

100 Phil. 752

[G. R. No. L-9442. January 28, 1957]

UEBANA D. ANZURES, PETITIONER, VS. HON. FIDEL IBANEZ, JUDGE, COURT OF FIRST INSTANCE OF MANILA, ENGRACIO A. LOZA, ADELA MANUEL, TOMAS G. ESTRADA, ENRICO POBLETE AND MANUEL R. CASAL, RESPONDENTS.

D E C I S I O N

LABRADOR, J.:

Mandamus to compel the Court of First Instance of Manila to allow the appeal interposed by petitioner against the decision rendered by said court in civil case No. 10794 entitled Engracio A. Loza, Plaintiff vs. Adela Manuet and Tomas G. Estrada, Defendants. Enrico Poblete, Intervenor and Third-Party Plaintiff vs. Manuel R. Casal, Third-Party Defendant; Manuel R. Casal, Fourth-Party Plaintiff vs. Urbana D. Anzures, Fourth-Party Defendant, and certiorari to annul an order denying petitioner's privilege to present her evidence in the lower court.

The facts giving rise to the above-entitled action, as found by the court below, are as follows: Adela Manuel was the original owner of a house of strong materials on Hipodromo street, Manila, constructed on land belonging to Angela S. Tuason, leased to the former. On October 31, 1946, Manuel mortgaged the house and her leasehold right over the land to Engracio A. Loza for P5,000. The mortgage instrument was recorded in the registry of November 4, 1946. On March 27, 1947, she received an additional loan of P500 from Loza, payable upon demand. On September 24, 1948, she sold the house and the leasehold right to Loza for P6,700, this amount representing the loans secured by the mortgage and the subsequent loan of P500. The deed was registered on September 23, 1949.

It so happened, however, that Manuel had sold the same house and leasehold right on February 8, 1947 to Tomas G. Estrada for P9,168, with the right to repurchase the same within a period of 30 days from the sale. On May 5, 1947, Estrada executed the affidavit for consolidation of ownership and on registration of the same a memorandum thereof was noted on a transfer certificate of title of the property and the owner's duplicate certificate.

The sale was registered on January 5, 1949.

As Manuel sold the house and her leasehold right to two parties, Estrada and Loza, the latter instituted this action to recover the ownership of the property. The court found that when Loza registered the sale in his favor he already knew that the property was in the possession of Estrada by virtue of the purchase in favor of the latter, so it found that the registration of Loza's deed was made in bad faith.

While the action was pending in the Court of First Instance/ Enrico' Poblete filed an answer in intervention, claiming that the property had been sold to him by one Manuel R. Casal for ₱5,000. Casal admitted having made the sale but he filed a fourth-party complaint against Urbana D. Anzures, petitioner in the present proceedings for contribution, indemnity or subrogation for any amount that may be recovered against him by Enrico Poblete not exceeding P5,000. Upon being summoned Anzures filed an answer confessing judgment, in favor of Casal in an amount not exceeding P5,000, which amount she had received as purchase price of the, property in litigation from Casal. She also filed a cross-claim against Adela Manuel for P5,240, representing, a loan given by her to Adela Manuel. In the prayer of her answer she asked that Poblete be declared owner and that in case the ownership is adjudicated in favor of any other party and that she is declared liable to Casal, that the defendant Adela Manuel be ordered to pay her the sum of P5,000 as damages.

A trial was had of the above-entitled case and at said trial, in view of the absence of the attorney for Casal, Atty. F. Saulog, counsel for Anzures verbally moved that the complaint against Anzures be dismissed for failure of Casal to appear at the trial. Pursuant to this petition, on July 4, 1954, the court entered an order i dismissing the complaint against Anzures. But upon finding later that Anzures had made a confession of judgment in favor of Casal in her answer, it reconsidered the order of dismissal in an order dated November 2, 1954.

