court's duty especially enjoined by law to admit a third-party complaint and that whether a party to an action shall be allowed to implead an additional party, rests in the discretion of the court. A motion for reconsideration was seasonably presented, petitioner Lagrimas contending that it is immaterial that a third-party plaintiff states a cause of action against the third-party defendant on a theory different from that asserted by the plaintiff against the defendant. He also pointed out that the rival claims of plaintiff Importante and his (Lagrimas) arose and descended from the same network of correlated circumstances and incidents brought about by unlawful acts or omissions described in the pleadings of the parties concerned; that third-party plaintiff would not have suffered his claim for damages, if the original plaintiff through the instrumentality and legal guidance of his counsel, had not unnecessarily and unlawfully included him as a co-defendant in the amended complaint. The motion for reconsideration was denied on March 30, 1957.

An appeal from the orders of March 19 and 30, 1957, was perfected within the reglementary period. On April 6, 1957, however, the respondent judge disapproved said appeal on the ground that the orders are interlocutory and, therefore, not subject of appeal. The motion for reconsideration on the order disapproving the appeal was denied on June 15, 1957.

The matter is now before us on Certiorari and Mandamus with Preliminary Injunction, petitioner alleging that the respondent judge acted with grave abuse of discretion or in excess of his jurisdiction, in disallowing his appeal from the orders complained of and that he has unlawfully neglected in the performance of an act which the law specifically enjoins as a duty resulting from his office, and/or has unlawfully excluded petitioner from his right to appeal, there being no appeal or other plain, speedy and adequate remedy in the ordinary course of law within the proceedings of the basic civil case No. 836 available to petitioner. Respondent judge denied knowledge and/or information regarding the inclusion of petitioner as a party defendant, upon the advice and guidance of counsel for plaintiff Importante.

Under the facts of record, it seems that the dominant issue in the case is whether or not mandamus will lie, which necessarily involves the determination of the character or nature of the orders in question.

We are of the opinion that mandamus is the proper remedy to compel the respondent judge to approve the appeal taken, considering the fact that the petitioner has established a clear and certain right to invoke it. (Zamora vs. Wright, 53 Phil., 613). The orders appealed from are not interlocutory in nature, but are final and appealable and, therefore, come within the pale of the last portion of Section 2, Rule 41 of the Rules of Court, which provides:

"No interlocutory or incidental judgment or order shall stay the progress of an action, nor shall it be the subject of appeal until final judgment or order is rendered for one party or the other."

When the respondent Court declared that its order of March 19, 1957, denying the admission of the third-party complaint, was interlocutory, it finally disposed of third Party plaintiff's action within the proceedings of civil case No. 836, leaving nothing more that can be done with it in the Court of First Instance of Antique. The declaration was a final order or judgment rendered against the action of the third-party plaintiff, which automatically threw his case (third-party complaint) out of court, a situation which only an appeal therefrom could have remedied, while it may be true that the proceedings in the main case could continue, the pending matter litigated ' between the third-party plaintiff and the third-party defendants was finally terminated by the orders in question, "An order or a judgment is deemed final when it finally disposes of the pending action so that nothing more can be done with it in the trial court (I Moran's Rules of Court, 1957 Ed., p. 638).

In view of the conclusions reached, it is deemed unnecessary for the purposes of this opinion, to pass upon the

merits of the petition for certiorari.

Wherefore, the order of the respondent court dated April 6, 1957, disapproving the record on appeal filed by petitioner, dated April 2, 1957 (Annex I, petition). and the order of the respondent court denying the motion for reconsideration of said order dated June 15, 1957 (Annex K) are hereby set aside and annulled; and the respondent court is directed to approve, certify and elevate the record on appeal to the appropriate appellate court in accordance with law.

Without pronouncement as to costs. So ordered.

Paras, C.J., Bengzon, Padilla, Bautista Angelo, Labrador, Conception, Reyes, J.B.L., Barrera, Gutierrez David, and Dizon, JJ., concur.

Orders set aside and annulled.

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