

FEDERICO CAÑETE AND PEDRO RUDAS, PETITIONERS VS. HON. JUDGE, COURT OF FIRST INSTANCE OF ZAMBOANGA DEL SUR AND GANLAY AMBAN, RESPONDENTS.

G.R. No. L-21743. May 04, 1968

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Original petition for certiorari to annul the proceedings taken by respondent judge in Civil Case 577 of the Court of First Instance of Zamboanga del Sur, sitting at Pagadian, entitled "Ganlay Amban, Plaintiff, vs. Federico Cañete and Pedro Rudas, Defendants."

The present proceedings had its roots in the case just mentioned for possession and damages lodged on January 29, 1960 by private respondent Ganlay Amban against petitioners. The complaint charges that sometime in May, 1957, petitioner Cañete entered into the possession of a five-hectare portion of respondent Amban's 8-hectare land described in the complaint, located in Camanga, Malangas, Zamboanga del Sur, upon a lease whereunder Cañete was to pay Amban an annual rental of P50.00 per hectare per year; that sometime in 1958, petitioner, after having a very good harvest, refused to pay the stipulated rentals despite repeated demands and started asserting ownership over the land. Petitioner Rudas is in the case because he is the tenant of his co-petitioner.

Petitioners' answer of February 29, 1960 traversed the foregoing complaint with the averment that Cañete purchased from Amban the five-hectare portion in 1953, although the deed therefor was executed in 1955.

When the case was called for hearing on October 18, 1962, petitioners and their counsel did not appear. The court directed that plaintiff's (private respondent's) evidence be taken ex parte before the clerk of court.

Came the lower court's decision of November 23, 1962. It recites that petitioner Cañete, a school teacher, thru fraud and deceit, made respondent Amban, an unlettered non-christian Subano, execute a purported lease contract which turned out to be a deed of absolute sale;^[1] that said document was not approved by the Provincial Governor as prescribed by law in reference to conveyances of real property by any member of the non-christian tribes, the result being that "defendants' pretended right to remain in the land in question cannot be legally sustained." Whereupon, the decision directed petitioners and all those claiming under them to vacate the disputed land and restore possession thereof to Amban, and sentenced said petitioners, jointly and severally, to pay Amban P100.00 a year as damages from the filing of the complaint until possession is turned over to Amban, plus P200.00 as attorneys' fees, and the costs.

Copy of this judgment was received by petitioners on December 10, 1962.

Meanwhile, petitioners filed an unverified motion dated November 27, 1962 to reconsider the October 18 order and to have the case set for trial on the merits. Ground therefor was that counsel sent to respondent judge a telegraphic request for postponement as he (counsel) was attending to his wife who had undergone an operation, and he himself was operated on for appendectomy, in the Community Hospital in Cebu City, making it impossible

for him to appear at the hearing of October 18; and that as a matter of fact, by reason thereof, the court itself allowed the postponement of the trial of another case handled by counsel (Civil Case 621, entitled "Mindanao Lumber Company vs. Gaudioso Nolasco"). He also made mention of the fact that the case was not ready for trial because previously - on March 7, 1961 - the court issued an order directing a commissioner to relocate the land claimed by plaintiff in his complaint and the land over which defendants asserted ownership.

By order of February 15, 1963, petitioners' motion for reconsideration was rejected.

It was respondent Amban's turn to move on January 24, 1963 for the execution of the judgment of November 23, 1962. This was, however, denied by respondent judge on February 23, 1963. But then, on March 13, 1963, Amban asked for a reconsideration of that denial, his claim being that the record then already showed that petitioners received by registered mail on December 10, 1962 copy of the decision; and that the lapse of more than three months notwithstanding, petitioners have not appealed.

On March 19, 1963, petitioners' counsel wired the court from Manila. He requested that the hearing of Amban's motion to reconsider set for March 20, be transferred to the April calendar. His reason was that he was in Manila upon an urgent transaction. He also claimed that he had not as yet received notice of the court's resolution on his November 27, 1962 motion to set aside the October 18 order.

On March 20, 1963, as scheduled, the trial court heard Amban's motion for reconsideration, apparently without the presence of petitioners' counsel; and, on March 22, 1963, reconsidered its previous order denying execution, and granted the same.

