

VENANCIO CASTAÑEDA, ET AL., PLAINTIFFS AND APPELLEES, VS. PASTOR DE AGO, ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. L-14066. June 30, 1961

Ponente: DIZON, J.

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DIZON, J.:

Appeal from the decision of the Court of First Instance of Manila dated May 30, 1957, and its order of March 7, 1958, (R. A. pp. 46-58 & 156-157). The former sentenced appellant Pastor De Ago as follows:

"* * * to return to the plaintiffs the three pieces of machinery described in the complaint or to pay them jointly and severally the sum of P30,000. Said defendants are also hereby sentenced to pay the plaintiffs jointly and severally the sum of P1,750 for the month of August 3, to September 3, 1954 and from September 4, 1954 and until the three pieces of machinery are returned to the plaintiffs or paid them the sum of P30,000, the sum of P1,312.50 monthly, deducting therefrom the sum of P3,000 admitted by the plaintiffs to have been paid to them by the defendant, plus the sum of P2,000 as attorney's fees, with legal interests on all those amounts from the date the complaint was filed and until they are fully paid. Said defendants are also sentenced to pay the costs of these proceedings."

The order appealed from denied appellant's original and amended motion for reconsideration and new trial.

Appellees commenced this action to recover from appellant the three pieces of machinery described in their complaint, the sum of P18,000, with interest thereon at the legal rate from the date of filing of the complaint, the additional sum of P2,000 as attorney's fees, and the costs of suit. The complaint alleged that appellees delivered to appellant the machineries described therein together with one D-7 Caterpillar Tractor with a Bulldozer, as their share in the capital of the logging business they had agreed to engage in with him for a period of one year from August 3, 1954; that their written contract provided that appellant and appellees would divide, equally the profits that may be realized in the business in excess of the sum of P1,750, this amount having been agreed to be the least share of appellees in said profits, to which they would be entitled even if the profits realized were less than said sum; that the tractor was returned to appellees after one month use; that appellant had paid to appellees, on account of their share in the profits, only the sum of P3,000; that upon expiration of the period of one year agreed upon, appellees demanded from defendant the return of the three pieces of machinery and the payment of their share in the profits of their business, but appellant refused to comply with such demand and instead asked that their agreement be renewed.

Appellant filed his answer alleging that appellees had not complied with their obligation to furnish him with the spare parts and accessories necessary to place the machineries in working condition, to obtain which appellant had to spend the sum of P19,640; that the D-7 Caterpillar was not returned by him but was seized from him by virtue of a writ of replevin issued in another case. By way of counterclaim, appellant sought to recover damages resulting from the taking away from him of the D-7 Caterpillar Tractor and appellees' failure to comply with other stipulation of their agreement.

Because neither appellant nor his counsel appeared when the case was called for trial on August 14, 1956, appellees were allowed to present their evidence, and on May 30, 1957 the court rendered the decision appealed from.

On July 1, 1957 appellant filed his original verified motion for reconsideration, the principal ground relied upon therein being that the notice of trial was sent to the Manila address of Atty. Mariano Yap who was no longer his attorney at that time; that in the latter part of December, 1955 appellant requested a clerk in the law office of his attorney Francisco Cupin to tell the latter to file his appearance in substitution of Atty. Yap "but due to the fact that Atty. Francisco Cupin was busy at that time with his election protest in connection with the 1956 mayoralty fight in Butuan City where Atty. Cupin was a candidate, as found out later by the defendant Mr. Ago, said clerk was unable to tell Atty. Cupin of this request and as a result no such change of counsel and addresses was duly made"; that when the office of Atty. Yap received the notice of trial, his clerk sent the same by ordinary mail to appellant in Butuan City, which notice however, was never received by him; that these circumstances caused his failure to appear at the trial.

The above-mentioned motion for reconsideration, however, was not accompanied by any affidavit of merits. Appellees, on July 19, 1957, opposed it precisely on this particular ground, and further contended that the negligence or mistake committed by appellant and counsel was not excusable. On January 31, 1958 appellees filed a supplemental opposition alleging that appellant's attorneys of record were Attys. Calo, Cupin and Yap ; that it was only after 15 months from the date of the trial and 5 months after appellant learned of the decision that said law firm withdrew its appearance from the case. In this connection it is worthy of notice that the original motion for reconsideration (R. A. pp. 64—68) was signed by Atty. Francisco R. Cupin, a member of said law firm.

