

DOMINGO DOCTOR, PETITIONER AND APPELLEE, VS. JUSTICE OF THE PEACE, CAMILING, TARLAC AND LEOCADIA SAPINORO, RESPONDENTS AND APPELLANTS.

G. R. No. 11595. September 29, 1958

Ponente: BENGZON, J.

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BENGZON, J.:

Appeal from the decision of the Tarlac judge of first instance annulling the "judgment by default" and all subsequent orders, including the writ of execution, of the justice of the peace court of Camiling, same province, in its Civil Case No. 141, wherein the following proceedings took place:

1. On February 13, 1954, Leocadia Sapinoro filed a complaint to recover P638.00 plus P150.00 as attorney's fees;
2. Summons was duly served on defendant Domingo Doctor, requiring him to appear and answer on February 25, 1954;
3. On this date the defendant appeared only to move for postponement, alleging a possible settlement of the matter;
4. The hearing was re-set for March 8, 1954, and both parties were notified; however, the defendant failed to show up on that day; wherefore, after hearing plaintiff's evidence, the justice of the peace immediately on the same day, rendered judgment declaring the defendant in default and ordering him to pay plaintiff P658.00 with interests, P150.00 for attorney's fees and costs;
5. On March 15, 1954, defendant Doctor submitted a motion to lift the order of default and to set aside the judgment, explaining that the absence of his attorney was due to his belief (erroneous) that the matter had been amicably settled;
6. On September 8, 1954, the court denied the motion to set aside;
7. On September 27, 1954, defendant moved to reconsider the order of denial;
8. Opposing the motion, the plaintiff petitioned for execution, asserting that the decision had become final;
9. On November 5, 1954, the justice of the peace, refusing to reconsider, granted the petition for execution;
10. Accordingly, the writ, was issued the next day;
11. Other subsequent proceedings followed, which need not be detailed.

On November 18, 1954, Domingo Doctor filed this petition for certiorari, prohibition and mandamus in the court of first instance of the province. Leocadia Sapinoro's answer contended that appeal was the proper remedy, and that anyway, there had been neither excess of jurisdiction nor abuse of discretion.

Having heard both sides, the judge rendered the decision herein-above described. He held, inasmuch as defendant Doctor had appeared on February 25, 1954, before the justice of the peace, the order of default was illegal and void, and everything done thereafter was likewise illegal and void. Adverting to Sapinoro's contention that appeal was Doctor's proper remedy, His Honor explained that, according to Carballo vs. Encarnacion[1] "a decision by default rendered by an inferior court is not appealable."

Challenging the last ground of the decision, appellant's counsel quotes, correctly, from Carballo vs. Encarnacion, wherein the defendant in a municipal court had appeared, but failed to show up at the trial, the hearing proceeded ex-parte, and judgment was entered declaring him to be in default. This Court ruled that "the judgment was not by default. So defendant Antonio Carballo had a right to appeal as in fact he appealed." Such features of this controversy becomes material, upon reflecting that relief through special civil actions like certiorari, prohibition

and mandamus may only be extended where no remedy by appeal lies.

In this connection, it may be stated that although the defendant who is properly declared in default may not appeal, he may file a motion under Rule 38 asking that the order of default be set aside upon the ground of fraud, accident, error or mistake or excusable neglect, and if this motion be denied he may appeal from the order denying such motion. And he may in the meantime apply for a writ of preliminary injunction to stay the execution of the judgment rendered in the case. And if the motion for a stay of execution is denied, the motion may be renewed on appeal[2].

Should petitioner reply that when he started this special civil action the time for appeal and for relief had already expired, our rulings in many cases should be recalled that, as petitioner could have appealed but did not appeal, he may not use certiorari as a substitute for an appeal.[3]

It would seem, therefore, that the petition should have been denied, in the court of first instance, because petitioner had another remedy by appeal, or under sec. 1, Rule 38 [4] not to mention others.[5]

However, other aspects of the litigation may as well be examined. In certiorari and prohibition the main allegations are, or should be (a) lack or excess of jurisdiction or (b) abuse of discretion. (We could disregard the mandamus portion, it being merely a remedy dependent on the allegations regarding jurisdiction and discretion.)

Did the justice of the peace have jurisdiction? Undoubtedly, yes, because the subject-matter was recovery of a debt in the total sum of P658.00 plus P150.00 as attorney's fees, and the defendant had been summoned and had appeared.

