

**ANTONIO IMPERIAL, PETITIONER, VS. RAFAEL DE LA CRUZ,
DISTRICT JUDGE OF CAMARINES SUR, JULIAN RELEVANTE AND
JUAN OCFEMIA, RESPONDENTS.**

G.R. No. L-37121. December 28, 1973

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court sets aside respondent Court's questioned orders and holds in accordance with the applicable Rules of Court that plaintiff's non-suit in a forcible entry case appealed to the court of first instance by defendant from the inferior court's adverse judgment results in the unqualified dismissal of the case and that such dismissal cannot operate as held by respondent court - to revive the vacated judgment which no longer exists in contemplation of law.

The case originated in the Naga City court.[1] Respondent Julian Relevante as plaintiff filed a complaint for forcible entry against petitioner Antonio Imperial as defendant, claiming that petitioner forcibly took possession of his house situated at No. 478 Prieto Street, Naga City. Herein co-respondent Juan Ocfemia filed a complaint in intervention against both respondent (plaintiff) Relevante and petitioner (defendant) Imperial alleging that both of them forcibly occupied a portion of about 135 square meters of his land.

After trial, the Naga City court rendered its judgment of October 7, 1967 in favor of respondent (plaintiff) Relevante as against petitioner (defendant) and declaring Relevante the rightful possessor of the house and ordered defendant "to restore the peaceful possession of the same to the plaintiff" and to pay him rentals of P83.33 per month until defendant vacates the premises, but on intervenor (co-respondent) Ocfemia's complaint in intervention found for intervenor as against both plaintiff and defendant and declared intervenor the rightful possessor of the house and land, and "ordered defendant to restore the peaceful possession thereof to the intervenor" with P500. -attorney's fees.

Petitioner as defendant duly appealed the city court's adverse judgment to respondent court of first instance of Camarines Sur and the case was therein duly docketed as Civil Case No. 6475 thereof.

After several preliminary settings of the case during a period of three years and after several absences of both plaintiff Relevante and his counsel, the case was set for pre-trial on April 7, 1972. Plaintiff Relevante and his counsel again failed to appear while defendant and intervenor with their respective counsels were present and announced their readiness for the pre-trial.

Petitioner through counsel moved to dismiss the case for non-suit, but respondent court while declaring plaintiff-appellant non-suited and the case dismissed further declared that such dismissal operated to revive the vacated judgment of the city court and ordered the "execution thereof pending this appeal", as per the dispositive part of its order of April 7, 1972, as follows:

"To the mind of the court, the provisions of Section 9 Rule 40 is a general rule of procedure which is subject to

Section 8, Rule 70 of the Rules of Court which treats of ejectment and forcible entry.

"Inasmuch as the plaintiff-appellee was non-suited and the case dismissed, the dismissal operates to revive the judgment of the city court of Naga declaring plaintiff Relevante as the rightful possessor of the property described in paragraph 2 of the complaint and the intervenor (Juan Ocfemia) as the rightful possessor of the property described in paragraph 3 of the complaint in intervention, which judgment shall so stand and the execution thereof pending this appeal should be, as it is hereby reiterated by virtue of Section 8 Rule 70 of the Rules." [2]

Petitioner's motion for clarification asking for a definite and unqualified pronouncement of dismissal of the case since it was plaintiff who was non-suited for failure to prosecute and stressing that the only instance when an appealed and vacated judgment is revived under Rule 40, section 9 is when the appeal itself is withdrawn or dismissed (which was not the case here) was perfunctorily denied in respondent court's order of May 10, 1972, in this wise:

"There is nothing to clarify in the order of the court dated April 7, 1972. It should be noted that there are two cases embraced in the appeal. There are indeed two rules applicable in the instant cases which were pointed out by the court. There is no need for the court to spell and delimit the desired interpretation just to suit the movant's view." [3]

Hence, the present petition for review by certiorari filed on July 11, 1973. The Court required comment from respondents but only respondent Relevante complied. The Court thereafter resolved to treat the case as a special civil action and with Relevante's comment and co-respondent Ocfemia's failure to file his comment, to consider the case submitted for decision in order to dispose promptly of the simple issue at bar.

