

CRISPIN ABELLANA AND FRANCISCO ABELLANA, PETITIONERS, VS. HONORABLE GERONIMO R. MARAVE, JUDGE, COURT OF FIRST INSTANCE OF MISAMIS OCCIDENTAL, BRANCH II; AND GERONIMO CAMPANER, M...*G.R. NO. L-27760. May 29, 1974*

Ponente: FERNANDO, J.

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This petition for certiorari is characterized by a rather vigorous insistence on the part of petitioners Crispin Abellana and Francisco Abellana that an order of respondent Judge was issued with grave abuse of discretion. It is their contention that he ought to have dismissed an independent civil action filed in his court, considering that the plaintiffs, as offended parties, private respondents here,[1] failed to reserve their right to institute it separately in the City Court of Ozamis City when the criminal case for physical injuries through reckless imprudence was commenced. Such a stand of petitioners was sought to be bolstered by a literal reading of Sections 1 and 2 of Rule 111.[2] It does not take into account, however, the rule as to a trial de novo found in Section 7 of Rule 123.[3] What is worse, petitioners appear to be oblivious of the principle that if such an interpretation were to be accorded the applicable Rules of Court provisions, it would give rise to a grave constitutional question in view of the constitutional grant of power to this Court to promulgate rules concerning pleading, practice, and procedure being limited in the sense that they "shall not diminish, increase, or modify substantive rights." [4] It thus appears clear that the petition for certiorari is without merit.

The relevant facts were set forth in the petition and admitted in the answer. The dispute had its origins in a prosecution of petitioner Francisco Abellana of the crime of physical injuries through reckless imprudence in driving his cargo truck, hitting a motorized pedicab resulting in injuries to its passengers, namely, private respondents Marcelo Lamason, Maria Gurrea, Pacienciosa Flores, and Estelita Nemenio. The criminal case was filed with the city court of Ozamis City, which found the accused Francisco Abellana guilty as charged, damages in favor of the offended parties likewise being awarded. The accused, now petitioner, Francisco Abellana appealed such decision to the Court of First Instances.[5] At this stage, the private respondents as the offended parties filed with another branch of the Court of First Instance of Misamis Occidental, presided by respondent Judge, a separate and independent civil action for damages allegedly suffered by them from the reckless driving of the aforesaid Francisco Abellana.[6] In such complaint, the other petitioner, Crispin Abellana, as the alleged employer, was included as defendant. Both of them then sought the dismissal of such action principally on the ground that there was no reservation for the filing thereof in the City Court of Ozamis. It was argued by them that it was not allowable at the stage where the criminal case was already on appeal.[7]

Respondent Judge was not persuaded. On April 28, 1967, he issued the following order: "This is a motion to dismiss this case on the ground that in Criminal Case No. OZ-342 which was decided by the City Court and appealed to this Court, the offended parties failed to expressly waive the civil action or reserve their right to institute it separately in said City Court, as required in Section 1, Rule 111, Rules of Court. From the Records of

Criminal Case No. OZ-342, it appears that the City Court convicted the accused. On appeal to this Court, the judgment of the City Court was vacated and a trial de novo will have to be conducted. This Court has not as yet begun trying said criminal case. In the meantime, the offended parties expressly waived in this Court the civil action impliedly instituted with the criminal action, and reserve their right to institute a separate action as in fact, they did file. The Court is of the opinion that at this stage, the offended parties may still waive the civil action because the judgment of the City Court is vacated and a trial de novo will have to be had. In view of this waiver and reservation, this Court would be precluded from adjudging civil damages against the accused and in favor of the offended parties. [Wherefore], the motion to dismiss is hereby denied. * * *.[8] There was a motion for reconsideration which was denied. Hence this petition.

The only basis of petitioners for the imputation that in the issuance of the challenged order there was a grave abuse of discretion, is their reading of the cited Rules of Court provision to the effect that upon the institution of a criminal action "the civil action for recovery of civil liability arising from the offense charge is impliedly instituted with the criminal action, unless the offended party * * * reserves his right to institute it separately." [9] Such an interpretation, as noted, ignores the de novo aspect of appealed cases from city courts. [10] It does likewise, as mentioned, give rise to a constitutional question to the extent that it could yield a meaning to a rule of court that may trench on a substantive right. Such an interpretation is to be rejected. Certiorari, to repeat, clearly does not lie.

