

MAXIMO ABARY AND VICTORIA ZALAMEDA, PLAINTIFFS AND APPELLANTS, VS. FIDELINO AGAWIN, DEFENDANT AND APPELLEE.

G.R. No. 45028. November 25, 1938

Ponente: DIAZ, J.

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DIAZ, J.:

To the complaint filed in the Court of First Instance of Laguna by the spouses Maximo Abary and Victoria Zalameda against Fidelino Agawin, the latter interposed a demurrer based on the following grounds: (1) That the court lacks jurisdiction over the case on appeal because the justice of the peace court from which said case originated did not have it by reason of the amount of the claim set forth in the complaint against defendant; and (2) that the complaint did not allege facts sufficient to constitute a cause of action.

The lower court sustained the demurrer on the first ground and inasmuch as plaintiffs did not amend their complaint, said court dismissed the same. From the order of dismissal, plaintiffs appealed, assigning as errors committed by the court the following:

"1. In sustaining the demurrer after defendant filed his motion for reconsideration of a previous order overruling said demurrer;

"2. In not rendering judgment in favor of plaintiffs after overruling the demurrer interposed by defendant; and

"3. In dismissing the case and ordering plaintiffs to pay the costs."

- The alleged lack of jurisdiction of the court over the case is based on the fact that plaintiffs' claim against defendant is for an amount not less than P600. Section 68 of Act No. 136, as amended by Act No. 4090, provides in effect that justice of the peace courts shall have concurrent jurisdiction with the Courts of First Instance to hear and determine cases in which the amount of the demand exceeds P200 but is less than P600. It should be noted, however, that the complaint in the instant case alleges two independent causes of action because the loans to which each of the causes of action refers were not secured from the same person, and were, moreover, obtained on different dates. The first loan for P500 was taken by defendant from plaintiffs on October 17, 1934, while the other for P100 was obtained from plaintiff Victoria Zalameda on October 23, 1934. These are two amounts which do not constitute a single account. It is error to add them together in order to allege an apparently good ground for demurrer.

"Where there are several counts in the declaration, complaint, or statement, each stating the same cause of action in somewhat different phraseology, or upon a different theory of recovery, and each claiming an amount within the jurisdictional limit, an objection that the aggregate amount claimed is beyond the justice's jurisdiction is without merit, even though the counts are not stated in the alternative." (35 C. J., page 516.)

"It is well settled that a person cannot split up an entire indivisible claim, so as to give a justice's court jurisdiction that it would not otherwise possess. If he could do so, a justice of the peace might be given cognizance of causes involving immense sums. * * * On the other hand a party cannot combine several separate causes of action for the

purpose of depriving" a justice's court of its jurisdiction, for the amount of each separate demand or cause of action, and not the aggregate of the various causes which may be joined in an action, determines the jurisdiction of the justice's court." (16 R. C. L., page 358.)

This same opinion was adopted by this court in the case of Villaseñor vs. Erlanger and Galinger (19 Phil., 574), in disposing of a similar question.

It is, therefore, clear that the lower court committed the first error assigned by the appellants.

- As to the second error, it should be stated that the practice in cases in which the demurrer is overruled is to wait until defendant answers the complaint within the reglementary period. If he does not do so, then plaintiff should be required to prove the allegations of his complaint (sec. 128, Act No. 190). Plaintiffs not having adduced their evidence after defendant's demurrer to their complaint was overruled, it is not proper to render judgment in their favor, granting them, without evidence, what they had prayed for in said complaint.

On the other hand, the order of the court overruling defendant's demurrer was later reconsidered. For this reason it cannot be strictly said that it was overruled. Exactly the contrary happened. In reconsidering its order, the court sustained the demurrer and held that it had no jurisdiction over the case for the reason hereinbefore mentioned. There is indeed no law which prohibits the lower court to reconsider its orders on any question if it has, in its opinion, good reasons therefor, and as long as the case in which it thus acts remains in its hands and it has not lost its jurisdiction through any of the grounds prescribed by law.

- As it has been shown that the lower court committed the first error assigned by appellants, we need not consider the third assigned error. The case should not have been dismissed because the reason set forth in the order appealed from did not justify such dismissal. There is now, therefore, no reason why plaintiffs should have to pay any costs after they have paid the legal fees.

In view of all the foregoing, the order appealed from is reversed and it is ordered that the case be remanded to the lower court for appropriate trial for the purpose of hearing the parties and deciding the questions raised by the complaint and the answer which appellee may desire to file within the period that may be given him, with costs against said appellee. So ordered.

Avanceña, C. J., Villa-Real, Imperial, and Laurel, JJ., concur.

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