

POLICARPO MENDEZ, PLAINTIFF AND APPELLEE, VS. SENG KIAM AND SE NGA, DEFENDANTS AND APPELLANTS.*G.R. No. L-9651. May 23, 1960*

Ponente: PADILLA, J.

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On 1 March 1951 the plaintiff brought an ejectment suit in the Court of First Instance of Lanao to recover from the defendants the possession of a parcel of land containing an area of 11 hectares, situated in Dalipuga, Iligan City, described in the complaint; P10,000, the value of the coconuts that the plaintiff failed to harvest in the parcel of land from 1940 to the filing of the complaint; P960, the value of the coconuts the plaintiff would fail to harvest in the parcel of land every quarter from the date of the filing of the suit until possession thereof is restored to him; and P500 for attorney's fees. He further prays for costs and other just and equitable relief. On the same date, 1 March, the plaintiff filed a motion praying for extraterritorial service of summons by registered mail pursuant to sections 17 and 18, Rule 7, upon the defendant Seng Kiam, whose known address was Quemoy, China. On 24 March 1951, the defendant Se Nga filed a motion praying for the dismissal of the complaint on the ground that the plaintiff's cause of action is barred by the statute of limitations and that the complaint states no cause of action. On 4 April 1951 the plaintiff filed a motion praying that the defendant Se Nga be adjudged in default. On 24 April 1951 the Court entered an order summoning the defendant Seng Kiam to appear before it on 4 September 1951 at 8:30 o'clock in the morning, and to answer the complaint filed against him by the plaintiff, with a warning that should he fail to do so, the plaintiff would take judgment against him by default and demand the relief prayed for in the complaint, and directing that a copy of the order be published in the Manila Times, a newspaper edited in the City of Manila, with general circulation in the province of Lanao, once a week for three consecutive weeks at the expense of the plaintiff, and that a copy of the order and of the complaint be sent by the Clerk of Court by ordinary mail addressed to the defendant Seng Kiam at Quemoy, Republic of China. On 1 September 1951 attorney Francisco A. Obach filed an answer in behalf of the absent defendant denying the claim of the plaintiff, averring that on 3 March 1932, for and in consideration of P1,000, the plaintiff conveyed and sold to the defendant Seng Kiam the parcel of land described in the complaint, as evidenced by an instrument acknowledged before Notary Public Francisco A. Obach, Notarial Document No. 27, page 88, book No. 2, series of 1932, and whatever right or interest the plaintiff had in the parcel of land was already barred by the statute of limitations, and praying that the complaint be dismissed with costs against the plaintiff. On 4 September 1951 the plaintiff filed a motion praying that the absent defendant be declared in default. The Court set the hearing of the pending motions of 4 April and 4 September 1951 for 25 September 1951 at 8:30 o'clock in the morning with notice to the attorneys of the parties. On 25 September 1951 the Court denied the plaintiff's motions to declare the two defendants in default, deferred resolution of the defendant Se Nga's motion to dismiss and directed the latter to file his answer.

On 1 November 1951 the plaintiff filed a motion praying that attorney Francisco A. Obach be prohibited from appearing as counsel for the absent defendant for lack of authority to do so and reiterating that the two defendants be declared in default. On 6 November 1951 counsel filed an answer to the plaintiff's motion averring that there is

