

**E. MACIAS COMMISSION IMPEX COMPANY, LIMITED, PETITIONER,
VS. PEDRO DUHART AND EUGENIO DUHART, DOING BUSINESS
UNDER THE FIRM NAME “DUHART FRERES & CIE.”,,
AND THE COURT OF FIRST I...**

G.R. No. 43968. August 07, 1935

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

The petitioner prays that we compel the respondent judge of the Court of First Instance, under section 499 of the Code of Civil Procedure, to approve and certify the bill of exceptions filed by it in civil cases Nos. 33653 and 35771 of the Court of First Instance of Manila. The respondent judge was required to give his reasons for disapproving the bill of exceptions and in the brief filed by him he states that he disapproved the bill of exceptions in question on the ground that the petitioner was not permitted to intervene in the two cases above cited and therefore it had no material interest therein, nor did the judgment rendered prejudice or affect it.

It is admitted that in said two cases the petitioner attempted to intervene alleging that it had direct interest in the matter in litigation but its intervention was, nevertheless, denied¹. It excepted to the resolution and after its motion for reconsideration was denied, instituted certiorari and mandamus proceedings in this court (G. R. No. 43030), praying that the orders dated October 5, and December 17, 1934, be set aside and that he be permitted to intervene in said cases. In the certiorari proceedings, this court rendered the following resolution:

"Upon consideration of the petition filed in case G. R. No. 43030, E. Macias Commission Impex Co., Ltd., vs. The Court of First Instance of Manila et al., praying that the orders of October 5 and December 17, 1934, entered by the respondent judge in civil causes Nos. 33653 and 35771 of the Court of First Instance of Manila be set aside for the reasons therein stated; it appearing that according to section 121 of the Code of Civil Procedure it was discretionary to the respondent judge to permit the intervention of the herein petitioner in said two civil causes and that according to the facts stated in the petition said respondent judge did neither exceed nor abuse his discretion in denying the petition for intervention, and it appearing, further, that whatever judgments might be rendered in the above-mentioned civil causes will not affect any substantial right of the herein petitioner; the court, sitting in second division, composed of Justices Malcolm, Villa-Real, Imperial, Butte, and Goddard, dismissed the aforesaid petition, with costs."

After judgment had been rendered in the two cases, the petitioner excepted thereto and filed its bill of exceptions within the reglementary period, but it was disapproved or denied. It filed a motion for reconsideration insisting on the approval of the bill of exceptions but said motion was likewise denied. The petitioner then filed this petition for mandamus to compel the respondent judge to certify and approve the bill of exceptions in question so that this appellate court may pass upon the legality of the orders denying its intervention in said cases.

The petitioner insists that the orders of October 5 and December 17, 1934, as well as the final judgment rendered in said cases are appealable and subject to review and that appeal from the first two did not lie because they were interlocutory in character. The respondent judge, in turn, contends that said two orders were final in nature and

appeal should have been taken therefrom within the reglementary period. He likewise affirms that the petitioner has no right to present a bill of exceptions for the purpose of reviewing the final judgment rendered therein because it has no material and direct interest in the said cases from the moment its intervention was denied. In our opinion, the legal question raised by the pleadings is not whether the orders are appealable or not but whether the final judgment rendered in the two cases in question in any way affects or prejudices the petitioner. Only in the affirmative case would it be justified in perfecting the bill of exceptions and in urging the approval thereof. From the facts above stated, it is evident, however, that the petitioner was neither affected nor prejudiced by the judgment rendered in the two cases as its intervention was dismissed and the judgment was rendered exclusively against the defendant. This same reasoning was the basis of the resolution of this court in case G. R. No. 43030 wherein it was held that the writs of *c^rtiorari* and *mandamus* applied for did not lie because, after all, the final judgment to be rendered would in no way affect the petitioner.

There is no doubt that an order denying a petition to intervene in a pending case is appealable and may be set aside when it is shown that it had been issued as a result of an erroneous appreciation of the law and of the facts and in excess of the sound discretion conferred on the courts (sections 121 and 123, Code of Civil Procedure); but in order that said order may be set aside, it is necessary to establish that the intervenor is a necessary and indispensable party to the case and that the final judgment to be rendered will inevitably affect him (section 122 of said Code). If these conditions are not present, there is no reason to restrain or control the exercise of judicial discretion nor is there any justification in law to declare that there was arbitrary exercise thereof. In the case at bar the petitioner was not an indispensable party to said cases, judging from the questions raised therein, nor was it to be affected in any way, as in fact it was not affected, by the judgment to be rendered. It has the speedy remedy of filing an ordinary action against the party who may have aggrieved it for the purpose of recovering what it claims to belong to it.

For the foregoing considerations, the remedy is denied, with costs to the petitioner. So ordered.

Malcolm, Villa-Real, Butte, and Goddard, JJ., concur.

Writ denied.

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