Respondent court's challenged order is manifestly grossly erroneous and violative of the Rules of Court as to amount to grave abuse of discretion or excess of jurisdiction and must be set aside. An elementary reading and application of the pertinent Rules of Court which were cited but misread by respondent court should have been sufficient for respondent court to grant a definitive and unqualified dismissal of plaintiff's case for non-suit and failure to prosecute his complaint, as prayed for by petitioner.

Respondent court thus correctly stated in its order that in view of the non-appearance at the pre-trial of plaintiff Relevante and his counsel, petitioner (defendant) "prayed that plaintiff therein be declared non-suited and accordingly moved for the dismissal of the above stated case pursuant to Section 3, Rule 17 of the Rules where-upon the court announced a non-suit in accordance with Section 2, Rule 20 of the Rules." [4]

The cited Rules fully support petitioner's plea for an unqualified order of non-suit and dismissal of the action. Thus, Rule 17, section 3 provides that:

"SEC. 3. Failure to prosecute. -- If plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by court."

Rule 20, section 2 further provides that:

"SEC. 2. Failure to appear at pre-trial conference. -- A party who fails to appear at a pre-trial conference may be non-suited or considered as in default."

Now, since respondent court correctly declared the plaintiff non-suited and ordered the dismissal of his case for his failure to prosecute and non-appearance at the pre-trial, plaintiff's action has utterly failed. There is no judgment that plaintiff may invoke in his favor. The judgment of the city court in favor of plaintiff was vacated by

petitioner's appeal and the dismissal of the case could not possibly or logically have the contrary effect of reviving such vacated judgment. Respondent court's ruling to this effect would totally frustrate and render nugatory a defendant's appeal in the court of first instance by the simple expedient of the plaintiff having himself non-suited whereupon notwithstanding his case being dismissed, the vacated judgment of the inferior court would be automatically revived and executed!

As succinctly pointed out by the late Chief Justice Moran, "(T)he Court of First Instance will not affirm, reverse, or modify the ruling or the judgment appealed from for the simple reason that there is no ruling or judgment to affirm, reverse or modify, because all the proceedings had in the justice of the peace or municipal court, including the judgment, do not in contemplation of law exist they having been vacated. The only instance when said judgment appealed from is revived is when the appeal is withdrawn or dismissed." [5]

This is expressly provided in Rule 40, section 9 of the Rules of Court:

"SEC. 9. Effect of appeals. -- 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 [6] 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."

Here, petitioner's appeal has not been withdrawn or dismissed for failure to prosecute such appeal. On the contrary petitioner's appeal was successfully prosecuted and resulted in plaintiff's non-suit and dismissal of the case. The vacated judgment of the city court no longer existed in contemplation of law. With the successful prosecution of petitioner's appeal for non-suit on plaintiff-appellee's part, the only judgment that could be rendered by respondent court was the definitive dismissal of plaintiff's case. [7]

Respondent court's order that the dismissal of plaintiff's action for non-suit operated to revive the vacated judgment of the city court is manifestly non sequitur and bereft of all basis in the Rules. Its misconception that the provisions of Rule 40, section 9 as a general rule of procedure do not apply to the case at bar as an action of ejectment and forcible entry by virtue of Rule 70, section 8 (which provides that for defendant to stay immediate execution of judgment in such cases, he must post a supersedeas bond and during the pendency of the appeal deposit with the appellate court the monthly rentals) likewise finds no support in the Rules - for Rule 62, section 1 expressly provides that the said Rules apply equally to all special civil actions including forcible entry and detainer actions.

In other words, while Rule 70, section 8 provides an exception in forcible entry and detainer cases in that the municipal court's judgment for restoration of possession may be executed pending appeal upon defendant's failure to comply with the requirements for staying immediate execution of judgment, such ejectment cases fall within the general rules that the defendant's perfected appeal vacates the judgment of the inferior court and non-suit of the plaintiff on appeal and dismissal of the case result in the definitive and unqualified dismissal of plaintiff's case and do not operate to revive the vacated and non-existent judgment of the municipal court.