no reasonable ground to believe that he has no authority to appear for the absent defendant; that the reasons given by the plaintiff are mere conjectures and suppositions not supported by affidavits; and that an attorney appearing for a client is presumed to be authorized to do so. On the same day, 6 November, the Court entered an order declaring the defendant Se Nga in default, authorizing the plaintiff to present his evidence in support of his claim, granting the plaintiff until the next day to file his motion for reconsideration of the order dated 25 September 1951, and setting the hearing of the said motion for reconsideration for 9 November 1951 at 8:30 o'clock in the morning. On 7 November 1951 the plaintiff filed his motion for reconsideration of the order of 25 September 1951 on the ground that Seng Kiam's answer was not served upon him or his counsel pursuant to the Rules. On 8 November 1951 the defendant Se Nga filed a motion praying that the order declaring him in default be set aside on the ground of mistake or excusable neglect, for neither he nor his attorney had been notified of any order of the Court on his motion to dismiss filed on 24 March 1951 and neither he nor his attorney had been served with notice to answer the complaint; and averring that he is just a trustee of his co-defendant who is the real owner of the parcel of land, his ownership dating back to 1932 and his possession from that year having been actual, open, public, peaceful and continuous, and that neither had judgment been rendered in the case against the defendant Se Nga, nor had the plaintiff introduced evidence in support of his claim, and for that reason, no real injury to the plaintiff's right would result from the setting aside of the order of default. On 9 November 1951 the plaintiff filed an opposition thereto. On the same date, 9 November, the defendants filed an opposition to the plaintiff's motion for reconsideration of the order of 25 September 1951, more than 40 days since then having already elapsed. On 12 December 1951 the Court denied the plaintiff's motion for reconsideration of the order of 25 September 1951 which had denied the plaintiff's motion to declare the defendant Seng Kiam in default, but directed attorney Francisco A. Obach to furnish counsel for the plaintiff with a copy of the answer he had filed in behalf of the defendant Seng Kiam, within five days from receipt of a copy of the order; denied the plaintiff's motion to prohibit attorney Obach from appearing for the defendant Seng Kiam; and set aside the order adjudging Se Nga in default but ordered the latter to answer the complaint within five days from receipt of notice thereof. On 28 December 1951 the defendant Se Nga filed his answer and a counterclaim of P800 for actual damages and P5,000 for injury to his business standing and commercial credit.

On 15 January 1952 the plaintiff filed a motion for reconsideration of the order of 12 December 1951. On 21 October 1952 the defendants filed an opposition thereto. On 21 January 1953 the Court denied the plaintiff's motion for reconsideration.

On 26 March 1953 the plaintiff again filed a motion praying that the defendant Seng Kiam be declared in default for failure of his counsel to comply with the order of the Court dated 12 December 1951, directing him to furnish the plaintiff with a copy of the answer filed by his counsel. On 27 March 1953 the Court entered an order granting attorney Obach up to 30 March 1953 to file his written pleading with reference to the plaintiff's motion of 26 March 1953 and setting the hearing thereof for 30 March 1953 at 8:30 o'clock in the morning. On 30 March 1953 the Court entered an order declaring Seng Kiam in default. On 7 August 1953 the plaintiff filed a motion praying that he be allowed to present his evidence. On 31 August 1953 the plaintiff presented his evidence.

On 1 September 1953 the Court rendered judgment for the plaintiff ordering the defendant Seng Kiam to deliver possession of the parcel of land described in the complaint, to pay the plaintiff the sum of P2,400 annually from the date of the filing of the complaint until possession of the parcel of land be restored to the plaintiff, and P500 as attorney's fees; and the plaintiff to refund to the defendant Seng Kiam the sum of P600 with legal interest from the date of the filing of the complaint, which may be deducted from the sums to be paid by the defendant Seng Kiam, without pronouncement as to costs.

On 3 November 1953 the defendant Seng Kiam filed a motion praying that the order of 30 March 1953 declaring

him in default, and the judgment rendered on 1 September 1953 be set aside. On 19 November 1953 the plaintiff filed an opposition thereto. On 22 January 1954 the plaintiff filed a motion praying for execution of the judgment. On 17 February 1954 the defendants filed a motion objecting to the last mentioned motion, which they sent by registered mail and which the Court received on 19 February 1954. On 22 February 1954 the plaintiff filed an answer to the defendants' objection to his motion for execution of the judgment. On 14 June 1954 the Court granted the plaintiff's motion for execution. On 2 July 1954 the defendants filed a motion praying for reconsideration of the order granting the plaintiff's motion for execution. On 10 July 1954 the plaintiff filed an opposition to the defendants' motion for reconsideration. On 12 July 1954 the plaintiff filed a motion praying for the dismissal of the case against Se Nga on the ground that in his answer filed on 28 December 1951 he admitted that he already had ceased to be the overseer (encargado) of Seng Kiam since the middle of the year 1951. On 22 July 1954 the defendant Se Nga filed an opposition to the motion to dismiss the complaint against him. On 17 November 1954 the Court denied the defendant Seng Kiam's motion to set aside the judgment of 1 September 1953 and motion for reconsideration of the order granting the plaintiff's motion for execution, dismissed the case against Se Nga, and set the case for hearing of Se Nga's counterclaim. On 19 November 1954 the defendants filed their notice of appeal to the Supreme Court.

The appellants claim that the trial court committed the following errors:

- The Court a quo erred in declaring Seng Kiam in default.
- The Court a quo erred in authorizing plaintiff-appellee to present his evidence and rendering judgment against Seng Kiam.
- The Court a quo erred in denying the motion for relief from judgment filed by the defendant-appellant.
- The Court a quo erred in ordering the execution of judgment.
- The Court a quo erred in dismissing the case against Se Nga.

