

CLARO J. GIL AND (MRS.) CLARO J. GIL, PETITIONERS, VS. F. IMPERIAL REYES, JUDGE OF THE COURT OF FIRST INSTANCE OF ILOILO, CONSTANTINO Z. CANTO, PROVINCIAL SHERIFF OF ILOILO, REG...

G.R. No. L-2758. December 07, 1949

Ponente: PARAS, J.

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PARAS, J.:

In civil case No. 928 of the Court of First Instance of Iloilo, for annulment of contract, the herein petitioners are the plaintiffs and the herein respondents Regoberto A. Aguirre, Maria Jereos and Sofronio Flores, are the defendants. Trial was set for July 2, 1948, notice of which was received on June 22, 1948, by Atty. Gaudencio D. Demaisip, representing the petitioners.

On the date of trial, as neither Attorney Demaisip nor the petitioners appeared, the court, upon motion of respondents, dismissed the complaint and rendered judgment on the pleadings as to the counterclaim of respondents. Copy of the judgment dated July 3, 1948, was received by Attorney Demaisip on July 3, 1948. On July 24, 1948, the petitioners, through Atty. Alfredo Zerrudo, filed a motion for reconsideration alleging that petitioners' failure to appear at the trial was due to excusable negligence, in that their former attorney, Gaudencio D. Demaisip, received notice of trial in Manila; that thereupon Attorney Demaisip wrote the petitioners, advising the latter to secure the services of another attorney; that petitioners received Attorney Demaisip's letter on July 3, 1948, or one day after the date fixed for the trial. Hearing of the motion for reconsideration was set for August 7, 1948; but upon request of Attorney Zerrudo, the court, in spite of strong opposition by attorneys for respondents, postponed said hearing to November 5, 1948. After hearing, the motion for reconsideration was denied in the order of the Court of First Instance of Iloilo of November 5, 1948, notice of which was received by Attorney Zerrudo on November 8, 1948. On December 14, 1948, a writ of execution was issued and several properties of petitioners were levied upon by the provincial sheriff of Iloilo who advertised the same for sale on February 10, 1949. No steps were taken by the petitioners or their attorney until February 3, 1949, when the present petition for certiorari and prohibition was filed in this Court by the petitioners against the respondents seeking the annulment of decision of the respondent judge of July 2, 1948, and the reopening of civil case No. 928. A writ of preliminary injunction was issued by this court on February 10, 1949.

The respondent judge did not commit any abuse of discretion in denying petitioners' motion for reconsideration. The former attorney of petitioners received notice nine days before the date of the trial. Although he was in Manila, there was ample time for him to notify, by adequate means of communication, the petitioners regarding any step to be taken in connection with said trial. It is of common knowledge that, between Manila and Iloilo, there was at the time telegraphic service, aside from regular mails by air and steamers. At the least, it was to be expected that if the attorney of record was not sure of contacting the petitioners on time, he should have filed a timely motion for postponement. This was not done in the case at bar. At any rate, the new attorney of petitioners, could have properly interposed an appeal from the decision of July 2, 1948, and the order denying the motion for

reconsideration,—a remedy which, however, said attorney had filed to avail himself of. Indeed, it may be remarked that there was rather too much negligence or indifference on the part of petitioners and their counsel.

Wherefore, the petition will be as the same is hereby dismissed and the writ of preliminary injunction heretofore issued is dissolved. So ordered, with costs against the petitioners.

Moran, C.J., Bengzon, Montemayor, Reyes, and Torres, JJ., concur.

DISSENTING

OZAETA, J.:

I feel that miscarriage of justice was committed by the respondent judge in refusing to reopen the case and to try it on the merits. As a result the petitioners (plaintiffs below) not only lost or forfeited to the respondents their land of 45,067 square meters worth more than P1,200, for an allegedly usurious loan of P360, but were also adjudged to pay to the defendants by way of damages 40 cavans of palay a year from 1942 to the date of the payment, or a total of not less than 280 cavans of palay, or its value at the current price of that commodity. By the time the judgment is executed, the damages so adjudged in favor of the defendants will aggregate about P4,000.

I hold that the judgment for damages, which was awarded without proof but upon the sole allegation of defendants' counterclaim, was rendered without due process of law and therefore null and void. It is true that the defendants alleged in their answer by way of counterclaim that in view of the refusal of the plaintiffs to deliver the possession of the land in question to the defendants the latter suffered damages at the rate of 40 cavans of palay a year. It is likewise true that the plaintiffs, answering said counterclaim, merely set up a general denial. But that did not authorize the trial court to render judgment for damages without proof; for section 8 of Rule 10 provides that "material averment in the complaint (in this case counterclaim), other than those as to the amount of damage, shall be deemed admitted when not specifically denied."

CONCURRING AND DISSENTING

TUASON, J.:

I agree with the majority decision in so far as it affirms the dismissal of the complaint. I dissent in so far as it sanctions the award of damages to the defendants based on the allegations in the counterclaim not substantiated by proofs. Even in cases of default such judgment is not allowed: the plaintiff is required to prove his allegations by competent evidence.

Padilla, J., I concur.

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