

**HON. PERFECTO A.S. LAGUIO, JR., PRESIDING JUDGE OF
METROPOLITAN TRIAL COURT OF QUEZON CITY, BRANCH XXXIX
(FORMERLY BR. IX), CITY SHERIFF OF QUEZON CITY THRU
GUILLERMO M. LANSANG...**

G.R. No. 74903. March 21, 1989

Ponente: PARAS, J.

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PARAS, J.:

The instant petition for review stemmed from an action for unlawful detainer, commenced on June 7, 1979 by Evangelina Quiambao before the Municipal Trial Court of Quezon City, Branch 39, against some forty-five (45) defendants who were allegedly illegally occupying her land located at No. 24 General Lim Street, San Francisco del Monte, Quezon City. The case was docketed as Civil Case No. 35511.

Of the forty-five (45) defendants -

“a) 5 were declared in default, and evidence against them was presented ex parte (TSN, 10-17-79; formal offer of evidence, 4-26-85);

“b) 15 entered into a compromise agreement with original plaintiff Evangelina Quiambao, whereby the latter agreed to sell the subject land to them in the terms and conditions, set forth in the DECISION of the MTC Court (Annex B of Petitioner);

“c) 15, while filing an answer to the complaint, did not appear during the trial despite notice, for which reason plaintiff's evidence was deemed presented ex parte as against them;

‘(1) admitting plaintiff's ownership over the subject land; but

‘(2) alleging that they have been in occupation and possession of a small portion of the lots in question for more than 10 years; that they constructed their houses within the subject lot with the consent of plaintiff who collected and received the rentals due up to the present; that there is no real necessity for the plaintiff to repossess the lots in question and for her to eject them, as they are in dire need of a house to pursue a means of livelihood in Manila;

and as they refused to sign the compromise agreement, adverted to above, they called themselves as the 'non-compromising defendants'." (p. 151, Rollo)

Meanwhile, Evangelina Quiambao conveyed all her rights and interest on subject parcel of land to herein petitioner Efren Nang To Dy, who thereafter substituted her as party-plaintiff.

Insofar as the so-called non-compromising defendants were concerned, petitioner filed on May 28, 1985 a Motion for Summary Judgment under Rule 34 of the Revised Rules of Court.

Acting on the said motion, the Municipal Trial Court rendered its decision on August 15, 1985, approving the compromise agreement executed by and between the plaintiff and the sixteen (16) defendants and ordering the

ejection from the subject land of the other twenty nine (29) defendants plus one Vicente Leonardo. The dispositive portion of the decision reads, viz:

"WHEREFORE, judgment is hereby rendered ordering the defendants, namely, Emilia Vizamanos, Nenita Sarit, Lolita de Vera, Rogelio Rico, Eduvigio Castro, Daniel Abulencia, Florencio Alberto, Benigno Angeles, Lolita Angeles, Juanito Carpio, Orlando Cesar, Angelina Cheng, Lydia Cruz, Melchor Diocera, Perla Dona, Jose Gamet, Lilia Gamet, Florentina Hebron, Jose Mata, Rogelio Ponce, Catalino Gamet, Esteban Rabago, Benjamin Amansec, Domingo Tubeo, Sofia Redolosa, Federico Ponce, Agustin Gamet, Petrocinio Gamet and Gregorio Dona, plus one Vicente Leonardo (who does not appear as a party-defendant in the complaint, but who has been represented in these proceedings by Atty. Evaristo Urbina as counsel for the last named 10 defendants), and all persons claiming right under them, to vacate plaintiff's land located at No. 24 General Lim Street, San Francisco del Monte, Quezon City, and to demolish and remove their houses and whatever constructions they have made thereon; to pay the plaintiff their respective accrued reasonable monthly rents on the premises from June 7, 1979, computed at P100.00 each, a month, until the defendants shall have vacated the premises being respectively occupied by them with interest thereof at the legal rate of 12% per annum from today until the amount shall have been fully paid and an additional sum of P5,000.00, as and for attorney's fees, plus the costs of this suit.

"SO ORDERED." (pp. 3-4, Memorandum for the Respondents; pp. 175-176, Rollo)

Invoking Sec. 8, Rule 70 of the Rules of Court, petitioner, as the then plaintiff, filed a motion for execution.

Instead of appealing, the non-compromising defendants thru Atty. Urbina filed a Motion for Reconsideration, which petitioner moved to strike out as being a "prohibited pleading" under the Rule on Summary Procedure.

In an Order dated September 20, 1985, the Municipal Trial Court ordered (a) the motion for reconsideration stricken out from the record and (b) the issuance of a writ of execution.

Atty. Urbina filed a Notice of Appeal but upon petitioner's motion, on the ground that since the motion for reconsideration did not stop the running of the reglementary period for appeal and that therefore the decision has already become final and executory, the Municipal Trial Court ordered the dismissal of the notice of appeal in its Order dated October 16, 1985.

Against the aforesaid Orders dated September 20, 1985 and October 16, 1985, Atty. Urbina filed a petition for certiorari and mandamus with the Regional Trial Court of Quezon City. The case was docketed as Civil Case No. Q-46541, assigned to Branch LXXXIX thereof, presided over by respondent Judge Rodolfo Ortiz.