On February 1, 1958, that is, seven months after the filing of the original motion for reconsideration, appellant filed a verified amended motion for reconsideration and new trial, supported by the affidavits of appellant Pastor D. Ago, in one of which he claimed that he had a good and valid defense showing—contrary to the allegation made in his answer to the complaint to the effect that their agreement was renewed for one year—that the written agreement attached to the complaint as Annex "A" and on which appellees based their cause of action had been cancelled prior to the filing of the complaint and upon the seizure by replevin of the D-7 Caterpillar Tractor with bulldozer mentioned therein—which seizure took place only a month after the contract was entered into on August, 1954; that appellees had committed a breach of the aforesaid agreement by not furnishing appellant with the required spare parts and accessories to put the remaining machineries in running condition; that said breach on the part of appellee entitled appellant to withdraw from the agreement; that after the cancellation of the agreement on September 12, 1954, the parties thereto agreed that appellant would simply rent the remaining machineries at the rate of P750 per month, which rent appellant had been paying until the present action commenced. Appellees objected to the consideration of the amended motion claiming that the same was filed without leave of court and not in accordance with the requirements of Section 3, Rule 17; that the affidavit of merits did not state facts but mere conclusions; that it was filed too late, that is, more than 7 months after appellant had received notice of the decision.

After appellant had filed a reply to this opposition, the lower court issued its order of March 7, 1958, the pertinent portions of which read as follows:

"The original motion was patently defective; and to admit, and give due course to, the amended motion would in effect allow a motion for reconsideration—or call it a petition for relief—beyond the period or periods fixed by the Rules of Court. Indeed, the Court cannot accept defendants' theory that they were not legally notified of the trial or that they have filed appropriate motion or petition with the necessary affidavits of merit within the reglementary period.

"Wherefore, the motion for reconsideration as well as the amended motion for reconsideration is denied for lack of merit."

The issue decisive of this appeal, therefore, is whether or not the lower court erred in denying the motion for reconsideration and the amended motion for reconsideration and new trial mentioned heretofore. In the light of the facts already stated above, we are constrained to hold that the lower court did not commit this error.

The record discloses that the attorneys of record of appellant who filed his answer to the complaint were Attys. Calo, Cupin and Yap . On the other hand, appellant admits that the notice of the trial was sent to and was received by Atty. Mariano Yap, a member of said law firm. At that time no withdrawal of appearance had been filed neither by the aforesaid law firm itself nor by Atty. Yap alone. Consequently, appellant's own allegations show that the service of the notice of the trial was proper and in accordance with the rules.

Moreover, appellant's original motion, as the lower court held, was fatally defective, firstly, because it did not sufficiently prove by affidavit or otherwise the alleged accident, mistake or excusable negligence relied upon, and secondly, the same was not supported by an affidavit of merits showing that appellant had a good and valid defense.

This latter defect appellant obviously sought to cure more than seven months later when he filed his amended motion for reconsideration and new trial. It must be adverted to that when appellees, on July 19, 1957, filed a written opposition to appellant's original motion for reconsideration, they pointed out as first ground in support thereof precisely the lack of affidavit of merits to support the aforesaid motion. Although appellant had notice of this defect of his motion since then, it was only on February 1, 1958, that is, almost seven months thereafter that he made a desperate attempt to cure it by filing an amended motion.

Now, as far as appellant's appeal from the decision of the lower court is concerned, little need be said. The evidence presented by appellees was uncontradicted and sufficiently supports the findings of fact made and conclusions of law drawn therefrom by the trial court. We agree, therefore, with the lower court that appellees are entitled to the return of the three pieces of machinery described in their complaint or to the payment of their value in the sum of P30,000, and that in accordance with the contract Exhibit A, they are further entitled to the sums of money specified in the dispositive part of the decision appealed from.

Wherefore, the decision and the order appealed from are affirmed, with costs.

Bengzon, C.J., Padilla, Labrador, Concepcion, Reyes, J.B.L., Paredes, De Leon and Natividad, JJ., concur.

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