

**ISIDORA AUREO, JOINED BY HER HUSBAND CATALINO FENERO,
PLAINTIFFS-APPELLEES, VS. FUNDADOR AUREO, DEFENDANT
APPELLANT.**

G. R. No. 11831. January 29, 1959

Ponente: MONTEMAYOR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-11831/>

MONTEMAYOR, J.:

Defendant Fundador Aureo is appealing from the decision of the Court of First Instance of Leyte (Carigara Branch) in Civil Case No. 254, ordering him among other things to restore to plaintiffs the possession of the land in litigation, and from the order denying his motion to set aside the decision.

On June 22, 1955, plaintiffs filed the present case for forcible entry and detainer in the Justice of the Peace Court of San Miguel, Leyte, over a portion of land, 10 meters by 342 1/2 meters, said to be a portion of a larger parcel situated in Ginciaman, San Miguel, Leyte, under tax declaration No. 468, valued at P560.00. The defendant filed an answer with a counterclaim, and plaintiffs answered the counterclaim. It would appear, that after plaintiffs had presented their evidence, defendant verbally moved for the dismissal of the case on the ground that according to the evidence presented, the case involved a question of ownership rather than a mere case of forcible entry. Acting upon said motion, the Justice of the Peace Court dismissed the complaint and plaintiffs appealed from said dismissal to the Court of First Instance of Leyte.

On September 29, 1955, defendant filed his answer and motion to dismiss the case on the ground that the Court of First Instance was "without appellate jurisdiction over the subject matter for the reason that the lower court in its decision ruled that it had "no original jurisdiction over the subject matter as the question of ownership is involved and at issue." When the case was called for hearing on September 28, 1956, defendant failed to appear and plaintiffs were allowed to present their evidence. Before the presentation of said evidence, however, the court ruled on the motion to dismiss contained in the answer of defendant, holding that the said motion was considered as not having been submitted and therefore denied, for lack of due notification to the opposite counsel. On October 1, 1956, which was the continuation of the trial, plaintiffs presented their last witness as well as their exhibits. Thereafter, the court rendered the decision appealed from the dispositive part of which reads as follows:

"The Court finding that the plaintiff has been deprived of her lawful possession of the eastern portion of the land described in the complaint on May 15, 1955, without the consent of the plaintiff; the Court restores the possession of the portion in question to the plaintiff, and orders defendant to return to her the amount of 25 cavans of palay or the value thereof at P10.00 a cavan for the year 1955 and the same amount for every subsequent year at the rate of P10.00 a cavan, to pay the plaintiff the sum of P200.00, consisting of damages occasioned by the said plaintiff due to the illegal acts of the defendant, and ordering the defendant to pay the costs of the present suit in all its instances."

The defendant filed a motion to set aside the decision, on the ground that his failure, to appear at the trial was due to excusable neglect and that he had a meritorious defense. Said motion was denied.

In this appeal, defendant-appellant makes the following assignment of errors:

"I. The lower court erred in proceeding with the trial of the case on the merits without resolving the motion of the defendant-appellant to dismiss the appeal on the ground that the court of first instance had no appellate or original jurisdiction to the prejudice of the rights of the defendant-appellant.

"II. The lower court erred in denying the verified motion of the defendant-appellant to set aside decision and to allow said defendant appellant to present his evidence

"III. The lower court erred in rendering judgment in favor of the plaintiff-appellees without giving defendant-appellant opportunity to present his evidence and without deciding on his counterclaim."

