

WALTER A. SMITH, PLAINTIFF AND APPELLEE, VS. ANTERO MIJARES ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 7142. December 12, 1912

Ponente: TORRES, J.

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TORRES, J.:

Appeal by defendants from the judgment rendered in these proceedings by the Hon. Albert E. McCabe, judge.

Counsel for the plaintiff, Walter A. Smith, filed in the Court of First of Occidental Negros a written complaint dated April 8, 1910, setting that:

On July 13, 1909, Antero Mijares and Marta Montilla, his wife, institute suit in the justice of the peace court of Binalbagan against the said Smith seeking judgment against him for the payment of P4,000 as rental for the hacienda named Josefa, damages, and ejection from said property because he had failed to comply with the conditions stipulated in the contract of lease, with the costs; and on September 10 of the same year a summons was issued and the said Smith accordingly served therewith in Iloilo on the 29th of said month and year;

Within the forty days allowed for the appearance of the plaintiff Smith said justice of the peace court, he became ill and by direction of his physician had to take a trip to Japan to recover his health, and he therefore failed to appear at the hearing in his case because of this m that had befallen him;

During his, absence from these Islands the justice of the peace of Binalbagan, although lacking jurisdiction to try the case and without previous notify of the hearing to the defendant, rendered judgment in the case for the plaintiffs, sentencing the defendant, Walter A. Smith, according to the complaint filed;

As a result of said judgment the court issued due order of execution against the property of the defendant and on December 20, 1909, the deputy sheriff of Isabela proceeded to levy upon said property, which is record the return of the levy and is now deposited in the possession of the plaintiff Mijares;

Because of the said mishap to the defendant Smith, which, as illness forcing him to a change of climate, was beyond his control, he did not receive notice of the date of the hearing, of the judgment, or of the levy until February 16, 1910, wherefore he was unable to appear in justice of the peace court or to appeal from the judgment rendered in the case;

The object of that complaint was the collection of a sum much greater than P600, with the value of all the property seized, and therefore the justice of the peace of Binalbagan lacked jurisdiction to try and decide case;

Therefore, the judgment rendered therein should be set aside, and in virtue of the facts stated judgment should be rendered setting aside the judgment of the justice of the peace of Binalbagan in said civil suit, releasing property deposited and sentencing the defendants to payment of damages and the costs of the trial.

Counsel for the defendants in a written amended reply of July 14, 1910, forth that:

They deny each and all of the facts alleged in the complaint, and in special defense aver that the justice of the peace of Binalbagan tried the suit instituted by the defendants against the herein defendant because the justice and auxiliary justice of the municipality of Isabela were disbarred from the case, the former as a relative of the defendant Montilla within the civil degree and the latter by physical disability;

The facts alleged in the complaint do not constitute ground for acti therefore, they ask to be absolved from the complaint, with costs against the plaintiff.

At the hearing of the case on August 4, 1910, the plaintiff submitted as evidence Exhibits A and B, and his own testimony and that of the witness Mariano Cuadra and Petronila Santaromana; the defendants presenting no evidence at all. On February 11, 1911, judgment was rendered in the suit aside and annulling the judgment of 'the justice of the peace of Binalbagan directing that said case be again tried on its merits before the Court Instance and that Antero Mijares and Marta Montilla proceed to bring case to trial under the rules for appeals from justice of the peace court further ordering that the said couple, Mijares and Montilla, remain in possession of the hacienda Josefa until the termination of the suit in the Court of Instance or until further order; and that the sheriff retain possession personal property levied from Walter A. Smith under said writ of executive until the termination of the suit or further order of the Court of First unless Smith should file bond with two or more bondsmen for satisfaction any judgment that might be rendered in this case against him, whereupon said personal property would be delivered to him.

Defendants excepted to this judgment and their counsel on February 14, 1911 asked for a new trial, which motion was denied. Again they excepted an their counsel having presented the proper bill of exceptions, it was approved, certified, and forwarded with the evidence in the proceedings the clerk of this court.