Copies of the March 22, 1963 order (granting execution) and the February 15, 1963 order (denying petitioners' motion for reconsideration dated November 27, 1963) were mailed on March 15, 1963 to petitioner's, counsel, who received them on April 3, 1963.

On April 22, 1963, petitioners lodged in the Court of First Instance of Zamboanga del Sur a petition for relief. Specifically prayed for therein is the setting aside of the orders of October 18, 1962, February 15, 1963, March 22, 1963 and the decision of November 23, 1962.

On May 13, 1963, the trial court, this time presided over by Vacation Judge Benedicto, denied the petition for relief.

Adverted to at the beginning is that the case is before us on certiorari. Focal point is the alleged abuse of discretion in issuing the orders complained of and in rendering the decision below.

1. The preliminary question before us is whether or not the case was ready for trial on October 18, 1962. It is said that by order of March 7, 1961 the court appointed a commissioner to relocate the land claimed by Amban in his complaint and the land over which Cañete asserted ownership by purchase from plaintiff, and likewise directed that the case be calendared after the commissioner's report. But suggestion is made in the record that the commissioner so appointed (Marcelino Malate, of Survey Party 18-D of the Bureau of Lands at Malangas, Zamboanga del Sur), has moved to Davao City. So, no relocation was made. If really this relocation is so important to defendants, they should have moved in the premises. Which was not done. At any rate, the answer of Cañete to the complaint below did not question the fact that he took possession of the five-hectare land. That land was identified in the decision below as the western portion of the bigger area belonging to Amban. The mere fact then that no relocation was made did not divest the court below of its power to hear the case and resolve the conflicting rights of the parties. That the court did so is now no ground for complaint.

2. But is the court justified in directing that the case be heard on October 18, 1962? The grievance presented to

this Court by petitioners is this: whereas the trial judge, upon the same counsel's representation that both petitioners' counsel's wife and counsel himself were operated on in October, 1962, postponed Civil Case 621 (Mindanao Lumber Company vs. Gaudioso Nolasco) scheduled for October 17, the same judge did not apply the same yardstick with reference to the present case (Civil Case 577) scheduled for the next day, October 18.

But then, as stated by respondent judge in his answer to the petition before this Court, the circumstances of the two cases are quite different. For, indeed, the defendants in Civil Case 621 were not notified of the hearing; so it could not have been tried. Particularly in reference to the present case, respondent judge's position is that it has been postponed four times: the first upon stipulation of the parties; and the last three times upon application of counsel for petitioners. There was the judge's statement, too, that this case - "which has been pending for sometime" - "has been unduly and unreasonably postponed at the instance of petitioners."

Really, petitioners' counsel should have made arrangements to have this case postponed, but not at the last hour. The notice of hearing for October 18 was received by petitioners' counsel on September 25, 1962. He did not leave for Cebu with his wife until October 2. He has had previous advice of a physician in Pagadian that he should take to Cebu his wife who was suffering back pains due to a cyst. Knowing that this case had been postponed for the last three times at his own request, he should have foreseen that further postponement might not meet with the court's approval, unless the move therefor be made on time to save the adverse party from another trip to the court and unless the court can be definitely convinced of a valid reason therefor. Petitioners' counsel did nothing to arrange for a postponement of this case before he left for Cebu. Neither did he ask his clients to engage the services of another counsel. In Cebu, his wife submitted to an operation on October 5. That was a warning signal for him to have sent posthaste a rush petition for postponement with notice to the adverse party and, if necessary, to do so by means of telegrams. Again, he did not. He waited until he himself was operated on for appendectomy. And that was already on October 10, eight days before the scheduled trial set for October 18. Worse, the record does not yield any notice to Amban's counsel of his telegraphic petition. Much less did he request counsel for Amban to agree to a postponement. Amban and his counsel could have been spared the trouble and expense of going to court on the day of trial.

If because of all these circumstances of the case, the court directed that the case proceed in obedience to the salutary policy of expediting disposal of cases to forestall clogging of dockets, petitioners' counsel had but himself to blame. He had no reason to rely on the liberality of the court nor on the generosity of the adverse party. He cannot tag the court with abuse of discretion in issuing its order of February 15, 1963 denying his motion for reconsideration of the order of October 18, 1962.