As to the intervenor Ocfemia: the city court's judgment in favor of intervenor Ocfemia was equally vacated by petitioner's perfected appeal. In its order of April 7, 1972, respondent court wrongly held that "what is only deemed reproduced [on appeal] is the complaint and the answer. The Rules do not bother with the case of the intervenor in the sense that the said intervenor should ask leave of this court to intervene anew." [8] Yet while it dismissed the plaintiff's action, it nevertheless erroneously held that as above stated that such dismissal operated to revive the vacated judgment of the city court including the portion thereof recognizing intervenor's claims as against

both plaintiff and defendant. This nebulous and confusing portion of the dispositive part of its challenged order directing that "the execution thereof pending this appeal should be, as it is hereby reiterated" should likewise be set aside.

At any rate, respondent court could not properly dismiss the complaint in intervention for non-suit, because intervenor and his counsel were duly present at the pre-trial and ready therefor. Petitioner's appeal from the city court's adverse judgment against him in favor of intervenor may therefore proceed to proper hearing and determination by respondent court.

A final word. The Court notes that a little circumspection on the part of respondent court would have avoided its issuance of its grossly erroneous orders and obviated the need with the attendant delay and unnecessary expenses of elevating the case here and securing the simple relief plainly marked out by the Rules of Court. The Court has herein dwelt at length on the glaring errors of respondent court's questioned orders, which were duly brought to its attention in petitioner's motion for reconsideration, so that trial courts may take the necessary care to avoid such needless errors and not negate the salutary objective of motions for reconsideration of giving the court concerned an opportunity to itself correct its own errors and leave the appellate courts with more time to give their attention to the study and determination of justly controversial and meritorious cases. Thus may the judiciary's task of rendering a just, orderly, inexpensive and prompt determination of every action and proceeding be duly enhanced.[9]

ACCORDINGLY, respondent court's orders of April 7, 1972 and May 10, 1972 are hereby set aside insofar as they decree that plaintiff's non-suit and dismissal of his action against petitioner operated to revive the vacated judgment of the Naga City Court, and it is hereby declared that plaintiff Relevante's action for forcible entry against petitioner (defendant) stands unqualifiedly dismissed. The case is remanded to respondent court for due trial de novo and determination on appeal of the merits of intervenor Juan Ocfemia's complaint in intervention against petitioner as originally filed with and adjudged by the Naga City court.

SO ORDERED.

Makalintal, C.J., Ruiz Castro, Makasiar, Esguerra, and Muñoz Palma, JJ., concur.

[1] Civil Case No. 2220 of the Naga City court, entitled "Julian Relevante, plaintiff vs. Antonio Imperial, defendant; Juan Ocfemia, intervenor."

[2] Annex I, petition, Rollo, p. 39; emphasis supplied.

[3] Annex K, petition, Rollo, p. 47.

[4] Rollo, p. 38.

[5] 2 Moran's Rules of Court, 1970 Ed., p. 387 citing Royal Shirt Factory vs. Co Bon Tic, L-6313, May 14, 1954, 94 Phil. p 994; emphasis supplied.

[6] Rep. Act No. 6031 approved on August 4, 1969 in amending section 45 of the Judiciary Act, has dispensed with such trials de novo and provides that the court of first instance shall decide such appealed cases on the basis of the evidence and records transmitted from the inferior courts and aided by memoranda and/or briefs which parties may submit with oral argument if requested.

[7] Petitioner further states that Relevante had subsequently executed a public document recognizing petitioner's right over the pro-property in question, which was submitted at the pre-trial, and that Relevante's non-appearance

was precisely because he (Relevante) had already waived and abandoned his claims against petitioner.

[8] Rollo, pp. 38-39.

[9] See *Mintu vs. C.A.*, L-36854, September 19, 1973.

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