

**AURORA B. CAMACHO, PETITIONER, VS. HON. COURT OF APPEALS,
HON. JUDGE RUBEN T. REYES, INCUMBENT JUDGE OF THE
REGIONAL TRIAL COURT OF BALANGA, BATAAN, BRANCH I, AND
ANGELINO M. BA...**

G.R. No. 79564. November 24, 1989

Ponente: REGALADO, J.

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REGALADO, J.:

This petition for review presents procedural questions involving the remedial vehicle of intervention as provided for in Section 2, Rule 12 of the Rules of Court.

The facts are clear and undisputed. Petitioner Aurora Camacho, together with the Municipality of Balanga, Bataan, fled Civil Case No. 424 on November 18, 1969 for forcible entry in the municipal court of the same town against one Silvestre Tuazon. Petitioner was then represented by private respondent Angelino M. Banzon as counsel of record.

In their complaint, it was alleged that the defendant was an agricultural lessee of Lot No. 261. covered by Transfer Certificate of Title No. T-10,1 85 of the Register of Deeds of Bataan, who surrendered his landholding by virtue of an agreement entitled "Agreement With Voluntary Surrender" dated August 22, 1968.

Defendant allegedly re-entered the lot in question by force, strategy and stealth, thereby obstructing the construction of a provisional road to the market site of the town as well as depriving the plaintiffs of possession thereof.[1]

After trial on the merits, the inferior court rendered a decision, dated March L, 1971, in favor of the plaintiffs ordering the defendant to vacate the premises.[2] The case was elevated by the defendant to the then Court of First Instance of Bataan where it was assigned to Branch I presided by Judge Abraham P. Vera, Docketed as Civil Case No. 3512, the case was tried de novo because no stenographic notes were taken of the proceedings in the inferior court.

While the trial de novo was ongoing, private respondent was dismissed as counsel by petitioner. This led to the filing of a complaint in intervention by private respondent on December 17, 1973 against both the petitioner, who was a plaintiff therein, and defendant Tuazon. Private respondent's complaint in intervention was predicated on an alleged contract of attorney's fees[3] wherein petitioner was supposed to have bound herself to pay private respondent five thousand (5,000) square meters of the lot in litigation for his legal services rendered in negotiating for the transfer of the town's market site to petitioner's property. Additionally, private respondent claimed one thousand (1,000) square meters of the lot which petitioner allegedly orally bound herself to pay him as attorney's fees in handling her seven (7) other cases.[4] It is averred that his discharge from the case was without justifiable cause and with clear intent of avoiding payment of the attorney's fees agreed upon.[5] Private respondent further asserted that he purchased from petitioner eighty (80) square meters and from third parties eight hundred (800)

square meters of the lot in question. Thus, private respondent, as intervenes, joined petitioner in praying for the ejectment of the defendant but, at the same time, asked the trial court to order petitioner to deliver to him the aforesaid portions of Lot No. 261, plus rentals, additional attorney's fees and expenses of litigation.[6]

Nearly four (4) years after the complaint in intervention was filed, or on August 14, 1977, petitioner, as plaintiff, and the defendant Silvestre Tuazon signed a compromise agreement which became the basis of a judgment on compromise, dated August 31, 1977, in Civil Case No. 35 12.[7] Thereafter, petitioner moved to dismiss the complaint in intervention in said case on the ground that the trial court had lost jurisdiction to hear and try the same as the principal case for forcible entry was already terminated. The trial court denied the motion to dismiss in an order dated March 16, 1979.[8]

Another motion to dismiss the same complaint for intervention was filed by petitioner on September 3, 1983 reiterating the same ground relied upon in the previous motion but with the additional ground that the complaint was filed late for having been filed when the case was already on appeal. The trial court denied the motion to dismiss and the motion for reconsideration of the said order of denial, on August 24, 1986 and October 14, 1986, respectively.[9]

A petition for certiorari was filed in this Court on November 4, 1986 questioning the denial of said motion to dismiss. On November 18, 1986, we referred the case to the Court of Appeals. The appellate court in its decision, dated February 26, 1987, dismissed the petition holding that the motion for intervention was seasonably filed. It further held that the judgment on compromise rendered by the trial court would not result in the dismissal of the complaint since the disposition thereof was not yet complete as was evident from the denomination of the August 31, 1977 decision of the trial court as a "Partial Decision." Petitioner's motion for reconsideration filed on March 19, 1987 was denied in a resolution dated August 14, 1987 where it was further observed that "under Section 26, Rule 138, Revised Rules of Court, the attorney may, in the discretion of the court, intervene in the case to protect his rights." [10]

The aforesaid disposition of respondent appellate court is assailed by petitioner, hence this petition.

