

REYNALDO JIMENEZ, ET AL., REPRESENTED BY THEIR LEGITIMATE MOTHER, TERESITA VILLARAMA-JIMENEZ, PLAINTIFFS-APPELLEES, VS. ARTURO T. JIMENEZ, DEFENDANT-APPELLANT, EQUITABLE BANKING...

G.R. No. L-26797. May 27, 1968

Ponente: REYES, J. B. L., J.

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REYES, J. B. L., J.:

Appeal from a decision of the Court of First Instance of Manila, in its Civil Case No. 63697, absolving the defendant Equitable Banking Corporation from the complaint but condemning its co-defendant Arturo T. Jimenez to restore certain bank deposits, pay moral damages, attorney's fees and costs in favor of the plaintiffs.

In their complaint, filed with the court a quo, the plaintiffs - appellees, Reynaldo, Maria Teresa, Arturo Jr., Alfredo, Maria Luisa, Maria Cristina, all surnamed "Jimenez", represented by their mother, Teresita Villarama-Jimenez, alleged inter alia that they are the legitimate minor children of the defendant Arturo T. Jimenez; that during the Sweepstakes Christmas Draw on 20 December 1964, the defendant won the whole second prize in the amount of P400,000.00; that as a gift to his children, he deposited in their names the sum of P5,000.00 each or a total of P30,000.00 in the Quiapo Branch of the other defendant Equitable Banking Corporation; that as a fatherly gesture of natural love and to assuage somewhat his long neglect and abandonment of them, the defendant Arturo Jimenez gave as a Christmas present the corresponding passbooks to his wife, Teresita Villarama-Jimenez for the future security of the children; that the plaintiffs gratefully and readily accepted the passbooks; that on 22 November 1965, when the mother of the plaintiffs, in behalf of the children, went to the defendant bank to have the interest of the deposits entered in the passbooks, the bank re-fused, on the ground that all the deposits had already been withdrawn by Arturo T. Jimenez; that such withdrawal was without the knowledge of the plaintiffs and their mother and contrary to a provision of the passbooks which requires the presentation of the said passbooks; that despite several demands, the defendants refused to pay or restore the total amount of P30,000.00; that on account thereof, they suffered moral damages and were compelled to hire the services of counsel.

In due time, defendant Jimenez filed his answer, denying that the plaintiffs are his legitimate children. He averred that it was his brother who won the sweepstakes, not himself (the defendant); that his brother donated to him P50,000.00 of the prize money; that the deposits he made in the names of each of the plaintiffs were not donated but were given for safekeeping in order to protect himself from opportunists, "balato"-seekers and borrowers; that deposits were made with the understanding of the Equitable Banking Corporation that defendant Jimenez alone could withdraw the deposits; that it is not true that he abandoned the plaintiffs, but that he was the one who was deserted; that his having given the passbooks to Teresita de la Rosa-Villarama was not in the sense of transferring ownership; that the plaintiffs did not accept the money since it was not donated to them; and that the rest of the plaintiffs' allegations are not true. By way of affirmative defenses, defendant Jimenez alleged that the complaint states no cause of action; that Teresita de la Rosa Villarama is an unfit mother and guardian; that she

had squandered P10,000.00 that was entrusted to her for the support of the children; that she had maltreated the defendant and caused him moral torture, humiliation and the like.

Defendant Equitable Banking Corporation answered with admissions and denials. It averred that it admits the lack of knowledge of the plaintiffs of the withdrawals made by defendant Jimenez; that the regulation requiring the presentation of the passbooks to effect withdrawals is subject to exceptions, such as upon proof of loss of said passbooks; and that the acts of the defendant-bank in permitting the withdrawals was in accordance with accepted banking practice and the rules and regulations printed in the passbooks and in compliance with the express instructions of depositor Jimenez that he alone was to effect withdrawals from the deposit accounts. Defendant bank alleged affirmative defenses, and included in its answer, a cross-claim against Arturo Jimenez.

In a pre-trial conference held on 20 April 1966, the lower court issued the following order:

"ORDER

"At the pre-trial conference, the parties agreed that the only issue to be determined by the Court in this case is whether the defendant was justified in withdrawing the deposits he made in the names of his six minor children, the plaintiffs herein.

"For this purpose, let the trial of this case on the merits be, as it is hereby, set for May 31, 1966, at 8:30 a.m."

"SO ORDERED.

"Manila, Philippines April 20, 1966.