And more. Petitioners' counsel left the hospital on October 16, 1962. He went home. As he had not yet received notice from the court as to what happened to his telegraphic petition for postponement, his duty to his clients should have urged him to make inquiry as to the fate of his said petition. Nothing in the record would persuade us to believe that he was not in a position to do so. After all, he was merely operated on for appendectomy. Nothing was done. He did not breathe a word until the 27th of November when he moved for the first time to set aside the order of October 18 directing the taking of plaintiff's evidence. Had he timely acted, he could have discovered that as of that date a decision was already written by the court.

Actually, he did receive the court's decision dated November 23, 1962 on the following December 10. He should have right away moved to reconsider that decision if only to call the court's attention to the fact that his motion of November 27, 1962 had not yet been resolved. Which he did not. And this, in spite of the fact that his motion for reconsideration of November 27 was opposed by respondent Amban on November 29. When counsel for Amban, on January 24, 1963, moved for the execution of the judgment upon the ground that it had become final, counsel for petitioners was again given notice thereof. That should have drawn the attention of petitioners' counsel that his

clients' case was in grave peril because on December 10, 1962, by his own admission, he received notice of that decision. That motion, of course, was denied. When respondent Amban, on March 13, 1963, filed his motion to reconsider the court's denial of his petition for execution, petitioners were afforded an opportunity to urge the court for a relief from the effects of the judgment. Respondent Amban's motion for recon-sideration of March 13 was set for hearing on March 20, 1963. Petitioners' counsel knew of this. But he did not attend the hearing because, on March 19, he wired the court that he was in Manila on some important business. Neither did he ask another lawyer to appear for him.

Negligence here is apparent.

3. By the time the court granted the writ of execution on March 22, 1963, the judgment had become final. There is the final decision of November 23, 1962 which petitioners' counsel confessed to have received on December 10. The 30-day period for appeal had thus long since elapsed. The decision having become final, obviously it is mandatory on the part of the trial court, on petition of the prevailing party, to issue the writ of execution to enforce the judgment.

Defendants' (petitioners') counsel may not invoke the alleged pendency of his motion of November 27, 1962 to reconsider the order of October 18, 1962. He cannot lackadaisically fold his arms and wait for a resolution on that motion before he acts on the court's final decision. For, a court's decision is no piddling matter. It concludes the controversy between the parties to a litigation. It should not be treated so lightly.

And from a legal viewpoint, the fact that the court did not rule on that motion is not now to be debated. The court's order of March 22, 1963 reconsidering its previous stand and granting plaintiff's motion for a writ of execution amounts to a denial of that motion for reconsideration which, after all, is but an interlocutory order and refers to the directive to receive plaintiff's evidence in the absence of defendants.

Petitioners should not even have waited for that order of execution. They should have filed their petition for relief from judgment within the 60-day period following their receipt of copy thereof on December 10, 1962.[2] As this Court reiterated in *Cruz vs. Ernesto Oppen, Inc.*, L-23861, February 17, 1968: "a doctrine which gained foothold through reiteration is that the 60-day period set forth in Rule 38 is absolutely fixed, inextendible, never interrupted, and cannot be subjected to any condition or contingency. Because the period fixed 'is itself devised to meet a condition or contingency'; the equitable remedy in Rule 38 'is an act of grace, as it were, designed to give the aggrieved party another and last chance'; and a petitioner for relief being in the position of one who begs, such party's privilege is not to impose conditions, haggle or dilly-dally, but to grab what is offered him." [3]

Since the 60-day period set forth in Section 3, Rule 38 of the Rules of Court, has elapsed before he filed his petition for relief in the lower court on April 22, 1963, that petition was correctly stricken down as filed out of time

4. Nor will such petition for relief—even on the assumption that it was filed on time—deserve consideration. First. The plain copy of that petition for relief, Annex S of the petition herein, does not show on its face that it is verified. Second. It does not attach thereto, an affidavit of merits. It again violates Section 3, Rule 38 of the Rules of Court, as interpreted by an un-broken line of jurisprudence.[4]

