

NUMENCIANO BRACA AND PRIMITIVA C. BRACA, PETITIONERS, VS. BIENVENIDO TAN, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, AND THE PHILIPPINE SURPLUS COMPANY, RESPONDENTS.

G.R. No. L-3053. September 21, 1949

Ponente: OZAETA, J.

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OZAETA, J.:

In civil case No. 1007 of the Court of First Instance of Negros Occidental, the petitioners, on December 10, 1948, obtained a judgment for P2,281.20 against the respondent Philippine Surplus Company under the Workmen's Compensation Act on account of the accidental death of their son which occurred in the performance of his duty as an employee of said company. The latter received copy of the decision on December 21, 1948.

On January 10, 1949, i.e., after the lapse of 15 days allowed by section 17 of Rule 41 for the perfection of an appeal in workmen's compensation cases, the respondent company filed a motion to set aside the judgment and to reopen the case on the ground that it had failed to receive the notice of the trial because its manager was then in Baguio. The court denied said motion on January 15, 1949, and on February 4 the respondent company filed a notice of appeal from the judgment, which was disallowed by the court on the ground that it was presented out of time. A motion for reconsideration of the order disallowing the appeal was subsequently filed and likewise denied by the court.

On May 31, 1949, the Philippine Surplus Company filed civil case No. 841 in the Court of First Instance of Rizal, seeking relief under section 2 of Rule 38 from said judgment of the Court of First Instance of Negros Occidental and praying for a writ of preliminary Injunction to restrain the sheriff of Rizal City from complying with the writ of execution issued by the Court of First Instance of Negros Occidental. The respondent judge issued the writ of preliminary injunction prayed for, ordering the sheriff to abstain from executing the judgment in question during the pendency of the petition for relief from said judgment.

The present petition for prohibition was presented in this court to prohibit the respondent judge from hearing said petition for relief under section 2 of Rule 38 on the ground that he had no jurisdiction to take cognizance thereof.

Section 2 of Rule 38 provides:

"When a judgment or order is entered, or any other proceeding is taken, against a party in a Court of First Instance through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same cause[1] praying that the judgment, order, or proceeding be set aside."

Section 3 provides that the petition must be filed within sixty days after the petitioner learns of the judgment and not more than six months after such judgment was entered; and must be accompanied by affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be, which he may prove if his petition be granted.

Section 4 provides that if the petition is sufficient in form and substance to justify such process, the court in which

it is filed, or a judge thereof, shall issue an order requiring those against whom the petition is filed to answer it within fifteen days from the receipt thereof.

Section 6 provides that if the petition is sufficient in form and substance to justify such process, the court in which it is filed, or a judge thereof, shall issue an order requiring those against whom the petition is filed to answer it within fifteen days from the receipt thereof. Section 6 provides that once the answer is filed, or the time for its filing has expired, the court shall hear the case, and if after such hearing the court finds the allegations of the petition are not true, the petition shall be dismissed; but if it finds said allegations to be true, it shall order the judgment complained of to be set aside, upon such terms as may be just, and shall try the principal case upon its merits.

Section 7 provides that where the judgment set aside is that of a Court of First Instance, such court shall proceed to hear and determine the case as if a timely motion for new trial had been granted therein.

It is clear from the foregoing provisions of Rule 38 that the petition for relief from a judgment of the Court of First Instance must be filed in the same court that rendered the judgment and in the same cause wherein the judgment was rendered; and that if the court finds the allegations of the petition to be true, it shall set aside the judgment and try the principal case upon its merits as if a timely motion for new trial had been granted therein.

It results therefore, that the Court of First Instance of Rizal has no jurisdiction to hear and decide the petition for relief from the judgment of the Court of First Instance of Negros Occidental not only because section 2 of Rule 38 expressly requires that such petition be filed in the latter court and in the same case but also because, although the principal case could have been originally brought either in the Court of First Instance of Rizal where the defendant has its domicile, or in the Court of First Instance of Negros Occidental where the plaintiffs reside, once the latter court had taken cognizance of said case, it acquired jurisdiction to the exclusion of the former. To permit the Court of First Instance of Rizal to set aside the judgment rendered by the Court of First Instance of Negros Occidental in civil case No. 1007 and to try said case upon its merits, would produce the anomalous effect of depriving the latter court of the jurisdiction which it had already acquired over the case and of transferring that case to another court of the same category at the instance of the losing party.

"Equitable relief from a judgment may be granted by the court which rendered the judgment, where such court exercises jurisdiction both at law and in equity. Indeed, it has been held that such relief may not be granted by another court possessing the same jurisdiction as the court which rendered the judgment, or by another court possessing general equity jurisdiction." (31 Am. Jur., Judgments, sec. 628, p. 213.)

As a matter of fact, the respondent company had exhausted all its remedies in the proper court, the Court of First Instance of Negros Occidental, which had denied its motion of January 4, 1949, to set aside the judgment and to reopen the case, for lack of merit.

Let the writ of prohibition be issued as prayed for. The order of the respondent judge of May 31, 1949 granting the writ of preliminary injunction against the sheriff of Rizal City is hereby annulled. The respondent Philippine Surplus Company shall pay the costs.

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

MORAN, C. J.:

Mr. Justice Padilla voted to grant.

[1] NOTE.—The phrase "and in the same cause" appearing in the official edition of the Rules of Court has been

inadvertently omitted in Moran's Comments on the Rules of Court.

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