'AGUSTIN P. MONTESA

"Judge"

On the date set for trial on the merits, which, pursuant to the above order was 31 May 1966, the counsel for the plaintiffs did not appear, and trial was net carried on and no evidence was adduced before the court; this notwithstanding, the court issued the following order:

"ORDER

"It appearing in this case that the only issue involved herein is whether Arturo Jimenez withdrew illegally the money deposited in his own name and that of the plaintiffs by executing an affidavit to the effect that the passbook issued in favor of the depositors was lost, the parties are hereby given fifteen (15) days from today within which to submit memoranda in support of their respective contentions, after which this case will be deemed submitted.

"SO ORDERED.

"Manila, Philippines, May 31, 1966.

"AGUSTIN P. MONTESA

"Judge"

Pursuant to the above order, the parties filed their respective memoranda.

On 9 July 1966, the court a quo rendered a decision, making findings of fact and law and sentencing the defendant Arturo T. Jimenez to restore the bank deposit that he had withdrawn, pay P10,000.00 for moral damages, P3,000.00 for attorney's fees and costs.

Defendant Jimenez appealed to this court assailing the validity of the judgment for having been rendered without

trial and without evidence to support the court's findings of fact.

A case substantially similar to the one at bar is *Asuncion et al. vs. Benalisa et al.*, 100 Phil. 840, where suit was filed for recovery of title to and possession of real property on the basis of a donation where the defendant, although admitting the fact of the donation, alleged the defense of prescription. There, the lower court rendered judgment without receiving evidence on prescription. In setting aside the judgment, this Court held:

"X x x, the defense of prescription set up by the defendants would defeat plaintiffs' action, if defendants' allegations of fact in support of that defense could be proved. But the court did not receive evidence on those allegations, ruling that prescription did not lie because defendants were holding the property in trust for the plaintiffs and were, therefore, not in adverse possession thereof. The ruling is untenable because from the allegations of the answer it is clear that, from as far back as 20 years ago, the defendants have persistently refused to recognize plaintiffs' claim to the property in dispute and have also prevented the plaintiffs from taking possession thereof. These allegations sufficiently suggest adverse possession as well as positive repudiation of the supposed trust. As to whether the allegations are true or not is a matter that should be determined on the basis of the evidence. x x x." (Underscoring supplied).

In the present case, there are many controverted matters, such as the ownership of the deposits, whether the deposits were donated or given in trust, the rules and regulations of the bank, banking practices the fees of moral damages and attorney's fees, that had to be proved by evidence, but were not properly proved. The parties did not stipulate on any controverted allegation a fact, which stipulation would have validly done away with the reception of evidence on the particular matter involved. What the parties did in the pre-trial conference was to state and define the issue -- "whether the defendant was justified withdrawing the deposits" But certainly, said issue could not arise without findings of fact to serve as basis to define and resolve it and no finding of fact may be made without evidence or stipulation upon it, unless admitted in the pleadings (which, in the present case, are controverted or denied) that would justify a summary judgment or a judgment on the pleadings (*Tan vs. Gua Tian Ho*, L-18820, 29 Dec. 1962 and cases cited therein).

Appellees urge that the appellant's silence or non-objection to the order of the court requiring the parties to submit memoranda and their actual compliance with the said order is acquiescence or consent to the judgment. The argument is self-defeating: appellant acquiesced to the order, but not to the judgment. The cases, *Vergara vs. Laciapag*, 28 Phil. 43? and *Soriano vs. Ramirez*, 44 Phil. 519, relied upon by the appellee holding that no objection to the procedure in the lower court, except lack of jurisdiction, will be considered by this Court unless same was here raised, and exception is duly taken to the action of the court overruling it, do not apply in the instant case. The cited cases did not involve a judgment with findings of fact or no evidence. In the case of *Vergara*, evidence was received by the trial court, while in the *Soriano* case, the matter involved was the discretionary power of the court to require notification of a hearing of a motion for new trial based on insufficient evidence.

Nor can the present case be considered as one of judgment by consent, at par with *Manila Railroad Co. vs. Arzadon*, 20 Phil 452, in the latter case, involving an expropriation, the parties agreed to the commissioner's report and requested the court to enter the corresponding judgment. Here, the parties have not agreed on anything, and they differ on the justification for the withdrawals from the bank. The fact that the parties submitted memoranda did not make the case ripe for decision, as questions of fact remain to be determined from evidence.

Finally, remand is made necessary by Article 222 of the Civil Code of the Philippines, that forbids the filing or maintenance of a suit between members of the same family (in this case, children against their father) unless it should appear that efforts toward a compromise have been made but that the same have failed. Such efforts must be properly proved, or the case will have to be dismissed.

FOR THE FOREGOING REASONS, the appealed judgment is hereby set aside and the case is ordered remanded to the court of origin for further proceedings. No costs.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Castro, and Angeles, JJ., concur.

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