5. We go to the merits of defendants' case as against plaintiff as set forth in the petition for relief. Petitioners' claim of ownership is predicated upon a deed of sale in favor of petitioner Cañete and thumbmarked by private respondent Amban, an unlettered non-Christian Subano. That alleged deed of sale is not even acknowledged before a notary public. It is a private document. It does not bear the imprimatur of the Provincial Governor — a statutory requirement. Correctly then did respondent judge say in his decision that the deed cannot be legally

sustained.[5]

Petitioners' eleventh-hour effort to sidetrack the Governor's approval by an equally eleventh-hour averment that the land involved is within the Malangas Coal Mine Reservation will not help petitioners any. If respondent Amban has no right to the land, neither can petitioner Cañete claim any.

Petitioners have not made out a case of grave abuse of discretion as will call for the corrective powers of this Court.

We, accordingly, deny the petition for certiorari.

Costs against petitioners.

SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Ruiz Castro, Angeles, and Fernando, JJ., concur.

Petition denied.

[1] The sum of P230 is the consideration recited in the unnotarized deed of sale executed on November 28, 1955 — of the rights of the Amban spouses to the hectare land declared for taxation purposes in Amban's name including all improvements (Amban, according to the decision, planted thereon 700 coconut trees and bananas, as well as seasonal drops of palay).

[2] See: Concurring Opinion of Mr. Justice Arsencio P. Dizon in *Balite vs. Cabangon*, 1967 Phil. 374, 377, which reads: "I concur with the opinion penned by Mr. Justice Jose P. Bengzon, in the result, for the reason that, in my opinion, the provisions of Rule 38 of the Rules of Court apply only when the order or judgment from which relief is sought has become final and executory (*Veluz vs. Justice of the Peace* etc. 42:557, 563; *Anuran vs. Aquino*, 38:29; *Punzalan vs. Papica*, L-13804, Feb. 29, 1960). In the case at bar, relief is sought from an order of default — which is merely of an interlocutory character. This is the reason why in *Prudential Bank etc. vs. Macadaeg*, G.R. No. L-10454, May 25, 1959, we held:

"However, in other decisions, the opinion was expressed that a default order being interlocutory, is subject to the control of the court and may be modified or rescinded at any time before final judgment [*Larrobis vs. Wislizenus*, 42 Phil. 401, 404, *Mandian vs. Leong*, L-10564, April 25, 1958].

"From these decisions the resultant principle appears to be that an order of default may be set aside at any time before final judgment, provided the petition for vacating it is made within six months after entry of the order."

[3] Citing *Palomares vs. Jimenez*, 90 Phil. 773, 776; *Rafanan vs. Rafanan*, 98 Phil. 162, 164-165; *Gana vs. Abaya*, 98 Phil. 165, 167; *Smith, Bell & Co., Ltd. vs. Philippine Milling Co.*, 57 O.G. No. 15, pp. 270]; 2702; *Quijano vs. Tameta*, 59 O.G. No. 4, pp. 545-546; *Mercado vs. Domingo*, L-19452, December 17, 1966.

[4] *Coombs vs. Santos*, 24 Phil. 446, 451-452; *Mapua vs. Mendoza*, 45 Phil. 424, 428; *McGrath vs. Del Rosario*, 49 Phil. 330, 331-333; *Paz vs. Inandan*, 75 Phil. 608, 612; *Omandam vs. Director of Lands*, 95 Phil. 450, 453; *Price Stabilization Corporation vs. Court of First Instance of Manila*, 97 Phil. 153, 156; *Fajardo vs. Bayona*, 98 Phil. 659, 662; *Villanueva vs. Alcoba*, 101 Phil. 277, 287; *Abao vs. Virtucio*, L-16429, October 25, 1960; *Fernandez vs. Tan Tiong Tick*, L-15877, April 28, 1961; *Alquesa vs. Cavada*, L-16735, October 31, 1961; *Rosario vs. Alonzo*, L-17330, June 29, 1963.

[5] Sections 145(b) and 146, Administrative Code of Mindanao and Sulu. *Madale vs. Sa Raya*, 49 O.G. No. 2, pp.

536, 537-538; Mangayao vs. Lasud, L-19252, May 29, 1964.

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