The subject of this litigation is the nullification of a judgment render auxiliary justice of the peace of the town of Binalbagan, Occidental Negros, on November 13, 1909, in favor of the plaintiffs Antero Mijares Marta Montilla against Walter A. Smith, which nullification was ordered Court of First Instance of that district in said judgment, in accordance provisions of section 148 of Act No. 190, the Code of Civil Procedure, which reads:

"When a judgment has been rendered by a justice of the peace or any other subordinate tribunal, and any party to the action has been unjustly deprived of his day in court and an opportunity to be heard thereon, by fraud, accident, mistake, or excusable negligence, or has been prevent from entering an appeal from such judgment by fraud, accident, mistake, excusable negligence, the Court of First Instance may, in its discretion and on reasonable terms, reverse and set aside the judgment so rendered and hear and determine the action and make the necessary orders there as if the same had been brought to the Court of First Instance by appeal provided the party so aggrieved shall make application, as hereinafter provided, to the Court of First Instance, and within sixty days after first knows that such judgment has been rendered against him. This section shall be liberally construed so as to prevent injustice."

It appears from the proceedings in the suit instituted in the justice peace court of Binalbagan by the married couple Mijares and Montilla that the defendant Smith was notified and summoned to appear and answer the complaint in Iloilo, where he resided, on September 29, 1909, within a period of forty days; that at the request of the plaintiffs an order was issued November 8 of the same year declaring the defendant in default from nonappearance and setting the 12th of the same month for the new hearing still the defendant Smith failed to appear, wherefore the justice of the on November 13 rendered the judgment, nullification whereof is sought, in favor of the defendants, ordering that the defendant Smith vacate the property rented and sentencing him to the payment of P4,000 as rent and damages, and the costs. Since the defendant did not appeal from this judgment, the sheriff, at the request of the plaintiffs, proceeded to l upon his property, which was turned over to the plaintiff Mijares.

In explanation of the reasons why he failed to appear in that suit tried the justice of the peace court and to answer the complaint of the married couple Mijares and Montilla, Mr. Smith, the defendant, state affidavit made in the present suit before the Court of First Instance th when he received in Iloilo, where he resided, notice and summons as a result of said complaint filed in the justice of the peace court of Binalbagan September, 1909, he went one day in the following October to the said to of Occidental Negros to answer it, but he found no one in the justice the peace court of said town, and though he found in the municipal build the municipal secretary, the latter refused to deal with him, and that October 21 he was away from the Islands and was probably in Hongkong or Formosa when the judgment was rendered, having returned to these Islands and his home in Iloilo on the 10th or 12th of January, 1910, and about middle of February received notice that the case had been decided against him by default.

In view of these facts and the allegations and evidence adduced by the parties, the Court of First Instance held that the plaintiff Smith through accident, mistake, or excusable negligence could not appeal from the judgment of the said justice of the peace, and therefore came within the purview of section 148 of the Code of Civil Procedure, and exercising the discretion authorized by that section set aside the said judgment and direction that the defendants institute a new suit in the Court of First Instance same points covered by their claim against the lessee Smith, in order that they might be discussed and decided on their genuine merits.

Said claim of the defendants arises from a contract of lease entered int between them and the plaintiff Smith, which was reduced to writing and certified copy thereof exhibited at the trial in the justice of the peace court, forming a part of said defendants Exhibit A.

Said claim of the defendants Mijares and Montilla seeks collection of the sum of P4,000 as rent and damages for non-fulfillment of said contract, and from the nature of the rights of action derived from that claim and complex questions arising from a contract of lease in the terms it was out, the incompetence of a justice of the peace to hear and pass upon them under the law clearly appears.

In the judgment appealed from it is averred that if this judgment be all to stand, as it was rendered by the justice of the peace, it would tolerate injustice because of the large amount of damages awarded, for there was no evidence upon which the justice of the peace could base his judgment P4,000 damages for non-fulfillment of contract.

This judicial finding more fully demonstrates the incompetence of the justice the peace regarding certain points in the complaint filed before him an propriety of the judgment appealed from.

Nevertheless, this judgment is not in itself a matter for appeal, because setting aside the judgment of the justice of the peace the court did not finally decide the case but directed the appellants to institute a new the Court of First Instance, and against the judgment that might then be rendered said appellants might appeal to this court for decision in second instance. Therefore, said appeal was improperly allowed through a bill exceptions because it dealt with a decision that was not in its nature final.

For the foregoing reasons, we hold that the appeal in question was improperly allowed and direct that the case be returned to the Court of First Instance, with a certified copy of this decision, for compliance w rendered in the Court of First Instance on February 11, 1911.

Arellano, C. J., Mapa, Johnson, and Carson, JJ., concur.

Trent, J., concurs in the result.

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