Appellant claims that the trial court erred in proceeding with the trial on the merits without first resolving his motion to dismiss on the ground of lack of appellate jurisdiction. In support of his contention; he invokes Section 10, Rule 40 of the Rules of Court, which reads:

"Sec. 10. Appellate powers of Courts of First Instance where action not tried on its merits by inferior courts. — Where the action has been disposed of by an inferior court upon a question of law and not after a valid trial upon the merits, the Court of First Instance shall on appeal review the ruling of the inferior court and may affirm or reverse it, as the case may be. In case of reversal, the case shall be remanded for further proceedings.",

and argues that what the trial court could do under the circumstances was to confirm or reverse the order of dismissal of the Justice of the Peace Court; and that if it found that the Justice of the Peace Court was without jurisdiction, it should have dismissed the cases but if it found said lower court with jurisdiction, then it should have reversed the order of dismissal and remanded the case for further proceedings. He further contends that if Section 10, Rule 40, was not applicable, because there was a trial on the merits in the Justice of the Peace Court, then Section 11 of the same rule, which reads;

"Section 11. Lack of jurisdiction. A case tried by an inferior court without jurisdiction over the subject-matter shall be dismissed on appeal by the Court of First Instance. But instead of dismissing the case, the Court of First Instance in the exercise of its original jurisdiction, may try the case on the merits if the parties therein file their pleadings and go to the trial without any objection to such jurisdiction.

should have been applied, at the same time arguing that his motion to dismiss became a preliminary question which should have first been decided.

As already stated, because of lack of due notification, the trial court regarded the motion to dismiss as not having been filed, and even denied the same. This will answer appellant's contention that his motion to dismiss should have been acted upon before proceeding with the trial of the case.

As regards the contention that Section 10, Rule 40, is applicable, we should bear in mind that there was a valid trial in the Justice of the Peace Court. Consequently, Section 10, Rule 40, is not applicable:

"What section 10, Rule 40, considers as termination of a case without valid trial upon the merits is a dismissal without trial and/or determination of any of the issues of fact raised in the pleadings. The existence of trial on the merits is the determining factor for the application of the rule. Even if the case is denied on a question of law, i.e., lack of jurisdiction, provided there was a trial on the merits the case may not be remanded to the inferior court." (Alcarin et al. vs. Navarro, 50 O.G. Mo. 5, p. 1989).

"Determining factor for application of section. The determining factor for the application of this section is the existence of a trial on the merits in the inferior court. Its purpose is to prohibit the trial of a case originating from an inferior court by the Court of First Instance on appeal, without the said inferior court having

previously tried the case on the merits. If there was no such trial on the merits, the trial in the Court of First Instance is premature, because the trial therein on appeal is a trial de novo., a new trial. There cannot be a new trial unless it was already had in the court below. It might happen that after the trial on the merits in the lower court the parties may be satisfied with its judgment. So, the evident purpose of the rule is to give an opportunity to the inferior court to try the case first upon the merits, and only thereafter should the Court of First Instance be allowed to retry the case, or to conduct another trial thereof on the merits." (MEJIA, Civil Practice and Procedure, Vol. II, 1958 Ed., p. 279).

As to the application of Section 11 of the same Rule 40, the trial court had the choice of dismissing the case if it found that the Justice of the Peace Court which tried the case had no jurisdiction or it may exercise its original jurisdiction and try the case on the merits if the parties therein filed their pleadings and went to trial without any objection to such ruling. The present plaintiff's naturally did not object to the exercise of said original jurisdiction in the trial court and presented their evidence. On his part, it would seem that the defendant did not insist in raising the question of jurisdiction and in his motion to set aside the decision, he asked for opportunity to present his own evidence. As a matter of fact, even in his motion for dismissal, all his objection was directed to the appellate jurisdiction of the Court of First Instance of Leyte, not to the exercise of its original jurisdiction.

We do not believe that the trial court erred in denying defendant's motion to set aside the decision. In the first place, the granting of similar motions depends upon the sound discretion of the trial court. Besides, defendant's motion was not accompanied by an affidavit of merits showing facts constituting his alleged good and substantial defense, in accordance with Section 3, Rule 38 of the Rules of Court.

In view of the foregoing, the appealed decision as well as the order denying the motion to set aside the same are affirmed, with costs.

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

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.