On June 6, 1986, respondent Judge Ortiz rendered his now assailed decision, the dispositive portion of which reads -

"ACCORDINGLY, judgment is hereby rendered nullifying the order of respondent judge, in Civil Case No. 35511 dated September 20, 1985 which ordered the issuance of a writ of execution, and his order dated October 16, 1985 which dismissed petitioners' notice of appeal, ordering thereby respondent judge to give due course to the appeal of the petitioners filed on September 25, 1985, and to forward consequent thereto the entire original records of Civil Case No. 35511 to the Regional Trial Court in Quezon City for further proceedings, with costs against the private respondent. The preliminary injunction issued on December 10, 1985, is made permanent.

"SO ORDERED." (p. 7, Annex A of Petition; p. 26, Rollo)

The rationale of the said decision is that, since Judge Laguio, Jr. of the Municipal Trial Court rendered the Summary Judgment on the basis of Rule 34 of the Revised Rules of Court, it stands to reason that defendants, (herein private respondents) adversely affected by said summary judgment must seek, as they did, reliefs and

remedies under the same Revised Rules of Court.

Petitioners now question the above ruling of respondent Judge Ortiz. While they never disputed the fact that the Summary Judgment of the Metropolitan Trial Court was indeed rendered on the basis of Rule 34 of the Revised Rules of Court, they nevertheless maintain that the Rules on Summary Procedure must be applied on the private respondent's Motion for Reconsideration if only to treat the same as a prohibited pleading under Sec. 15(c) of the said Rule 7 on Summary Procedure and consequently the Summary Judgment sought to be appealed became final and executory.

It is a matter of record that when this case was filed in 1979, the Rules on Summary Procedure was not yet a law. This took effect only on August 1, 1983. Thus, Judge Laguio, Jr. of the Metropolitan Trial Court tried the case on the merits with the presentation of one witness in the person of the original plaintiff, Evangelina Quiambao. Then, on a motion for Summary Judgment filed by herein petitioner who substituted Evangelina Quiambao as party plaintiff, Judge Laguio, Jr. rendered a Summary Judgment on August 15, 1985. All these proceedings were done pursuant to the provisions of the Revised Rules of Court. It is to be noted that under these rules a motion for reconsideration is allowed and this will toll the running of the period for appeal. So, when private respondents filed their motion for reconsideration on August 26, 1985 or eleven (11) days from receipt of a copy of the decision, the period for appeal was interrupted. Their appeal, therefore, filed on September 25, 1985 (the very same day they received the notice of the denial of their motion for reconsideration) was filed well within the period to appeal.

But, Judge Laguio, Jr. did not apply the Revised Rules of Court which allows a motion for reconsideration. Instead, he applied the Rule on Summary Procedure which prohibits Motion for New Trial, or for reconsideration or for re-opening of trial.

This question therefore, arises: Is the rule on Summary Procedure applicable to cases filed prior to the date of its effectivity on August 1, 1983 and still pending on that date?

As a general rule, new Rules of Court on procedure apply to pending cases (*People vs. Sumilang*, 77 Phil. 764). Being procedural in nature, those provisions may be applied retroactively. (Executive Order No. 864, dated January 17, 1983 cited in *Alday vs. Camilon* 120 SCRA 522)

The specific dimensions of the matter, however, may be grasped with the assistance of the Rules of Court, Rule 144 thereof, the last rule entitled "Effectiveness" reading as follows:

"These Rules shall take effect on January 1, 1964. They shall govern all cases brought after they take effect and also all further proceedings in cases then pending, except to the extent that in the opinion of the court their application would not be feasible or would work injustice, in which event the former procedure shall apply."

The foregoing text except for the date mentioned therein has been reproduced in toto from the last rule of the 1940 Rules of Court, more specifically, Rule 133 thereof.

Going by the above-quoted provision which is in *pari-materia*, new court rules apply to pending cases only with reference to proceedings therein which take place after the date of their effectivity. (*Pacho vs. Uy Tioco*, 9 Phil. 123) They do not apply "to the extent that in the opinion of the court their application would not be feasible or would work injustice in which event the former procedure shall apply."

In the case at bar, the application of the rule on Summary Procedure will work injustice to the private respondents, because it will mean the dismissal of their appeal. The interest of justice will be better served if private respondents will be allowed to pursue their appeal. After all, the procedure they have availed of was allowed under the Revised Rules of Court.

Also, the application of the said rule on Summary Procedure is not feasible. Before summary procedure could be applied to parties-litigants, prior notice to the latter to that effect should be made, as mandated by the provisions of Section 3 of the Rules on Summary Procedure, to wit:

"Sec. 3. Duty of the Court upon filing of complaint. - Upon the filing of the complaint, the court, from a consideration of the allegations thereof:

a) May dismiss the case outright due to lack of jurisdiction, improper venue, failure to state a cause of action, or for any other valid ground for the dismissal of a civil action; or

b) if a dismissal is not ordered, shall make a determination whether the case falls under summary procedure. In the affirmative case, the summons must STATE that the summary procedure under this Rule shall apply."
(capitalization supplied)

Clearly then, the rule requires prior notice to the parties of its application which notice must be contained in the summons duly served to them. In this case no such notice was made.

In view of all the foregoing, the petition is DISMISSED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

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