

TEODORO L. URBAYAN, PLAINTIFF AND APPELLANT, VS. CALTEX (PHILIPPINES) INC., ET AL., DEFENDANTS, JOHN GRAY, DEFENDANT AND APPELLEE.

G.R. No. L-15379. August 31, 1962

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is an appeal taken by the plaintiff to the Court of Appeals, whence it was forwarded to us on the ground that it involves purely legal questions.

The case originated in the municipal court of the City of Tacloban, where appellant Teodoro L. Urbayan filed a complaint against Caltex (Philippines) Inc. and appellee John Gray for recovery of damages for breach of contract. John Gray filed an answer with a counterclaim for damages in the sum of P2,000.00 and attorney's fees of P300.00. Caltex, on its part, moved to dismiss. Its motion was granted by the municipal court in an order dated September 7, 1954. The case was set for trial with respect to Gray on the following September 17.

On the last mentioned date appellant failed to appear and the complaint was dismissed as against Gray for non-suit. Gray was thereupon permitted to present evidence in support of his counterclaim, but a little later the same day the court issued the following order:

"Within two hours after this case had been dismissed with respect to defendant John Gray for failure of the plaintiff to appear before this Court and plaintiff declared in default on counterclaim against him; and after the said defendant presented his evidence in support of his counterclaim plaintiff with his counsel Atty. Filomeno Montejo appeared before the Court and orally asked that the order of dismissal of the complaint and default on counterclaim be lifted. The petition being in accordance with the Rules of Court it was granted.

"Nevertheless, instead of asking for a re-trial or a new trial plaintiff announced that he is not going to present evidence and manifested his intention to appeal against the decision of this Court to the Court of First Instance.

"The order of dismissal of the complaint against John Gray for non-suit and default of plaintiff on the counterclaim is hereby lifted and the appeal of the plaintiff is hereby given due course.

"So ordered.

"Done at the City of Tacloban this 17th day of September, 1954."

The municipal court then rendered its decision, also dated September 17, 1954, ordering Urbayan to pay defendant Gray P200.00 as moral damages, P100.00 as exemplary or corrective damages, P150.00 as attorney's fees, and costs. Copy of the decision was received by appellant's counsel on September 28, 1954. However, on September 17, that is, on the date of the decision and eleven days before appellant received a copy thereof, he filed a notice of appeal worded as follows:

"Comes now the plaintiff in the above-entitled case thru the undersigned attorney and to this Hon. Court

respectfully presents this notice of appeal against the order dismissing the complaint against defendant, CALTEX (PHILIPPINES) Inc., and against the other defendant John Gray.

"Tacloban City, September 17, 1954."

On September 28, 1954 the municipal court issued an order forwarding the case to the Court of First Instance of Leyte, where on the following October 11 John Gray filled a motion to dismiss the appeal on the ground that the same had been taken only from the order dismissing the complaint with respect to Caltex but not from the decision on his counterclaim against appellant. On December 1, 1954 the Court of First Instance granted the motion and dismissed the appeal as against Gray, but remanded the case to the court below for further proceedings in so far as defendant Caltex was concerned. It is this order dismissing the appeal with respect to Gray that is now before us for review.

The question as to whether or not the appeal was correctly dismissed depends upon how the notice of appeal filed by appellant on September 17, 1954 should be construed. The reference made therein is to the order of the municipal court "dismissing the complaint against defendant Caltex (Philippines) Inc. and against the other defendant John Gray." At first blush it would seem that the appeal was ineffective as against Gray, because on one hand the order of dismissal on the ground of non-suit had been set aside and the complaint reinstated by the municipal court with respect to him, and on the other hand appellant had not yet received a copy of the decision. However, appellant's intention may be clearly inferred from the court's order lifting the declaration of non-suit. It is there stated that the defendant waived presentation of his evidence and announced instead that he would appeal from the decision, anticipating, with reason, that the decision would be adverse to him. He must have been prompted to make the waiver because after all the effect of his appeal would be to vacate the judgment and to have the case tried de novo in the Court of First Instance.

The circumstance that a copy of the decision was actually received by appellant only on September 28 does not necessarily militate against his announced intention to appeal therefrom on September 17, as he was then already certain that any decision the court might render would be adverse to him inasmuch as only the defendant Gray had presented evidence. The decisive fact is that appellant intended to appeal and did so by filing the corresponding notice of appeal, and that the same could have been from no other action of the court than its decision. Technicalities, such as the inaccurate reference in the notice of appeal to a non-existent order of dismissal of the complaint as against defendant Gray, should give way to the realities of the situation.

In connection with appellant's contention, subject of the first error assigned by him in his brief, that the municipal court of Tacloban should have been declared as without jurisdiction to take cognizance of appellee's counterclaim in view of the amount involved, it appears that the same was not submitted either to the said court or to the Court of First Instance for resolution. Hence the assignment of such error in the present appeal is premature.

The order appealed from is set aside and the case remanded to the court below for further proceedings.

No costs.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, and Regala, JJ., concur.

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