éste ordena que se hagan mas especificas las alegaciones que en dicho escrito se hacen y el demandante ni lo enmienda para corregir los defectos de que adolece, ni hace las especificaciones requeridas, el único paso que queda y procede darse es sobreseer la causa, como así lo ha hecho con mucho acierto el Juzgado inferior. (Arts. 101 y 127 de la Ley No. 190; Marcelo contra Bermudez y otros, R. G. No. 43547, Septiembre 13, 1938).

Por tanto, confirmamos el auto apelado, o sea el de 28 de Febrero de 1936, con las costas a los apelantes.

Así se ordena.

ANACLETO DIAZ.

CONFORMES: *Ramon Avanceña, Antonio Villa-Real, Carlos A. Imperial, Jose P. Laurel, Pedro Concepción.*

MORAN, M., concurrente:

Estoy conforme con la parte dispositiva. Aunque la moción de sobreseimiento no equivale, en mi sentir, a una moción de especificación ni a un *demurrer*, creo, sin embargo, que la misma es permisible bajo las circunstancias especiales del caso, en que el demandante quiere ocultar en su última demanda enmendada un hecho indiscutible alegado en sus anteriores demandas, con el deliberado propósito de ocultar un error de procedimiento que, tarde o temprano, se ha de descubrir, y que debe corregirse lo antes posible para evitar dilaciones innecesarias. Los tribunales de Justicia deben estar investidos de poderes amplios para enderezar los procedimientos y encaminarlos a una pronta y eficiente disposición de los asuntos.

MANUEL V. MORAN.

V

Tavera-Luna, Inc., petitioner-appellant, vs. Judge Mariano Nable, respondent-appellee, G. R. No. 45601, April 14, 1939, **Laurel, J.**

1. CIVIL PROCEDURE; COURTS OF JUSTICE OF THE PEACE; FORCIBLE ENTRY AND UNLAWFUL DETAINER ACTIONS; JURISDICTION NOT LOST BY MERE ALLEGATION OF OWNERSHIP.—In an action of forcible entry and detainer instituted to recover possession, the defendant cannot defeat that action merely by asserting in his answer a claim of ownership in himself. The only exception to this rule is when the question of ownership is so necessarily involved that it would be impossible to decide the question of mere possession without first settling that of ownership.

2. ID.; INTERVENTION; DISCRETION OF TRIAL COURTS.—Under section 121 of the Code of Civil Procedure, before a party may be allowed to intervene in an action or proceeding, he must show legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both. And the granting or refusal of a motion to intervene is a matter of judicial discretion, and once exercised, the decision of the court cannot be reviewed or controlled by mandamus, however erroneous it may be.

3. ID.; ID.; ID.; EXCEPTION; REASON.—The only exception to this rule is when there is an arbitrary abuse of that discretion, in which case mandamus may issue if there is no other adequate remedy, though the result is that the court will be called upon to review the exercise of a discretionary power. Such review is allowed because the power of discretion is not an arbitrary and despotic one, to be exercised at the pleasure of the court, or from passion, prejudice, or personal hostility. But it has also been held that this abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all, in contemplation of law.

DECISION

This is an appeal by the petitioner Tavera-Luna, Inc. from an order of the Court of First Instance of Manila sustaining the demurrer interposed by the respondent to the petitioner's petition for mandamus.

On December 21, 1936, El Hogar Filipino, as administrator of the Crystal Arcade Building, filed Civil Case No. 111246 in the Municipal Court of the City of Manila to recover the possession of the portion known as the Torre of the "Crystal Arcade" from the defendant therein, Andres Luna, by reason of the latter's failure to pay the corresponding rentals thereof. In answer to the complaint, Andres Luna alleged, among other things, that Tavera-Luna, Inc., the petitioner herein, was the owner of the Crystal Arcade Building, and that El Hogar Filipino, as mere administrator thereof, had no right to increase the rental of the portion occupied by him, and that there was pending in the Court of First Instance of Manila Civil Case No. 47097, entiled "Tavera vs. Hogar Filipino and Tavera-Luna, Inc.", in which the issue involved was the title and ownership over the Crystal Arcade Building. On January 7, 1937, the petitioner filed a motion for intervention, which motion was denied by the respondent Judge of the Municipal Court of Manila. To compel the respondent municipal judge to admit the intervention, Tavera-Luna, Inc., instituted mandamus proceedings in the Court of First Instance of Manila. In its petition for mandamus Tavera-Luna, Inc., the petitioner and herein appellant, alleges that as the registered owner of the Crystal Arcade Building, any judgment which might be rendered against the defendant Andres Luna in Civil Case No. 111246 would necessarily affect the occupancy and possession of the tower of that building by Tavera-Luna, Inc. of which Andres Luna was the President, and that the respondent judge, in refusing to admit its motion for intervention in Civil Case No. 111246, had committed an abuse of discretion. Respondent demurred to the petition on the grounds (1) that the petition did not state facts sufficient to constitute a cause of action, and (2) that the petitioner had other plain, adequate and speedy remedy at law. The Court of First Instance of Manila sustained the demurrer of the respondent. The petitioner having elected to stand on its complaint, the lower court dismissed the same. Hence, the appeal to this Court adverted to in the beginning of this opinion.

Petitioner claims that in illegal detainer proceedings, the defendant or any intervenor therein may, subject to certain qualifications, raise the question of ownership of the property in litigation. The rule is that in an action of forcible entry and detainer, instituted to recover possession, the defendant cannot defeat that action merely by asserting in his answer a claim of ownership in himself. The only exception to this rule is when the question of ownership is so necessarily involved that it would be impossible to decide the question of mere possession without first settling that of ownership (Mediran vs. Villanueva, 37 Phil. 752; Medel vs. Militante, 41 Phil. 526; See Kiong Pha vs. Ti Bun Lay, 45 Phil 670; Sevilla vs. Tolentino, 51 Phil. 333; Supia vs. Quintero, 59 Phil. 312). In Civil Case No. 111246 of the Municipal Court of the City of Manila, El Hogar Filipino alleged mere possession of the Crystal Arcade Building of which the tower occupied by Andres Luna is part, and that Luna failed to pay the rents from November 1, 1936. Both plaintiff and defendant there did not claim any right of ownership for themselves of the Crystal Arcade Building or of its tower. The sole question presented was one of possession. The question of ownership of the building was a matter foreign. This being the case, it is not seen how the petitioner's claim of ownership of the Crystal Arcade Building could be affected by any decision rendered in the detainer proceedings. It is elementary law that the right of a party cannot be affected by any judgment or order in a case in which he is not a party. Upon the other hand, it appears that there is actually a suit pending in the Court of First Instance of Manila entitled "Tavera vs. El Hogar Filipino and Tavera-Luna, Inc." (Civil Case No. 47097), in which the issue is the title over the Crystal Arcade Building and in which two writs of preliminary injunctions had been

Headnote 1

(*Continued on page* 112)