

PETRA VDA. DE CARCALLAS, WIDOW AND HER CHILDREN (WHO WILL BE MENTIONED IN THE PETITION PROPER), PETITIONERS, VS. THE HON. JUDGE VALERIANO YANCHA, AS PRESIDING JUDGE OF BRANCH I,...

G.R. No. L-46401. December 18, 1987

Ponente: PADILLA, J.

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PADILLA, J.:

An action for recovery of a parcel of land was filed with the respondent court by the private respondent against petitioners herein. After the pre-trial conference, trial on the merits ensued. On the day set for the reception of evidence of the defendants (now petitioners), the latter and their counsel failed to appear. On the same day, that is, 23 February 1977, the trial court issued an order considering the case submitted for decision[1]. On the following day, however, defendants through counsel filed a motion for reconsideration[2]. This was denied by the respondent court in an order dated 14 March 1977. A second motion for reconsideration was filed[3], which was likewise denied by the trial court on 18 March 1977.

On 29 March 1977, the trial court promulgated a decision against the defendants[4] who acknowledged receipt of the decision on 1 April 1977. A motion (petition) for relief from judgment was filed on 22 April 1977[5]. The court denied the same on the ground that it lacked an affidavit of merit. On 17 May 1977, petitioners filed an alternative motion (a) for reconsideration of the order denying motion (petition) for relief or (b) for reproduction and refiling of original motion (petition) for relief, refiled this time with the affidavit of merit[6]. This was again denied in an order dated 1 June 1977[7], copy of which was received by petitioners on 7 June 1977. On 28 July 1977, upon motion of private respondent, the court a quo issued an order of execution.

Petitioners have come to this Court on a petition for certiorari, raising the following assignment of errors:

1. The court a quo committed error in declaring the case submitted for decision for failure of the defendants (petitioners herein) and their counsel to appear on the scheduled date of trial;
2. The court a quo committed error in rendering a decision not based on the issue agreed upon by all parties at the pre trial hearing; and
3. The court a quo committed error in denying the second motion for reconsideration and thereafter ordering the execution of the judgment, when in fact the original motion (petition) for relief from judgment, with an affidavit of merit and proof of service thereof, was refiled within the reglementary period provided by the Rules.

There is merit in this petition.

1. To begin with, we find no error committed by the respondent court in issuing the order considering the case submitted for decision for failure of the petitioners (as defendants) and their counsel to appear at the scheduled date of trial. However, it should be noted that a motion for reconsideration was filed by petitioners without delay

and, upon its denial, a second motion for reconsideration was again filed.

In the first motion for reconsideration, counsel for petitioners gave a reasonable explanation for his nonappearance in court on the scheduled date of trial. He explained that, on the day of the trial, he had a slight attack of ashtma and had to rest for some fifteen (15) to twenty (20) minutes, that when he arrived in court at around 9:00 a.m., the respondent court had already given the order considering the case submitted for decision. The court, however, denied the motion for reconsideration, even after finding the nonappearance of defendants' counsel justified, because "there is no justification whatsoever for the absence and nonappearance of the defendants themselves"[8].

In the second motion for reconsideration, counsel for petitioners alleged that one of the defendants was with him at the time he arrived late (on the scheduled date of trial). In the same second motion for reconsideration, counsel made a notation that said motion will be submitted to the court for consideration, at which time, further explanation will be given. However, on the day set for the hearing of said second motion, counsel for petitioners again failed to appear, for which reason, the respondent court denied said second motion for reconsideration.

In the motion (petition) for relief from judgment, petitioners' counsel apologized to the court for his nonappearance at the hearing of the second motion for reconsideration, alleging that, on the same day, he was in Branch II of the Court and that the arguments and deliberations of a case in said other branch dragged for more than one hour and that, by the time he arrived in the sala of respondent court, he was informed that the court had already called the case and had declared the second motion for reconsideration submitted for resolution.

We find the non-appearance of counsel for petitioners at the scheduled date of trial as not intended to delay the disposition of the case. It was the happening of an event beyond his control - the asthma attack - that forced his absence from court at the start of such scheduled trial. But counsel for petitioners exerted efforts to correct any wrong impression caused by his absence at the scheduled hearing, by filing a motion for reconsideration without delay. The respondent court should not have applied the rules too strictly. The interest of justice would have been better served if petitioners had been given their day in court.