It appears that on 1 September 1951, attorney Francisco A. Obach filed an answer in behalf of the appellant Seng Kiam. At the foot of the last page thereof, he wrote, as follows: "I hereby certify that a copy of the foregoing answer had been sent to Atty. L. Ll. Badelles, at Iligan City today Sept. 1, 1951." On 25 September 1951, resolving the appellee's motion's filed on 4 September 1951 to adjudge the appellant Seng Kiam in default, the Court denied the motion, ruling that attorney Francisco A. Obach already had filed on time his answer. Again, on 12 December 1951, acting on the appellee's motion filed on November 1951 for the reconsideration of the order of 25 September 1951, on the ground that the appellant Seng Kiam's answer was not duly served upon him, the Court held that as in the answer filed by attorney Obach on 1 September 1951 the attorney certified that a copy hereof had been sent to counsel for the appellee, the answer may be considered as duly filed. It also directed attorney Obach to furnish counsel for the appellee with a copy of the answer within five days from receipt of a copy of the order. On 4 November 1952 counsel for the appellee sent counsel for the appellant Seng Kiam a letter acknowledging receipt of the latter's letter dated 25 October 1952, where a copy of the answer filed by him on 1 September 1951 was enclosed. The Clerk of Court was furnished with a copy of this letter, and it now forms part of the record of the case. When on 21 January 1953 the Court entered an order denying the appellee's motion for reconsideration of the order dated 12 December 1951 it made mention of the propriety and fairness of the admission and allowance of the appellant Seng Kiam's answer.

The foregoing are sufficient to excuse the appellant Seng Kiam's tardiness in complying with the order of the Court to furnish counsel for the appellee with a copy of his answer. More, the appellant Seng Kiam filed his answer within the period set by the Court in its summons, and the appellee already had actual knowledge of the

appellant Seng Kiam's answer.

In his petition for relief from judgment, accompanied by an affidavit of merit, filed on 3 November 1953 the appellant Seng Kiam has set up a valid and meritorious defense, to wit: that the parcel of land in question has been sold to him by the appellee as evidenced by a public instrument. The Court should be liberal in setting aside an order declaring a party in default if it appears by affidavits that he has a valid and meritorious defense.[1]

Upon motion of the appellee, on 17 November 1954 the Court dismissed the complaint against the appellant Se Nga, on the ground alleged by the appellee that in his answer, he admitted that he already had ceased to be the overseer (encargado) of his co-appellant. In paragraph 5 of the complaint the appellee alleges that the appellant Se Nga "is the one actually in possession of the land," and in the prayer he asks that judgment be rendered in his favor and against the appellants in the manner stated therein. The judgment rendered by the Court was merely partial and nothing therein was adjudged in favor of the appellee as against the appellant Se Nga. The dispositive part of the judgment provides:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against defendant Seng Kiam, ordering the latter to reconstitute immediately possession of the land in question to the plaintiff; to pay the plaintiff the sum of Two Thousand Four Hundred (P2,400.00) Pesos annually until the land is reconstituted to him; and to pay furthermore the plaintiff the sum of Five Hundred (P500.00) Pesos as attorney's fees. Plaintiff, however, is hereby ordered to refund to defendant Seng Kiam the original loan of Six Hundred (P600.00) Pesos with legal interest from the date of the filing of the complaint until fully paid, which amount, together with the interest thereon, may be deducted from the sum to be paid by defendant Seng Kiam to plaintiff Policarpo Mendez as herein ordered.

Without pronouncement as to costs.

The Court did not dismiss his counterclaim but set it for hearing on 17 November 1954. His appeal, therefore, has no basis.

The order dated 30 March 1953 adjudging the appellant Seng Kiam in default, the judgment dated 1 September 1953 rendered against him, the order dated 14 June 1954 granting the appellee's motion for execution of the judgment against him, and the order dated 17 November 1954 denying his motion for reconsideration, appealed from, are set aside and the case remanded to the Court of origin for further proceedings. The order of 17 November 1954 dismissing the complaint against the appellant Se Nga, appealed from, is affirmed, with costs against the appellee.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Barrera, and Gutierrez David, JJ., concur.

[1] Bañares vs. Flordeliza, 51 Phil., 786.

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