Petitioner Camacho questions the timeliness of the complaint in intervention contending that the filing thereof in the appealed case before the then court of first instance was improper since the same may be permitted only "before or during a trial," as provided by Section 2, Rule 12 of the Rules of Court. Petitioner concedes that the case is being tried de novo but maintains that intervention is not proper because the trial court is trying said case in the exercise of its appellate, not its original jurisdiction.[11]

Under the procedure now in force, the regional trial court, in cases appealed from the inferior courts, decides the case on the basis of the entire record of the proceedings had in the court of origin and such memoranda and briefs as may have been filed or required.[12] Trial de novo is no longer required. However, under the former procedure in Section 9, Rule 40 of the Rules of Court, a perfected appeal from the inferior court to the then court of first instance shall operate to vacate the judgment of said inferior courts. The action when duly docketed in the court of first instance shall stand for trial de novo upon its merits in accordance with the regular procedure in that court, as though the same had never been tried before and had been originally there commenced.

The said former rule nevertheless applies only to cases decided before August 4, 1969, when Republic Act No. 6031 took effect, or in those cases where the proceedings in the inferior court were not recorded. Under said law, when the proceedings in the inferior court had been recorded, there would be no trial de novo on appeal in the former court of first instance as said appellate court will merely review the evidence and records transmitted by the inferior court, with the parties having the right, on motion to that effect, to file their briefs or memoranda.[13] As already stated, however, it follows as a logical consequence that a case shall stand for trial de novo where the

proceedings in the inferior court were not recorded. The present case falls under the last mentioned situation since no stenographic notes were taken during the trial in the municipal court.

Considering that the motion for intervention was filed during trial de novo in the then court of first instance, we are convinced that private respondent intervened in due time. There is sufficient authority to hold that the term "trial" referred to in Section 2 of Rule 12 includes the trial de novo conducted by the trial court.[14] The basis of this view lies in the very nature of such specific procedural rule since the then court of first instance will try the case without regard to the proof presented in the municipal court or the conclusions arrived at by said court. As we have stated on this particular aspect, "(t)he Court of First Instance will not affirm, reverse or modify the rulings or the judgment appealed from, for the simple reason that there is no ruling or judgment to affirm, reverse or modify because all the proceedings had in the justice of the peace or municipal court, including the judgment, do not in contemplation of law exist, having been vacated." [15]

The other issue submitted to this Court for consideration is the effect of the judgment on compromise on the complaint in intervention. Petitioner submits that the trial court lost its jurisdiction to hear and try the complaint in intervention, an ancillary case, after the principal case of forcible entry was terminated by the approval of the court of the compromise agreement.[16]

Worthy of note, in this connection, is that the attorney's fees of a counsel may be claimed in the very action in which the services in question have been rendered. As an incident of the main action, the fees may be properly adjudged after such litigation is terminated and the subject of recovery is at the disposition of the Court.[17]

The foregoing rule applies where the counsel was dismissed without cause pending the litigation, although the amount of recovery may be different depending on the circumstances. As observed by respondent appellate court, the rules even provide that if the contract between the client and his counsel has been reduced to writing and the dismissal of the attorney was without justifiable cause, he shall be entitled to recover from the client the full compensation stipulated in the contract and may in the discretion of the court intervene to protect his rights.[18]

Complete reliance on this particular rule per se cannot, however, be made. The records show that the intervenor claims properties supposedly due to him not only because of the legal services rendered in the same case where it is being claimed but also in some other cases or undertakings, as well as consequent to certain conveyances made in his favor. We must, therefore, also view and take into account these other claims of the intervenor in the determination of the effect of the judgment on compromise.