1. In the language of the petition, this is the legal proposition submitted for the consideration of this Court: "That a separate civil action can be legally filed and allowed by the court only at the institution, or the right to file such separate civil action reserved or waived, at such institution of the criminal action, and never on appeal to the next higher court." [11] It admits of no doubt that an independent civil action was filed by private respondents only at the stage of appeal. Nor was there any reservation to that effect when the criminal case was instituted in the city court of Ozamis. Petitioners would then take comfort from the language of the aforesaid Section 1 of Rule 111 for the unwarranted conclusion that absent such a reservation, an independent civil action is barred. In the first place, such an inference does not per se arise from the wording of the cited rule. It could be looked upon plausibly as a non sequitur. Moreover, it is vitiated by the grievous fault of ignoring what is so explicitly provided in Section 7 of Rule 123: "An appealed case shall be tried in all respects anew in the Court of First Instance as if it had been originally instituted in that court." [12] Unlike petitioners, respondent Judge was duly mindful of such a norm. This Court has made clear that its observance in appealed criminal cases is mandatory. [13] In a 1962 decision, *People vs. Carreon*, [14] Justice Barrera, as ponente, could trace such a rule to a 1905 decision, *Andres vs. Wolfe*. [15] Another case cited by him is *Crisostomo vs. Director of Prisons*, [16] where Justice Malcolm emphasized how deeply-rooted in Anglo-American legal history is such a rule. In the latest case in point, *People vs. Jamisola*, [17] this Court, through justice Dizon, reiterated such a doctrine in these words: "The rule in this jurisdiction is that upon appeal by the defendant from a judgment of conviction by the municipal court, the appealed decision is vacated and the appealed case 'shall be tried in all respects anew in the court of first instance as if it had been originally instituted in that court.'" [18] So it is in civil cases under Section 9 of Rule 40. [19] Again, there is a host of decisions attesting to its observance. [20] It cannot be said then that there was an error committed by respondent Judge, much less a grave abuse of discretion, which is indispensable if this petition were to prosper.

2. Nor is the above the only ground for rejecting the contention of petitioners. The restrictive interpretation they would place on the applicable rule does not only result in is emasculation but also gives rise to a serious constitutional question. Article 33 of the Civil Code is quite clear: "In cases of * * * physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance

of evidence." [21] That is a substantive right, not to be fritted away by a construction that could render it nugatory, if through oversight, the offended parties failed at the initial stage to seek recovery for damages in a civil suit. As referred to earlier, the grant of power to this Court, both in the present Constitution and under the 1935 Charter, does not extend to any diminution, increase or modification of substantive right. [22] It is a well-settled doctrine that a court is to avoid construing a statute or legal norm in such a manner as would give rise to a constitutional doubt. Unfortunately, petitioners, unlike respondent Judge, appeared to lack awareness of the undesirable consequence of their submission. Thus is discernible another insuperable obstacle to the success of this suit.

3. Nor is this all that needs to be said. It is understandable for any counsel to invoke legal propositions impressed with a certain degree of plausibility if thereby the interest of his client would be served. That is though, merely one aspect of the matter. There is this other consideration. He is not to ignore the basic purpose of a litigation which is to assure parties justice according to law. He is not to fall prey, as admonished by justice Frankfurter, to the vice of literalness. The law as an instrument of social control will fail in its function if through an ingenious construction sought to be fastened on a legal norm, particularly a procedural rule, there is placed an impediment to a litigant being given an opportunity of vindicating an alleged right. [23] The commitment of this Court to such a primordial objective has been manifested time and time again. [24]

WHEREFORE, this petition for certiorari is dismissed. Costs against petitioners.

Zaldivar, (Chairman), Barredo, Fernandez, and Aquino, JJ., concur.

Antonio, J., concurs on the bases of parag. Nos. 2 & 3 of opinion.

[1] The private respondents are: Geronimo Campaner, Marcelo Lamason, Maria Gurrea, Paciencia Flores and Estelita Nemen.

