

[G. R. No. L-11752. July 30, 1958]

JOSE GATTOC, DEFENDANT AND PETITIONER, VS. HON. JUAN SARENAS, JUDGE, FIRST BRANCH, COURT OF FIRST INSTANCE OF COTABATO, 16TH JUDICIAL DISTRICT, RESPONDENT; AND CORAZON VDA. DE EVANGELISTA, IN HER OWN RIGHT AND AS GUARDIAN AD LITEM OF THE MINORS, AMBROSIO EVANGELISTA AND ZENAIDA EVANGELISTA, PLAINTIFFS AND RESPONDENTS.

D E C I S I O N

MONTEMAYOR, J.:

This is a petition for certiorari and preliminary injunction by Jose Gattoc, seeking to annul all the court proceedings in Civil Case No. 819 of the Court of First Instance of Cotabato, presided over by respondent Judge Juan Sarenas, including the decision in said case, dated August 14, 1956, ordering petitioner Gattoc to immediately vacate the portion of land he was illegally occupying, to pay plaintiffs in that case, now herein respondents, the sum of P5,000.00 as reasonable rentals from 1950 to the latter part of 1955, plus attorney's fees and costs. The petition was given due course and a writ of preliminary injunction was issued.

The facts as may be gathered from the pleadings and their annexes, specially the decision now sought to be set aside, may be briefly stated as follows: In November, 1954, Corazon R. Vda. de Evangelista, in her own right and as guardian ad litem of her minor children Ambrosio Evangelista and Zenaida Evangelista, filed a complaint in the Court of First Instance of Cotabato against defendant Jose Gattoc, now petitioner, and others to recover possession of a parcel of land situated in Midsayap, Cotabato, with an area of about 16 hectares, under Tax Declaration No. 7067, assessed at P2,610.00, and for damages. It was alleged in said complaint that years before, Tomas Evangelista, the predecessor-in-interest of the plaintiffs, took possession of the land in question, subsequently filed a homestead application for the same, and was later issued a homestead patent No. 65566 on July 14, 1941; that Tomas Evangelista died on April 29, 1944, and because said homestead patent was not registered due to the outbreak of the war and because it was lost or destroyed, his

heirs, the plaintiffs, had said patent reconstituted as a result of which Reconstituted Patent No. V—28551 and Original Certificate of Title No. V—3053 were issued in the name of the heirs of Tomas Evangelista by the Register of Deeds of Cotabato on July 12, 1954; that shortly before, the outbreak of the last war in December, 1941, Tomas Evangelista left the land for Mambajao, Oriental Misamis, and appointed one Jose Chan as his overseer, but was unable to return to the place because of his death in 1944; that sometime in 1946, with the permission of the overseer, Jose Gattoc entered the land as tenant on shares, but that in February, 1950, he repudiated the tenancy and claimed the property as his own and dispossessed the plaintiffs of the same.

Jose Gattoc, through his counsel, Atty. Prudencio V. Mejia, filed his answer dated January 18, 1955, denying certain allegations in the complaint and, as a special defense, claimed that he was the original homestead applicant of the land in question; that in 1939, he mortgaged his improvements on the land and sold two houses built by him thereon to one Jose Chan, the mortgage to last for a period of seven years; that when he returned to the premises in 1946 to redeem the mortgage, the mortgagee of the land said that the land had already been applied for homestead by Tomas Evangelista, which information was confirmed by the Bureau of Lands' records in Cotabato; that he then filed a protest against the homestead entry and the issuance of the homestead patent in favor of Tomas Evangelista and "that the said protest has reached the Secretary of Agriculture and Natural Resources and although defendant was fraudulently made to sign a document purporting to be a petition to drop his appeal, the case is still pending resolution by said official." By way of counterclaim, Jose Gattoc stated that since he occupied the land in 1946, he had improved the same, incurring expenses in the amount of about P5,000.00. He asked that the court dismiss the case and declare him in lawful possession of the land in question, with a right to remain thereon until the administrative case was terminated, and that in the event that the plaintiffs are declared to have the right to occupy the land, they should pay to him the amount of his claim of P5,000.00 for improvements, plus P1,500.00 as expenses.