There is no question that intervention is only collateral or ancillary to the main action. Hence, it was previously ruled that the final dismissal of the principal action results in the dismissal of said ancillary action. The main action having ceased to exist, there is no pending proceeding whereon the intervention may be based.[19] In the case at bar, however, there was no such final or complete dismissal but rather, an approval of a compromise agreement which was embodied in what was specifically designated as a "Partial Decision" affecting only the interests of herein petitioner and the defendant in said case but not those of her co-plaintiff municipality and the intervenor. The clear intent of the court below in making the partial decision is to make a reservation to determine the rights of the intervenor and, presumably, the plaintiff municipality. There may be nothing much left to be done with respect to the main case but as far as the proceedings in the trial court are concerned, the controversy therein has not been fully settled and the disposition of the case is definitely incomplete.

It bears mention that the complaint in intervention was filed against the plaintiffs and the defendant in said case. The settlement forged by petitioner and the defendant therein would not necessarily settle the rights of the intervenor and may even be prejudicial to the latter considering that his interest as alleged in the complaint in intervention, if substantiated, will entitle him to portions of the property in question.

Also, considerations of equity weigh heavily in favor of private respondent. To require private respondent to refile another case for the settlement of his claims will necessarily result in greater prejudice and delay, aside from the inevitable consequence that it will entail multiplicity of suits. It should also be borne in mind that this complaint in intervention has been pending for almost sixteen (16) years now, during which period private respondent has already rested his case after presentation of evidence and petitioner is in the process of presenting her own evidence.[20] Predictably, the rights of the intervenor can no longer be as adequately protected in another future proceeding which will require presentation anew of the same evidence adduced in the hearings of the case below, some of which evidence may no longer be available or extant by then. Undeniably, such cumbersome and duplicitous procedure would run counter to the desirable legal norm required for the orderly and expeditious administration of justice.

Petitioner should also be faulted for not opportunely assailing the denial of her motion to dismiss the intervention. After her motion was denied on March 16, 1979, she waited until September 3, 1983 to again question the propriety of the proceedings on the complaint in intervention. All throughout these intervening four (4) years, she did not avail herself of the remedies provided by law. Such inaction of petitioner, bordering on, if not altogether constitutive of estoppel by laches ineluctably leads us to hold that her petition for certiorari seeking to annul the purported improper grant of the motion for intervention was not filed within the reasonable period of time required in the rules. In fine, the confluence of the aforementioned considerations dictate that the adjudicative process on the questioned intervention can validly proceed to its proper conclusion.

ON THE FOREGOING PREMISES, the petition is DENIED and the decision of respondent appellate court is hereby AFFIRMED.

SO ORDERED.

Padilla and Sarmiento, JJ., concur.

Melencio-Herera, J. (Chairman), on leave.

Paras, J., no part.

[1] Rollo, 38.

[2] Ibid., 44-46.

[3] Ibid., 54.

[4] Ibid., 49.

[5] Ibid., 76.

[6] Ibid., 52.

[7] Ibid., 57-59.

[8] Ibid., 60-62.

[9] Ibid., 20, 63-65.

[10] Ibid., 5-10, 12-13. The decision and resolution were penned by Justice Gloria C. Paras, with the concurrence of Justices Jose C. Campos, Jr. and Conrado T. Limcaoco.

[11] Ibid., 25.

[12] Sec. 22, B.P. Big. 129: Par. 21(d). Interim Rules and Guidelines.

[13] Sec. 45, R.A. No. 296, as amended by R.A. No. 6031.

[14] Moran, Comments on the Rules of Court, 1979 Ed., Vol. I. 409.

[15] Royal Shirt Factory, Inc. vs. Co Bon Tic, 94 Phil. 994 (1954) and cases therein cited.

[16] Rollo, 21.

[17] Otto Gmur, Inc. vs. Revilla, et al, 55 Phil. 627 (1931); Lichauco vs. Zourtof Appeals, et al., 63 SCRA 123 (1975); Quirante et. al. vs. Intermediate Appellate Court, et al., G.R. No. 73886, January 31, 1989.

[18] Sec. 26, Rule 138. Rules of Court.

[19] Barangay Matictic vs. Elbinias, et al., 148 SCRA 83 (1987).

[20] Rollo, 9, 88.

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