Was there excess of jurisdiction? None, whatsoever, unless, the error of adjudging defendant in default, and hearing the case and rendering judgment ex-parte amounted to excess of jurisdiction.[6]

Plaintiff Sapinoro admits it was error to declare defendant in default. But she claims quite correctly, that as previously ruled in other cases, the judge could properly hear and render judgment ex-parte if despite proper notice, the defendant be absent on the day of the trial—as in this case.[7]

It should be stated in this connection that when Case No. 141 was called for hearing on March 8, the defendant being absent, although properly notified, the justice of the peace heard the plaintiff's evidence, and then rendered his decision of three paragraphs. In the first, he declared defendant in default; in the second and third, he wrote of plaintiff's evidence and decreed payment of the unpaid debt and attorney's fees.

Of course, the declaration of default was erroneous; yet it was harmless error. It would have been different if, as it happened in other cases, the defendant was not notified of the trial because he had previously been adjudged to be in default. Here defendant had been advised that on March 8, the case would be heard; and it was actually heard on that date. Consequently, the default order—though erroneous—made no difference to the absentee's rights. The default declaration in the justice of the peace's decision could have been crossed out, without affecting the tenor and substance of his adjudication.

In *Quizan vs. Arellano* and *Veluz vs. Justice of the Peace of Sariaya*, supra, notes, although the judgment of default turned out to be improper, we held that, in the absence of defendant the trial could proceed nevertheless, and judgment could be validly rendered, subject of course to revision upon a timely appeal.

About abuse of discretion, did the respondent justice of the peace commit it in refusing to reopen the litigation? The trial judge expressed no findings on this point. He simply declared, as the default pronouncement was illegal, every other subsequent proceedings was equally tainted, with illegality. We have found His Honor's conclusion to be non sequitur. And we are shown no sufficient reasons to declare there was grave abuse of discretion. For one

thing, defendant Doctor filed no affidavit of merit to support his petition to reopen[8] which was not even accompanied by affidavits.

In his memorandum appellee ascribes excess of jurisdiction and/or abuse of discretion to the issuance of the writ of execution, his position resting on the view of non-finality of the decision on November 5, 1954. Such view implies a mis-calculation. Indeed, granting that the first petition to re-open[9] had suspended the time to perfect the appeal, nevertheless, defendant Doctor having had knowledge of the denial of such petition on September 19, 1954, he should have appealed 15 days thereafter (at most)—but he did not. Consequently, on November 5—over forty days later—the decision was final and executory.[10] Needless to add, the second motion to re-open (called a motion to reconsider denial) did not have the effect of again suspending the period for appeal.

Wherefore, the decision below is reversed, this special civil action is dismissed, and the proceedings in the justice of the peace court, including the order of execution are upheld. The writ of preliminary injunction issued by the lower court is dissolved. Costs against appellee Domingo Doctor.

Paras, C. J., Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, and Endencia, JJ., concur.

[1]49 Off. Gaz., 1831; 92 Phil., 974.

[2]See Moran, Rules of Court (1957 Ed.) Vol. I p. 485 citing Son et al. vs. Melendres, 88 Phil., 703; Gequilana vs. Buenaventura, 48 Off. Gaz. 63; 87 Phil., 301; Sanchez vs. Serrano, 46 Off. Gaz. Sup. (11) 289.

[3]See Profeta vs. Gutierrez David, 71 Phil. 582; Gov't of the "D.S. vs. Judge of First Instance, 49 Phil., 495; 50 Phil., 975, 979. See also Cheek vs. Watson, 90 N.C. 302; Currie vs. Clark, 90 N.C. 17. See Moran op. cit. Vol. 2 p. 165, 166.

[4]This petition for certiorari may not be classed as request for relief under Rule 38, sec 1, because it was filed beyond the 60 days' and 6 months' period: Judgment March 15; petition Nov. 18.

[5]See for instance sec. 14, Rule 4.

[6]See Quizan vs. Arellano, 90 Phil., 644; Veluz vs. Justice of the Peace of Sariaya, 42 Phil. 559.

[7]See Asican vs. Quirino, 75 Phil. 791.

[8]Sec. 3, Rule 26, Sec. 2, Rule 37. Enumeration of Rules applicable to inferior courts in sec. 19, Rule 4 not exclusive. Manabat vs. Aquino, 49 Off. Gaz. 1834; Heiman vs. Cabrera, 73 Phil. 707.

[9]Considering it as a motion for new trial under sec. 16, Rule 4; Galao vs. Diaz, 75 Phil. 109.

[10]Sec. 18, Rule 4.

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