

PROCOPIO GAQUIT, PLAINTIFF AND APPELLEE, VS. DOROTEO CON-UI, DEFENDANT AND APPELLANT.

G.R. No. 46046. April 21, 1939

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

On April 22, 1935, the plaintiff-appellee Procopio Gaquit filed in the Justice of the Peace Court of Ormoc, Leyte, a complaint praying, upon the facts alleged therein, that judgment be rendered against the defendant Doroteo Con-Ui sentencing the latter to pay the former the sum of P122.68, with legal interest from January, 1931, and the costs.

On April 29, 1935, the said defendant filed his answer denying each and every fact alleged in the complaint.

On May 28, 1935, the Justice of the Peace Court of Ormoc, resolving the last of the various motions for postponement of trial filed by the plaintiff and objected to by the defendant, after denying said motions, entered an order the dispositive part of which reads:

"The court, in view of the defendant's opposition and of the fact that this case has been repeatedly postponed at the instance of the plaintiff, dismisses this case provisionally, without prejudice to plaintiff's right to file another action of the same nature should he deem it convenient and necessary, without special pronouncement as to the costs."

On June 11, 1935, the appellant appealed from the said order to the Court of First Instance of Leyte.

The complaint having been reproduced, the defendant also reproduced the answer filed by him in the Justice of the Peace Court of Ormoc and asked at the same time that the appeal taken be dismissed because the case is not appealable inasmuch as the dismissal thereof was provisional in nature.

Without resolving the motion for dismissal filed by the defendant, the said Court of First Instance of Leyte heard the case on the merits on April 22, 1936, and rendered judgment ordering the defendant to pay to the plaintiff the sum of P122.68, with legal interest from April 22, 1935, until fully paid, and the costs of the suit in the Court of First Instance.

From this decision the defendant interposed the present appeal, assigning six alleged errors committed by the lower court in said decision, which errors may be reduced to the sole proposition of whether or not the said court had jurisdiction to take cognizance of the case and decide the same on the merits upon the appeal taken by the plaintiff from the provisional order of dismissal of the complaint.

The Court of First Instance of Leyte, without resolving the question of whether or not the order of dismissal was appealable, proceeded to take cognizance of the case on the merits. As the case was appealed to it, it should have resolved the question raised by the appeal, and the appealed order not being a decision on the merits, it could not take cognizance of the case as though it were initiated for the first time in said court, inasmuch as the amount of money in litigation falls under the exclusive original jurisdiction of the justices of the peace court (section 68, Act

No. 136, as amended by Act No. 1627) ; hence, the appealed decision is null and void (Nolan vs. Montelibano, 29 Phil., 236).

In view of the foregoing considerations, we are of the opinion and so hold, that upon the perfection of an appeal taken from an order of a justice of the peace court provisionally dismissing a complaint for the recovery of an amount less than P200, the Court of First Instance before which the appeal is pending should resolve the same; and if it does not do so and it proceeds to take cognizance of the case on the merits, the jurisdiction that it exercises is original, which is possessed not by it but exclusively by the justice of the peace court under section 68 of Act No. 136, as amended by Act No. 1627, and the decision rendered by it therein is null and void.

Wherefore, the appealed decision is reversed, the same is declared null and void, and it is ordered that the case be remanded to the Court of First Instance of Leyte to the end that it may exercise its appellate jurisdiction by resolving the only question raised on appeal, without special pronouncement as to the costs. So ordered.

Avanceña, C. J., Imperial, Diaz, Laurel, Concepcion, and Moran, JJ., concur.

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