

FAUSTO ISAAC, PLAINTIFF AND APPELLANT, VS. LEOPOLDO MENDOZA, DEFENDANT AND APPELLEE.*G. R. No. L-2820. June 21, 1951*

Ponente: BENGZON, J.

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For the amount of four hundred and fifty pesos, Japanese currency, Fausto Isaac, plaintiff, sold to Leopoldo Mendoza, defendant, a parcel of land in Pili, Camarines Sur, reserving the right to repurchase within four years. The sale took place in February 1944. After liberation, the seller offered to redeem, but defendant objected, saying the redemption was premature. Hence this litigation instituted in the court of first instance of said province, in February 1946, to compel re-transfer.

After having been duly summoned, the defendant failed to answer. Consequently, upon plaintiff's motion, he was defaulted by order of May 10, 1947. Thereafter, i.e. on September 23, 1947, considering the plaintiff's evidence the court rendered judgment requiring the defendant to execute a deed of re-sale of the land, to receive the amount of P90 Philippine currency which Fausto Isaac had consigned in court, and to pay damages in the sum of P95.

On December 9, 1947 Leopoldo Mendoza submitted a petition to set aside the judgment invoking accident, mistake, or excusable negligence. Opposed by plaintiff, the petition was denied. Wherefore defendant appealed directly to this court.

Basis of defendant's petition was the allegation that as his attorney Jorge C. Briones had not received notice of the court's denial of his motion, to dismiss the complaint, he had reason to believe the time to answer had not expired.

It appears from the record that, duly summoned, defendant through Attorney Briones filed a motion to dismiss, which was overruled by order of April 8, 1946. At the bottom of that order there is a notation that copy had been furnished Attorney Briones by ordinary mail. On February 8, 1947, the plaintiff filed his motion for default, asserting that, defendant's motion to dismiss had been denied and that so far, defendant had interposed no answer. On February 15, 1947 the court issued an auto suspending consideration of plaintiff's motion and giving the defendant a period of ten days within which to reply thereto, if he so desired. Copy of this directive was sent by registered mail to Attorney Briones, but the latter "refused to claim the registered letter despite the notices given him by the postmaster". And according to an affidavit submitted to the court, Attorney Penas for the plaintiff, had again and again reminded Briones that the time was come for the answer.

Apprised of the foregoing circumstances, the court of first instance denied the petition to set aside.

We think such denial was entirely proper. According to the rules, Attorney Briones is deemed to have received the copy of the auto of February 15, 1947 which he declined to accept from the mails (Rule 27 section 8). That order was sufficient to advise him of the rejection of his previous motion of dismissal, supposing he had not actually received the copy of the order of April 8, 1946, which had been forwarded to him by ordinary mail.

The appellant insists here that "the record fails to show a conclusive evidence that Atty. Jorge C. Briones * * *

was notified". This is refuted by the above account of the facts and of the governing principles. It is remarkable that, to meet the conclusions therein set forth, defendant has not introduced any sworn statement of Attorney Briones.

In connection with the argument that defendant should not suffer for his lawyer's shortcoming, it should be explained that the client is bound by the acts, even mistakes of his counsel in the realm of procedural technique [1]; but if the client is prejudiced by the attorney's negligence or misconduct he may recover damages.[2]

Another point, which is equally decisive. Unless the appellant has filed a motion to set aside the order of default, on any of the grounds enumerated in Rule 38, he has no standing in court nor the right to appeal.[3] Examining appellant's motion of December 9, 1947 we observe that he merely requested for the annulment of the decision rendered after his default (September 23, 1947) without praying for the revocation of the order of May 10, 1947 declaring him to be in default. But granting, for the sake of argument, that the aforesaid pleading impliedly included the second prayer, we are met by the insuperable objection that the petition was too late, because filed beyond the six-month period within which applications for relief under Rule 38 may be entertained. From May 10 to December 9 seven months had elapsed.

Wherefore, this appeal being without merit, we affirm the order of the trial judge denying the petition to set aside. With costs.

Paras, C. J., Feria, Pablo, Padilla, Tuason, Montemayor, Reyes, Jugo and Bautista Angelo, JJ., concur.

[1] 127 sec. 21; U. S. vs. Umali, 15 Phil. 33; Montes vs. Court of First Instance, 48 Phil., 640.

[2] In re Filart, 40 Phil., 205.

[3] Lim Toco vs. Go Fay, 4C Off. Gaz., 3350; 80 Phil., 166.

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