

**SANTIAGO GANGCAYCO AND MANUEL GANGCAYCO, PETITIONERS,
VS. HON. EMILIO BENITEZ, JUDGE OF THE COURT OF FIRST
INSTANCE OF SAMAR, BRANCH II, ALIPIO N. CASILAN AND PURITA
GALAGNARA, ...**

G. R. No. 11335. October 30, 1958

Ponente: PADILLA, J.

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PADILLA, J.:

In G. R. Nos. L-9320 and L-9321 (98 Phil., 360), this Court reversed an order of the Court of First Instance of Samar (Annex S. G. R. No. L-11335) dismissing civil cases Nos. 486[1] and 487,[2] which were brought to that court on appeal from judgments rendered by the Justice of the Peace Court of Guiuan, Samar, and remanded the two appealed cases to the trial court for further proceedings.[1] On 15 May 1956 the trial court again dismissed the appeals on the ground that as the defendants had been in default in the justice of the peace court, they had lost their right to appeal, relying on the case of Canlas vs. David, 50 Off. Gaz. 234, decided by the Court of Appeals (Annex U, G. R. No. L-11335; Annex B, G. R. No. L- 11450). Motions for reconsideration filed by the defendants (Annexes V & W, G. R. No. L-11335), were denied on 17 September 1956 (Annex X, G. R. No. L-11335; Annex C, G. R. No. L-11450). The defendants are now before this Court praying for a writ of certiorari and mandamus to set aside the orders of 15 May 1956 dismissing their appeals and of 17 September 1956 denying their motions for reconsideration.

Section 13, Rule 4, provides:

If the defendant does not appear at the time and place designated in the summons, he may be declared in default, and the court shall thereupon proceed to hear the testimony of the plaintiff and his witnesses, and shall render judgment for the plaintiff in accordance with the facts alleged and proved.

In justice of the peace and municipal courts, failure to appear in civil cases is the only ground when a defendant may be declared in default and not failure to answer the complaint.[2] Appearance of the defendant may be made personally, by counsel, or in writing.

In case No. 39 of the Justice of the Peace Court of Guiuan, it appears that the petitioner Manuel Gangcayco received copy of the summons issued by the Court to appear before it on 26 April 1950 at 9:00 o'clock a.m. and answer the complaint (Annex B, answer of the respondent judge); that on 26 April 1950 the petitioner Manuel Gangcayco personally appeared in Court in his own behalf and of his father Santiago Gangcayco, answered the complaint and joined counsel for the respondent spouses in asking for postponement of the hearing of the case; that the Court set the hearing of the case for 29 May 1950; that on 25 May 1950 counsel for the petitioners Gangcaycos filed a motion for postponement of the hearing of cases Nos. 39 and 40 set for 29 May Annex E, G. R. No. L-11335); that on 29 May 1950 the Court set the hearing of the cases for 7 June 1950; that on 6 June 1950 counsel for the petitioners Gangcaycos sent a telegram to the Court praying for postponement of the hearing of the cases (see p. 7, record on appeal, G. R. No. L-9321) ; that on the day set for the hearing of the cases, counsel for

the respondent spouses opposed the motion for postponement; and that the Court denied the continuance prayed for and proceeded to hear the evidence for the respondent spouses.

In case No. 40 of the same Court, it appears that the petitioners Gangcaycos and Tomassi received copy of the summons issued by the Court to appear before it on 6 May 1950 at 9:00 o'clock a.m. and answer the complaint (Annex C, answer of the respondent judge); that on 3 May 1950 the petitioner Tomassi filed a motion to dismiss the complaint (Annex C, G. R. No. L-11335) ; that the Court post-poned the hearing of the cases to 29 May 1950; and that on 29 May 1950 the Court denied the motion to dismiss filed by petitioner Tomassi and reset the hearing of the cases for 7 June 1950.

The petitioner Manuel Gangcayco having appeared and answered the complaint against him; the petitioner Santiago Gangcayco having also appeared by joining his co-petitioner in moving for postponement of the hearing of the two cases; and the petitioner Tomassi having filed a motion to dismiss the case against him, although on the day set for the hearing of the cases they or their counsel did not appear, they were not in default.

The writ prayed for is granted. The orders of 15 May and 17 September 1956 complained of are set aside. The respondent court is directed to proceed with the trial of the two appealed cases, without pronouncement as to costs.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L. and Endencia, JJ., concur.

[1]Alipio N. Casilan and Purita Galagnara, plaintiffs vs. Raymond Tomassi, Santiago Gangcayco and Manuel Gangcayco, defendants, for, recovery of possession of two quonset huts. Civil No. 40, Justice of the Peace Court of Guiuan, Samar. Annex B, G. R. No. L-11335.

[2]Alipio N. Casilan and Purita Galagnara, plaintiffs vs. Santiago Gangcayco and Manuel Gangcayco defendants for recovery of personal property. Civil No. 39, Justice of the Peace Court of Guiuan, Samar. Annex A, G. R. No. L-11335.

[1]52 Off. Gaz. 806; 98 Phil., 360.

[2]Section 13, Rule 4; Veluz vs. Justice of the Peace of Sariaya, 42 Phil. 557; Quisan vs. Arellano, 90 Phil. 644; Carballo vs. Encarnacion, 49 Off. Gaz., 1383; 92 Phil., 974; Makabenta vs. Bocar, 50 Off. Gaz., 3549; 95 Phil., 634.

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