In their reply, plaintiffs admitted that Jose Gattoc was the original homestead applicant of the land in question, but that in 1939, he transferred all his homestead rights to the late Tomas Evangelista by virtue of which transfer, Homestead Patent No. 65566 was issued in Tomas' name on July 14, 1941, as confirmed by the decision of the Director of Lands, dated February 28, 1953, and which decision had been affirmed by the Secretary of Agriculture and Natural Resources, and had already become final and executory; and that the alleged expenses incurred by said Jose Gattoc in the amount of P5,000.00 to improve the land, if he ever made the same, was unauthorized and done in bad faith.

At the trial, neither Jose Gattoc nor his counsel appeared, and the plaintiffs were allowed to present their evidence in their absence. In his decision, respondent Judge Juan Sarenas found that Jose Gattoc entered the land as tenant in 1946 and was giving plaintiffs, through the *encargado*, part of the harvest up to the year 1950, when he refused to pay anymore rentals and claimed the land as his own; that he not only refused to pay rentals, but even collected rentals from the other tenants of plaintiffs up to the year 1955. As already stated, the decision ordered Jose Gattoc and the other defendants to immediately vacate the portion of the land that was illegally occupied by them to pay plaintiffs P5,000.00 as rentals for the period from 1950 to 1955, and their proportionate share of the P500.00 as attorney's fees, plus costs.

According to petitioner Gattoc, the decision dated August 14, 1956, came to his knowledge on September 20, 1956 and the day following, he filed his motion for new trial on the ground that he was denied his day in court, due to lack of notice of the hearing, and that excessive and unwarranted damages had been adjudged against him, the motion being accompanied by an affidavit to the effect that the trial of the case had been held without his knowledge because of lack of proper notice, and that he had been sick of influenza and malaria, and that on the day of the trial on June 11 and 12, he was weak and convalescing, which allegation was supported by the medical certificate of Dr. Gregorio P. Manubag.

On October 10, 1956, respondent Judge denied the motion for new trial. The reasons given for the denial were that the affidavit accompanying the motion for new trial could not be regarded as an affidavit of merits required by the Rules of Court, and that Jose Gattoc was duly notified of the hearing of the case, and that plaintiff Mrs. Corazon R. Vda. de Evangelista was a teacher residing in Candaba, Pampanga, and that she had to go to Cotabato in order to be present at the hearing of this case, and that if a new trial were granted, she would have to come back to Cotabato in order to be present at the rehearing, and absent herself from her classes as teacher, and would spent a considerable amount for her transportation, board and lodging in Cotabato as well as in Manila. The order further stated that Jose Gattoc was advised in open court that his motion for new trial might be granted if he deposited the amount of P500.00 with the court, for expenses of the plaintiff in coming to and returning from Cotabato, and that Jose Gattoc evidently refused to make the deposit.

Jose Gattoc moved for reconsideration of the order denying the motion for new trial, but respondent Judge denied the same by order of December 4, 1956 for lack of merit and because there was already an Original Certificate of Title No. 3053 issued in favor of the

heirs of Tomas Evangelista, the plaintiffs, on July 12, 1954.

The main question to be determined is whether or not defendant-petitioner Gattoc was duly notified of the hearing of Civil Case No. 819, either personally or through counsel. As already stated, Jose Gattoc filed his answer to the complaint in Civil Case No. 819 through Atty. Prudencio V. Mejia. Said attorney signed the answer in his personal capacity as counsel for Gattoc, although it seems that he was a member of the Sucaldito, Mejia & Narajos Law Office. There is no proof that the notice of the hearing was actually served on Atty. Mejia, his secretary or his clerk, and it seems that the notice in question was served on the law firm, through one of its clerks. If this be the case then the failure of Gattoc's counsel to attend the hearing may be regarded as excusable negligence, justifying a new trial.

