

ASUNCION ABAD, PETITIONER AND APPELLANT, VS. AMANDO AQUINO, RESPONDENT AND APPELLEE. HONOLULU IRON WORKS, INTERVENER AND APPELLEE.*G.R. No. 45755. April 25, 1939*

Ponente: CONCEPCION, J.

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Asuncion Abad, as attorney-in-fact of Teresa Mendez Villa-Abrille, brought suit in the Court of First Instance of Manila against Amando Aquino for the recovery of the sum of P1,700, the balance of a promissory note executed by said defendant in favor of Teresa Mendez Villa-Abrille on February 21, 1932. After the complaint was answered and the evidence for both parties adduced, the Honolulu Iron Works was permitted to intervene in the case as intervener. The defendant alleged in his defense that the amount of the note upon which the action is based, represents the price of a rice mill with its motor sold to him by the plaintiff, and the intervener, on the other hand, alleged that the rice mill referred to had been purchased by Mariano Pardo, in the name and on behalf of the plaintiff Asuncion Abad, from Catton Neill Engineering & Machinery Company, together with a motor, in payment of which he issued a note in favor of Catton Neill Engineering & Machinery Company, which note was indorsed to the intervener Honolulu Iron Works. The defendant guaranteed the payment of said note by a mortgage on the machinery purchased, and of the amount of the note there was a balance remaining of P875, plus the sum of P175, which the plaintiff and the defendant refused to pay. Judgment having been rendered in favor of the plaintiff and against the defendant for the amount of the claim, P1,700, with interest at twelve per cent (12%) per annum, plus attorney's fees and the costs, the defendant and the intervener appealed. The Court of Appeals dismissed the case because the action was not commenced by the real party in interest.

As above stated the note, which is the subject matter of the complaint was issued by the defendant in favor of Teresa Mendez Villa-Abrille; but the complaint was filed by Asuncion Abad as attorney-in-fact of Teresa Mendez Villa-Abrille.

Section 114 of the Code of Civil Procedure imperatively provides that every action must be prosecuted in the name of the real party in interest.

An attorney-in-fact or agent is not the real party in interest. A judgment for or against an attorney-in-fact does not in any way bind the real party, and the decision in the case would be entirely useless. (*Arroyo vs. Granada and Gentero*, 18 Phil., 484. See also *Esperanza and Bullo vs. Catinding*, 27 Phil., 397; *Salmon and Pacific Commercial Co. vs. Tan Cuelco*, 36 Phil., 556.)

In the light of the law and the jurisprudence above cited, it is obvious that Asuncion Abad could not legally file the complaint as attorney-in-fact of Teresa Mendez Villa-Abrille, and this is the more so in the present case where, according to the Court of Appeals, the power of attorney presented at the trial as Exhibit B, executed by Teresa Mendez Villa-Abrille in favor of her daughter, the plaintiff Asuncion Abad, does not authorize the latter to bring any action before the courts for the recovery of the note in suit. From what has been said it follows that all

the proceedings, from the filing of the complaint to the rendition of judgment, are null and void for lack of the real party plaintiff.

The petitioner argues that, following the doctrine laid down by this court in the case of *Alonso vs. Villamor* (16 Phil., 315), the Court of Appeals erred in not considering the complaint as amended by substituting the name of the real party in interest for that of Asuncion Abad.

We believe that this could not be done in view of the fact that there is an intervener, the Honolulu Iron Works, which is entitled to be heard before any amendment to the complaint could be made, thus requiring the remand of the case to the Court of First Instance.

The appealed decision is affirmed, and it is ordered that the case be remanded to the Court of First Instance for the amendment of the complaint, with notice to all the parties, which court may consider all the evidence reproduced and thereafter render the appropriate judgment. The costs in the three instances shall be paid by the plaintiff-petitioner. So ordered.

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

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