

**ENGRACIA P. LUCHAYCO, AND ESTER L. VDA. DE VILLANUEVA,
PETITIONERS, VS. HON. FELIXBERTO IMPERIAL REYES, ETC., AND C.
N. HODGES, RESPONDENTS.**

G.R. No. 15096. February 23, 1960

Ponente: BENGZON, J.

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BENGZON, J.:

Petition to compel the respondent judge to approve the record on appeal in Civil Case No. 3921 of his Iloilo Court.

It appears that having lost that case, herein petitioners, as defendants, took steps to elevate it to a higher court by presenting on time their notice of appeal, appeal bond and record on appeal. But upon objection of the plaintiff, the respondent judge required defendants to amend their record by correcting certain errors and by inserting,

- (a) the motion to dismiss counterclaim;
- (b) the answer to such motion;
- (c) the application for appointment of receiver ;
- (d) the opposition to such appointment;
- (e) the reply to opposition; and
- (f) the order of the court on the matter.

Objecting to such requirements, defendants filed this petition after their motion to reconsider had been denied.

I. There is no question as to the materiality of the two pleadings on the counterclaim. As a matter of fact, the record on appeal tendered to the court stated that such pleadings had been filed, and then copied the first parts thereof. As to (a) it said that such motion to dismiss had been filed "on the ground that the court has no jurisdiction over the subject matter of the counterclaim"; and as to (b) that "the defendants maintained that this Court has the jurisdiction to entertain the subject matter of the counterclaim alleged in the answer." The record on appeal omitted the subsequent parts of the two pleadings wherein the attorneys explained the reasons in support of the motion and of the answer, respectively.

Petitioners here maintain it was unnecessary to include such portions of the pleadings because they merely contained the "argument" of counsel, and this Court has ruled in *Aliño vs. Villamor* (2 Phil., 234) that the argument of counsel need not be reproduced in the bill of exceptions— now record on appeal. We find their position to be untenable, because our aforesaid ruling referred to oral argument during the trial—which is not the case here. The argument of counsel in a pleading, is a part thereof, and if the pleading is included in a record on appeal,—because it is material—the argument may not be suppressed. In the case now before us, the appellate court would not understand why counsel on one side disputed the court's jurisdiction, even as the other side sustained it.

II. During the trial of the case, the plaintiff asked for receivership in a written petition, defendants opposed it and the court after considering the matter, refused to appoint a receiver. Refusing to include the pleadings on the matter, petitioners claim they are immaterial, and object to the court's order for their inclusion. Plaintiff-appellee Hodges replies that appellants may consider the papers immaterial for their purposes on appeal, but "as appellee, I have the right to raise other points than those raised by appellants, and those papers may contain matter in support of my position and in support of the appealed decision." At this stage of the action, Hodge's contention cannot be tested, and as the lower court decided in his favor, we are not in a position to impute or find any abuse of discretion, having in mind our pronouncements recommending liberality in the inclusion of pleadings in the record on appeal, and expressing prima facie reliance on the discretion of the trial judge.[1] Of course, appellee's insistence entails additional expense for the appellants in the printing of their record on appeal; however, they have no legitimate ground to object on that score, since they are entitled to recover such expenses from appellee as part of the costs,[2] if, as they, expect, they win their appeal.

III. As to the clerical errors and/or omissions, the appellants assert that they were merely in the copy furnished to the appellee; that the original filed in court was entirely correct; and that appellee should or could correct the said errors or omissions in his copy. On this aspect of the case and speaking in general, we must say that it is the duty of the appellant to furnish the appellee with a correct copy of the record on appeal, complete and accurate. Once we permit service of a copy where a line or a date is omitted—leaving it to the appellee to fill in the blanks—there is nothing to prevent appellants in other cases from furnishing appellees with copies omitting material portions of the pleadings.[3]

IV. This petition may not, therefore, be granted. If they wish to go ahead with their appeal, petitioners must comply with the order requiring amendment of their record on appeal. Fortunately for them, the judge has not fixed a period for compliance. They may still do so within ten days after this decision becomes final.

Petition dismissed, with costs. The preliminary injunction heretofore issued is dissolved. So ordered;

Paras, C. J., Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, Barrera, and Gutierrez David, JJ., concur.

[1] *Smith Bell & Co. vs. Sta. Maria*, 49 Phil., 820; *Pratts & Co. vs. Phoenix Ins. Co.*, 52 Phil., 807; *Jai Alai vs. Court of First Instance*, 98 Phil., 407; 61 Off. Gaz., 710.

[2] Sec. 11 (b) Rule 131.

[3] Needless to add, the court may use its discretion as to minor mistakes, to discourage cavil or pettifoggery.

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