* * * "and the failure of the. defendant's attorney to answer because the notice to answer was served not upon him or upon his employee but upon the employee of a business firm with which the attorney was sharing office, is excusable negligence which is a ground for a new trial." (Moran, Rules of Court, 1957 Ed., Vol. I, p. 509, citing Tecson vs. Benjamin, et al., 49 Off. Gaz., 4308).

Under the circumstances, there was no need for Gattoc to file an affidavit of merits.

"However, affidavits of merits are not necessary if the granting of the motion is not discretionary with the court, but is demandable as of right, as where the court has no jurisdiction over the defendant, or the judgment was rendered by mistake, as, for instance, when the defendant is declared in default before his time to answer had expired, or where the judgment was obtained through fraud, and in similar cases, as where the movant has been deprived of his day in court through no fault or negligence on his part because no notice of hearing was furnished him in advance so as to enable him to prepare for trial." (Moran, Rules of Court, 1957 Ed., Vol. I, p. 515, citing Valerio vs. Tan, 97 Phil., 558.) (Italics supplied.)

This, aside from the fact that because of sickness or during the period of recovery in the same, supported by a medical certificate, Gattoc claimed that he could not have attended the hearing anyway, another justification for the holding of a new trial. (Philippine Engineering Co. vs. Argosino, 49 Phil., 983; Castañeda vs. Pestaño, 96 Phil., 890; 51 Off.

Gaz. (5) 2042; see Moran, Rules of Court, 1957 ed., Vol. I, p. 508). Furthermore, it would appear from the order denying the motion for new trial that respondent Judge was disposed and ready to grant the said motion, provided that Gattoc deposited the sum of P500.00, to cover the expenses of Mrs. Evangelista in going from Pampanga to Cotabato and back. As regards this part of the order, his Honor, respondent Judge, must have been under the impression that it was necessary for Mrs. Evangelista to go back to Cotabato and attend the new trial. Said impression is not justified. According to law (Sec. 5, Rule 37 of the Rules of Court), when a new trial is granted, although the judgment is vacated, the recorded evidence taken upon the former trial, so far as the same is material and competent to establish the issues, shall be used upon the new trial without retaking the same. Mrs. Evangelista had already testified during the original hearing, and her testimony must have been taken down. There was therefore, no need for her to repeat said testimony in the new trial. Moreover, for purposes of checking on the testimony which Gattoc may give during said new trial, Mrs. Evangelista was not exactly the person to do so, because she was not present in Cotabato during the period when Gattoc entered the land in 1946, supposedly as a tenant, and when from 1950 to 1955, he claimed the land as his own and collected rentals from the tenants in the land. The person or persons competent to check the testimony of Gattoc on this matter would be the overseer or encargado of the Evangelistas, and possibly, tenants of the land. Besides, in his answer, Gattoc claimed that he never sold his homestead rights to Tomas Evangelista; that he protested the entry of Tomas on the homestead; and that said protest is still pending decision in the Department of Agriculture and Natural Resources, claims which are contrary to the allegations in the complaint. The holding of a new trial giving defendant-petitioner an opportunity to submit his evidence, would certainly and definitely decide these conflicting claims. In addition, even if the contention of Gattoc in this regard is found to be unfounded, we have his claim that he entered the land in 1946 and continued his possession up to 1955, in all good faith, during which time, he had introduced improvements valued at approximately P5,000.00. If his claim of good faith is found to be true, instead of being condemned to pay damages, as was done in the decision, he might yet be awarded damages for improvements introduced in good faith.

Considering all these circumstances herein, we believe that no harm would be done by granting the motion for new trial and giving petitioner Gattoc his day in court. Consequently, granting the petition for certiorari, the decision complained of is hereby set aside and the respondent Judge is directed to hold a new trial of Case No. 819. In the meantime, the writ of preliminary injunction will continue until the case is finally decided. No costs.

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Paras, C. J., Bengzon, Reyes, A., Bautista Angelo, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

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