The proceedings went on and the court rendered judgment in the case on November 4, 1954. Of this judgment petitioner herein, Urbana D. Anzures, was notified by a copy-served on her upon express order of the court dated January 22, 1955, which reads as follows: "Wherefore, it is hereby ordered that the clerk of court furnish the fourth-party defendant Urbana Anzures with a copy of the decision rendered in the above-entitled case." The decision was served on petitioner herein on March 23, 1955. She perfected the appeal from the decision in 33 days after the service of the decision on her. The court a quo refused to approve her appeal and after denial of a motion to reconsider the order of denial the present

petition for mandamus was instituted in this court. In the original petition it is alleged that the decision was not served upon her attorney but upon her personally through her son and that her counsel was never notified officially thereof. Based on this allegation we gave course to the petition. But in the amended petition which was entitled not mandamus, but mandamus and certiorari, the original allegations were modified. According to the amended petition, Anzures received copy of the decision on March 23, and presented a motion for reconsideration on April 19, (after 27 days); that she received a copy of the denial of the motion for reconsideration on May 27 and presented the notice of appeal and appeal bond on May 31 and the record on appeal on June 3. In other words, the motion for reconsideration was filed after 27 days from the date of the notice of the decision and the record on appeal was filed seven days after notification of the denial of the motion to reconsider. All in all 34 days had elapsed before the appeal was perfected.

There is no question, and it is admitted by the petitioner, that the appeal was perfected beyond the time prescribed by the Rules, but it is claimed that the court abused its discretion in not furnishing petitioner's counsel a copy of the decision instead of furnishing it herself. It is also claimed that the court a quo abused its discretion in setting aside the previous order of dismissal *motu pro-prio* without giving her notice of the said reconsideration of the order of dismissal. It is alleged that had petitioner been notified of the setting aside of the order of dismissal against her, she could have introduced evidence to sustain the right of the intervenor.

As to the claim of error on the part of the trial court in not giving notice of the decision to her counsel, the records of the trial court show that petitioner Anzures filed her own answer, and that no lawyer ever entered his appearance as counsel for her. The only time when she appeared by counsel was at the time of the trial on July 19, 1954 when Atty. Saulog appeared for her; but it does not appear that this attorney was appearing permanently as her lawyer, as he entered no appearance in the records. His appearance at the time of the trial, appearing in the record of the trial only, was only for that occasion, as it does not appear from the record that he was attorney of record. In view of this fact, the order of the court for service of the decision on the defendant herself was fully justified as this is expressly authorized by the Rules (Rule 27, section 2).

With respect to the contention of petitioner that the trial court had no right to reconsider the order dismissing the fourth-party complaint against petitioner, we state that as petitioner's answer contains a confession of judgment in favor of the fourth-party plaintiff, the trial court was correct in setting aside the order of dismissal. Since petitioner Anzures

had confessed judgment, there was no need for the fourth-party plaintiff to appear during the trial of the case. In view of the confession of judgment entered by her in her answer, her motion for the dismissal for failure of the fourth-party plaintiff to appear was improper. A party may not confess judgment and upon failure of the adverse party plaintiff to appear at the trial, relying on said confession, ask for the dismissal of the action.

It also argued that petitioner herein had no opportunity to sustain the right of the intervenor against the parties who won in the action. Her pleadings in the trial court and in this court do not show that she possessed evidence or documents to sustain the alleged right of the intervenor against either Estrada or Loza. The claim, therefore, is mere empty talk and the court cannot be said to have abused its discretion in refusing to reconsider its decision and reopening the case for her. The court must have been convinced by the absence of any allegation to the effect that she had positive evidence to sustain the right of the intervenor, that it was useless to grant the petition for the reopening of the case. We, therefore, find that the court did not abuse its discretion in this respect.

Wherefore, the petition for mandamus and certiorari is hereby denied, with costs against petitioner.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angela, Conception, Reyes, J. B. L., Endencia, and *Felix, JJ.*, concur.