[2] The aforesaid sections read as follows: "Sec. 1. Institution of criminal and civil actions. — When a criminal action is instituted, the civil action for recovery of civil liability arising from the offense charged is impliedly instituted with the criminal action, unless the offended party expressly waives the civil action or reserves his right to institute it separately. Sec. 2 Independent civil action. — In the cases provided for in Articles 31, 32, 33, 34 and 2177 of the Civil Code of the Philippines, an independent civil action entirely separate and distinct from the criminal action, may be brought by the injured party during the pendency of the criminal case, provided the right is reserved as required in the preceding section. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence."

[3] Section 7 of Rule 123 reads as follows: "An appealed case shall be tried in all respects anew in the Court of First Instance as if it had been originally instituted in that court."

[4] According to Article VIII, Section 13 of the 1935 Constitution: "The Supreme Court shall have the power to promulgate rules concerning pleading, practice, and procedure in all courts, and the admission to the practice of law. Said rules shall be uniform for all courts of the same grade and shall not diminish, increase, or modify substantive rights. The existing laws on pleading, practice, and procedure are hereby repealed as statutes, and are declared Rules of Courts, subject to the power of the Supreme Court to alter and modify the same. The Congress shall have the power to repeal, alter, or supplement the rules concerning pleading, practice, and procedure, and the admission to the practice of law in the Philippines." The present Constitution, in its Article X, Section 5, paragraph (5), empowers this Court to promulgate "rules concerning pleading, practice, and procedure in all courts, the admission to the practice of law, and the integration of the Bar, which, however, may be repealed, altered, or supplemented by the National Assembly. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not

diminish, increase, or modify substantive rights."

[5] Petition, pars. 2 and 3.

[6] Ibid, par. 4.

[7] Ibid, par. 5.

[8] Ibid, par. 9.

[9] Cf. Rules of Court, Section 1 of Rules 111.

[10] Cf. Section 7 of Rule 123, Rules of Court.

[11] Petition, Ground for Reversal of the Court Order Involved, 4.

[12] Cf. Section 7 of Rule 123 (1964)

[13] Cf. *People vs. Jaramilla*, 97 Phil. 880 (1955); *Escudero vs. Lucero*, 103 Phil. 672 (1958); *People vs. Malayao*, L-12103, February 28, 1961, 1 SCRA 628; *People vs. Carreon*, L-17920. May 30, 1962, 5 SCRA 252; *People vs. Jamisola*, L-27332, November 28, 1969, 30 SCRA 555.

[14] L-17920, May 30. 1962, 5 SCRA 252.

[15] 5 Phil. 60.

[16] 41 Phil. 368 (1921). Cf. *People vs. Co Hiok*, 62 Phil. 501 (1935).

[17] L-27332, November 28, 1969, 30 SCRA 555.

[18] Ibid. 556-557.

[19] Section 9 of Rule 40 reads: "A perfected appeal shall operate to vacate the judgment of the justice of the peace or the municipal 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. If the appeal is withdrawn, or dismissed for failure to prosecute, the judgment shall be deemed revived and shall forthwith be remanded to the justice of the peace or municipal court for execution.

[20] Cf. *Lichauco vs. Guash*, 76 Phil. 5 (1946); *Torres vs. Ocampo*. 80 Phil. 36 (1948); *Ricohermoso vs. Enriquez and Ricohermoso*, 85 Phil. 88 (1949); *Evangelista vs. Soriano*, 92 Phil. 190 (1952); *Vda. de Valdez. vs. Farinas*, 94 Phil. 850 (1954); *Royal Shirt Factory, Inc. vs. Co Bon Tic*, 94 Phil. 994 (1954); *Acierto vs. De Laperal*, 107 Phil. 1088 (1960); *Singh vs. Liberty Insurance Corp.*, L-16860, July 31, 1963, 8 SCRA 517, *Florendo, Sr. vs. Buyser*, L-24316, Nov. 28, 1967, 21 SCRA 1106; *Permanent Concrete Products, Inc. vs. Teodoro*. L-29766, Nov. 29, 1968, 26 SCRA 332.

[21] Article 33 includes the other cases of defamation and fraud.

[22] Cf. Article X, Section 5, par. 5 of the Constitution and Article VIII, Section 13 of the 1935 Constitution.

[23] Cf. *Avila vs. Gimenez* L-24613, February 28, 1969, 27 SCRA 321.

[24] Cf. *Aguinaldo vs. Aguinaldo*, L-30362, November 26, 1970, 36 SCRA 137.

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