

44 Phil. 27

[G. R. No. 19784. November 11, 1922]

UY CHU, PETITIONER, VS. CARLOS A. IMPERIAL AND UY DU, RESPONDENTS.

D E C I S I O N

OSTRAND, J.:

This is a petition for a writ of certiorari.

The original petition alleged that the respondent judge exceeded his jurisdiction in appointing a receiver for certain *tiendas* in litigation in civil case No. 22818 of the Court of First Instance of Manila, in which case the herein respondent Uy Du is the plaintiff and one Uy Chu the defendant. The petition did not show that the irregularities complained of had been brought to the attention of the inferior court through the appropriate motion for a reconsideration and this court, therefore, invoking the rule laid down in the case of Herrera vs. Barretto and Joaquin (25 Phil., 245), denied the petition by minute-order or resolution dated October 21, 1922.

The petitioner thereupon, without leave of the court and without asking such leave, filed an amended petition identical in terms with the original petition, but with the addition of two paragraphs to the effect that at the hearing of the motion for the appointment of a receiver the attention of the lower court was specifically called to certain alleged defects in the motion and that due exception was taken to the order of the court issued upon said motion.

The rule above referred to is thus stated in the syllabus of our decision in the Herrera case:

“Where it is claimed that a Court of First Instance has in the judgment of one of the parties issued an injunction erroneously or performed any other act in the opinion of a party illegally or beyond or in excess of his jurisdiction, the party should, before invoking the jurisdiction of a higher court, call the attention of the

inferior court to its supposed error and ask for its correction; and this court discourages all attempts to come here upon questions which a court below is entitled to decide without first invoking its judgment thereon.

“Questions which Courts of First Instance are required by law to decide should not be summarily taken from them and presented to this court without first giving them an opportunity of deliberately passing upon such questions themselves ; and where it is claimed that a mandatory injunction issued *ex parte* was issued by the court in excess of its jurisdiction, a motion should be made to the court for its dissolution before an application is made to the Supreme Court for a writ of certiorari to review the proceeding.”

This rule is a wholesome one and has generally been adhered to by this court except when special circumstances have required immediate and more direct action. No such special circumstances have been shown to exist in the present case, and the additional allegation inserted in the amended petition that previously to the issuance of the order complained of the attention of the court was called to certain defects in the motion upon which the order was based does not take the case out of the rule quoted, “The error or irregularity must be brought to the attention of the inferior court by way of a motion for reconsideration.

The original petition in this case having been denied and the amended petition having been filed without leave of the court and containing no new material allegation, it is hereby ordered/that said amended petition be stricken from the record So ordered.

Araullo, C. J., Johnson, Street, Malcolm, Avanceña, Villamor, Johns, and Romualdez, JJ., concur.