

HONORATO GADIER AND ELISEO GADIER, PLAINTIFFS AND APPELLEES, VS. BASILIO GONZALEZ, DEFENDANT AND APPELLANT.

G. R. No. 43462. March 25, 1936

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This case is before us on an appeal taken by the defendant Basilio Gonzalez from the judgment of the Court of First Instance of Manila, the dispositive part of which reads as follows:

"In "View of the foregoing, judgment is hereby rendered in this case, to the effect that the plaintiff takes nothing from the defendant Basilio Gonzalez, without any special pronouncement as to costs. The said defendant is, however, ordered to forthwith deliver said horse to its owner as was ordered by the municipal court of Manila. It is so ordered."

In support of his appeal, the appellant assigns the following alleged errors as committed by the court a quo in its said judgment, to wit:

- The lower court erred in overruling defendant's demurrer to plaintiff's original complaint.
- The lower court erred in overruling the S. P. C. A/s motion to intervene and its complaint in intervention.
- The lower court erred in ordering the defendant to deliver the horse to its owner."

The first assignment of alleged error refers to the court a quo's having overruled the demurrer filed by the defendant-appellant to the plaintiffs' original complaint on the ground of non-joinder of parties defendant.

In the first paragraph of the original complaint reproduced on appeal, it is alleged:

"That the plaintiffs are joint owners of four horses and a calesa, of age and both residing at 1929 Felix Huertas and that the defendant, of age, is chief of the squad of employed men hired by Sociedad Protectora de Animates, and resides at the office of the said society at Azcarraga."

It is therefore admitted in the above quoted paragraph that the defendant Basilio Gonzalez is "chief of the squad of employed men hired by Sociedad Protectora de Animates." As such chief of the squad of employed men hired by the Society for the Prevention of Cruelty to Animals, said defendant was and is a mere agent of said society which, as principal, is liable for the former's acts performed within the scope of his authority (art. 1727, Civ. Code); therefore said society should be joined as defendant although the case is in the Court of First Instance of Manila on appeal from the municipal court of Manila, inasmuch as its joinder as such defendant does not alter the nature of the action (35 Corpus Juris, 821), and is necessary for the final determination of the case (sec. 114, Code of Civ. Proc.; Arroyo vs. Granada and Gentero, 18 Phil., 484; Salmon and Pacific Commercial Co. vs. Tan Cuelco, 36 Phil., 556).

Therefore the court a quo erred in overruling the demurrer filed by the defendant Basilio Gonzalez and in not requiring the plaintiffs to amend their complaint by joining the Society for the Prevention of Cruelty to Animals

as defendant.

As to the second assignment of alleged error, although the filing of the complaint in intervention in the Court of First Instance of Manila was improper because the case was before it on appeal (35 Corpus Juris, 742), however, as said complaint in intervention contained only special defenses and a cross-complaint for an amount not exceeding that over which the municipal court of Manila has concurrent jurisdiction with the Court of First Instance of Manila, the latter court could have admitted it as a pleading of special defense and cross-complaint (35 Corpus Juris, 830).

Although the resolution of the first two assignments of error disposes of this case without discussing and passing upon the third assignment of error, however availing ourselves of the power under section 496 of the Code of Civil Procedure to reverse or modify, any final judgment and direct the proper judgment, order or decree to be entered, and in order to avoid unnecessary litigation and the raising of this same question anew in this court, we shall pass on the third assignment of alleged error, taking into consideration the stipulation of facts entered into by the parties. (Arroyo vs. Granada and Gentero, supra; Lichauco vs. Limjuco and Gonzalo, 19 Phil., 12; Zook vs. Coker, 24 Phil., 434; Hilario vs. Congregacion de San Vicente de Paul, 27 Phil., 593; Esperanza and Bullo vs. Catinding, 27 Phil., 397.) From the pleadings and the said stipulation of facts approved by this court in its resolution of July 27, 1935, the following appears:

On May 13, 1934, the plaintiff Honorato Gadier was arrested for driving a carromata pulled by a horse that had been lame for some time. After the plaintiff, together with the carromata and the horse, had been brought to the office of the Society for the Prevention of Cruelty to Animals, Vicente Acuna, the former owner of the vehicle and of the horse came for them. The defendant Basilio Gonzalez gave him only the carromata because Acuna refused to sign a receipt for a lame horse. Gonzalez informed Vicente Acuna and Honorato Gadier that if they did not take the horse they would have to pay fifty centavos daily for its maintenance and that they could take it any time upon payment of the expenses incurred by the society for the care and maintenance of the animal. In view of their refusal, the horse remained in the possession of the Society for the Prevention of Cruelty to Animals to be used as evidence in the charges to be brought against said plaintiff Honorato Gadier for violation of the ordinance for the prevention of cruelty to animals. However, there was no need of presenting the animal to the court because said plaintiff Honorato Gadier pleaded guilty to the infringement with which he was charged and was sentenced to seven days of arrest. After his conviction, Honorato Gadier went to the office of the Society for the Prevention of Cruelty to Animals and the defendant Basilio Gonzalez told him that he could take his horse upon payment of the expenses incurred by the society for its care and maintenance. Honorato Gadier refused to make said payment and the defendant Basilio Gonzalez did not deliver the horse to him.

There is no doubt that the defendant Basilio Gonzalez, as chief of the squad employed by the Society for the Prevention of Cruelty to Animals and authorized by section 4 of Act No. 1285, as amended by Act No. 3548, "to make arrests for violations of the laws enacted for the prevention of cruelty to animals and the protection of animals, and to serve any process in connection with the execution of such laws" acted" within the scope of his police power in retaining as corpus delicti the lame horse for which the plaintiff-appellee refused to sign the corresponding receipt. In refusing to sign the receipt for the return of the horse notwithstanding the warning that if he did not take it he would have to pay fifty centavos daily for its maintenance, Honorato Gadier impliedly consented to the retention of the animal by the Society for the Prevention of Cruelty to Animals, answering for the payment of its maintenance. The Society for the Prevention of Cruelty to Animals, therefore, had the right to retain the animal pending refund of expenses for its care and maintenance.

For the foregoing considerations, we are of the opinion and so hold: (1) That the Society for the Prevention of Cruelty to Animals is a necessary defendant in an action brought against one of its agents for acts performed by

him within the scope of his authority as such agent; (2) that as such necessary defendant, it has the right to file a cross- complaint even on appeal from the municipal court of Manila to the Court of First Instance; (3) that the Society for the Prevention of Cruelty to Animals, which makes an arrest through one of its duly appointed agents for using a lame horse in violation of an ordinance for the prevention of cruelty to animals, is empowered to retain said animal as corpus delicti to be used as evidence of the infringement before the competent court; and (4) that the owner of a lame horse, who has been arrested for having hitched it and who refuses to sign a receipt evidencing the return of such lame animal after having been informed that he would have to pay for its maintenance, is obliged to pay for such maintenance before he can recover its possession.

Wherefore, the appealed judgment is hereby reversed and it is ordered that "the case be remanded to the Court of First Instance of Manila for the purpose of directing the amendment of the complaint and the joinder of the Society for the Prevention of Cruelty to Animals as defendant, and for further proceedings, without special pronouncement as to costs. So ordered.

Avanceña, C. J., Abad Santos, Imperial, Diaz, Recto, and Laurel, JJ., concur.

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