

101 Phil. 740

[G. R. No. L-10463. June 18, 1957]

FELICIANO V. DELGADO, PETITIONER, VS. HON. PATRICK) C. CENIZA, JUDGE OF THE COURT OF FIRST INSTANCE OF MISAMIS OCCIDENTAL, PEDRO CALAPIS AND CBISPULO CALAPIS, RESPONDENTS.

D E C I S I O N

LABRADOR, J.:

Certiorari to reverse an order issued by the Court of First Instance of Misamis Occidental, Hon. Patricio C. Ceniza, presiding, granting relief from a judgment against respondents Pedro Calapis and Crispulo Calapis, in civil case No. 1373 of the said court, entitled Feliciano V. Delgado vs. Crispulo Calapis and Pedro Calapis. Ground for certiorari is that the petition for relief from judgment was filed by respondents after six months from the day they were notified of the decision rendered against them.

The record shows that the action was filed on May 20, 1951 by plaintiff to recover possession of a parcel of land with damages. Defendants answered the complaint, alleging as special defense that they are owners of the land subject of the action and had been occupying it as owners peacefully, continuously and adversely against the whole world from 1931. After repeated postponements, the case was again called for hearing on February 18, 1955. The clerk of court sent notices of the hearing by registered mail, but the letters containing the notices were returned to the clerk of court "unclaimed," in spite of the fact that three registry notices to the addressees have been sent by the postmaster. The hearing took place without the presence of defendants or their counsel. After hearing the court rendered a decision, declaring plaintiff entitled to the possession of the land and ordering defendants to vacate the same, and to pay the plaintiff the sum of P1,800 as damages, plus P300, as attorney's fees, plus costs. Copies of the judgment were sent by registered mail to each of the defendants, and according to the affidavit of the postmaster the letters were received by Isidoro Calapis, son of Pedro Calapis, who signed for the addressees (see Annex J, Petition).

On January 19, 1956, defendants filed a petition for relief from judgment, alleging that they have not been notified of the trial of the case, nor of the decision rendered therein, and alleging further that they have a good and meritorious defense. Motion was supported by affidavits and executed by both defendants. This motion was heard at a time when a motion to declare defendants for contempt was being heard and jointly with said motion for contempt. Both parties were heard in argument, after which the court rendered the order appealed from, setting aside the judgment. A motion for reconsideration was presented by the plaintiff, but same was denied. The pivotal fact upon which the resolution of the petition depends is the validity of the service of the decision made upon the defendants. According to the record, copies of the decision were sent by registered mail to the defendants, in this manner.

“To Whom It May Concern:

This is to certify that according to our records, this Office has received, for transmission to the respective addressees, the following registered letters, to wit:

1. Registered letter No. 2174, addressed to Mr. Crispulo Calapis, Mabini, Baliangao, Misamis Occidental, and sent by the Office of the Clerk of Court, Oroquieta, Misamis Occ.;
2. Registered letter No. 217S, addressed to Mr. Pedro Calapis, Mabini, Baliangao, Misamis Occidental, and sent by the Office of the Clerk of Court, Oroquieta, Misamis Occ.

It is certified further, that according to our records, said letters were received by the addressees on March 28, 1955, through Isidoro Calapis, son of Pedro Calapis, who signed for the addressees.

This certificate is issued after proper permission was granted by the Director of Posts in connection with Civil Case No. 1373, Court of First Instance of this province, entitled ‘Feliciano V. Delgado vs. Crispulo Calapis, et al.,’ and through the written request of the sender, the Clerk of Court.

(Sgd.) Buenaventura Arcede

Postmaster

Under section 7 of Rule 27, judgments must be served personally or by registered mail. Proof of service by registered mail is made in the following manner:

“Sec. 10. *Proof of service.*—Proof of personal service shall consist of a written admission of the party served, or the affidavit of the party serving, containing a full statement of the date, place and manner of the service. If the service is by mail, proof thereof shall consist of an affidavit of the person mailing, together with the registry receipt issued by the mailing office if the letter has been registered. The registry return card shall be filed immediately upon receipt thereof by the sender, or in lieu thereof the letter unclaimed together with the certified or sworn copy of the notice given by the postmaster to addressee,”
(Rule 27.)

Tested by the above-quoted provision, We find that the service of the judgment rendered in the case suffers from two defects, namely, there is no affidavit of the clerk of court, the person mailing, and there is no registry return card, or a certified or sworn copy of the notice given by the postmaster to the addressee. It also appears that the delivery of the letter (containing the decision) to Isidoro Calapis was not made in accordance with the practice followed by the Bureau of Posts in such cases. The practice is for the notice of the registered letter to be sent or given to the addressee, and for the addressee, in case he does not receive the registered letter himself, to authorize, in writing upon the notice received, the postmaster to deliver the letter to another person designated therein. It does not appear that this practice was followed; it does not appear that the original notice was received by the addressees, or that they had authorized Isidoro Calapis to receive the letters containing the decision for them.

While there may be a presumption that Isidoro Calapis, in the ordinary course of events, delivered the letters containing the decision to the addressees, the fact of receipt by them is denied by defendants in their answer. From the order of the court setting aside the judgment, which found the petition for relief well-founded, we gather that the judge was impressed and convinced by defendants' claim that they did not receive copies of the decision from Isidoro Calapis, for which reason he granted the relief prayed for. There being no reason for changing this "finding, we conclude that the defendants had not Actually received copies of the decision of the court.

Two other important issues remain to be determined, which are, was the motion for relief filed within six months from entry of judgment as provided in Section 3 of Rule 38, and presented within sixty days from notice of such judgment? The decision was rendered on February 18, 1955 and the court ordered service of the decision on the defendants by registered mail. The decision was actually sent by registered mail to defendants on March 18, 1955 but as pointed out above service was not made in accordance with the Rules. There appears nothing in the record to show when the judgment was actually entered. In accordance with section 2 of Rule 35, entry is made by the clerk (by notation in the book of entries of judgments) if no appeal or motion for new trial is filed within the time provided (30 days). While, as petitioner contends, more than nine months elapsed between the sending of the notice of the decision on March 18, 1955 and the filing of the petition for relief, there is no positive evidence or assurance that the entry was made by the clerk in the ordinary course of business, especially in view of the fact that the court granted the motion for relief.

As to the date when defendants actually learned of the decision, the record discloses that on January 10, 1956 plaintiff presented a motion to declare the defendants in contempt of court (Annex VII to Answer). When this motion was called for hearing¹ on January 19, 1956, defendants' counsel, upon being informed of the existence of the decision, immediately presented the petition for relief. These facts are not denied. It appears, therefore, that the petition for relief was presented on the very day (January 19, 1956) the defendants learned of the existence of the decision, basis of the petition for contempt.

Under the circumstances, the Court hereby remands the case to the court below with instructions to grant the relief and reinstate the case for trial, if no entry of judgment was made, or to deny the petition for relief if entry of judgment had been made six months or more before January 19, 1956, the date when the petition for relief was filed.

Without costs.

Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Conception, Reyes, J. B. L., Endeneia, and Felix, JJ., concur.