Petitioners should also not be made to suffer because of minor lapses in the diligent attendance of their counsel, for they are entitled to be protected in the vindication of their rights. It is to be noted that one of the defendants was with their counsel when the latter arrived late on the scheduled date of trial on account of an asthma attack.

2. At the pre-trial of the case in the court a quo, the following facts were agreed upon by both parties, as proven:

"1) That the two parcels, namely, that which is claimed by the plaintiffs and that which is claimed by the defendants, originally belonged to one, Tiburcio Pangan (now deceased) who was the legitimate father of Juan Pangan;

"2) That said two parcels of land were sold by said Tiburcio to Emigdio Carcallas (now deceased husband of defendant Petra Vda. de Carcallas) on August 26, 1952 under a public instrument duly registered with the Register of Deeds for Bohol on August 2, 1967; and

"3) That the parcel claimed by the plaintiffs was purchased by said plaintiffs from Juan Pangan, legitimate son of said Tiburcio Pangan, under a public instrument on July 17, 1967 and duly registered with the same Office of the Register of Deeds for Bohol on June 4, 1967; and that same parcel was donated to said Juan by his father Tiburcio in consideration of Juan's marriage sometime in or before 1951"[9].

Consequently, as the respondent court itself said, "if such donation is not preponderantly proven by evidence, therefore, the claim of the plaintiffs must necessarily fail, considering that they admit that the aforesaid two parcels of land originally belonged to Tiburcio Pangan and then the latter sold the same to the defendants on

August 26, 1952, so that the subsequent sale of that portion of the land by Juan Pangan to them (plaintiffs) must necessarily be inofficious. On the other hand, if it can be proven by them (plaintiffs) by means of indubitable documents or evidence that said parcels were donated to them (actually, Juan Pangan) under donation propter nuptias in or about 1951, then their (plaintiffs's) claim must succeed"[10].

Thus, the parties agreed to simplify the issue for resolution, as -

"WHETHER OR NOT THE SAID PORTION SOLD BY JUAN PANGAN TO THE PLAINTIFFS ON JULY 17, 1967 WAS PREVIOUSLY A SUBJECT MATTER OF A VALID DONATION PROPTER NUPTIAS BY TIBURCIO PANGAN IN FAVOR OF HIS LEGITIMATE SON JUAN PANGAN, IN CONSIDERATION OF THE LATTER'S MARRIAGE SOMETIME IN OR BEFORE 1951"[11].

In the now assailed decision, the respondent court declared the plaintiff as the owner of the land in question. In arriving at this conclusion, the court said:

"The land in question was originally owned by Juan Pangan who sold the same to plaintiff Esteban Tojong as evidenced by Exhibit A, a written deed of sale of said land notarized by notary public Juanito Ricafort. This document was registered with the corresponding register of deeds. After the execution of said deed of sale, vendee, Estaban Tojong procured that its tax declaration which was then in the name of vendor Juan Pangan be transferred in the name of the plaintiff-vendee, as per Exhibit C, Land Tax Declaration No. R-21792 in the name of Esteban Tojong and Aurea L. Tojong. From and after the transfer of the tax declarations of said land in the name of the plaintiffs, the latter have been paying the taxes thereon as evidenced by Exhibit D payment of taxes for 1973; Exhibits D-1, D-2, D-3, D-4, D-5 and D-6, receipts of taxes for the years 1972, 1971, 1970, 1969, 1968, 1967, 1966 and 1965, respectively.

"During the Martial Law regime pursuant to the revision of land declarations, the tax declaration of said land was further revised as evidenced by Exhibit C-2, true copy of Tax Declaration No. D-10465 in the name of spouses plaintiffs Esteban Tojong and Aurea L. Tojong.

"Before the land in question was sold to the plaintiffs by its original owner, Juan Pangan, the latter mortgaged said land to the Philippine National Bank to secure a loan he obtained from said bank sometime in November 1966 as evidenced by Exhibit C, promissory note of Juan Pangan in favor of the Philippine National Bank. After they purchased said land, plaintiffs had this mortgage released. Plaintiffs took actual possession of said land from Juan Pangan in 1967 and while plaintiffs were in possession of said land defendants, by means of force and without justification therefore entered upon said land and occupied the same to the exclusion of and damage to the plaintiffs. So that the plaintiffs in this pray that judgment be rendered declaring them owner in fee simple of the land in question.

"It having been established by the evidence on record that the land in question was originally owned by Juan Pangan who had been in continuous, peaceful possession of the same as an owner for more than ten years and that Juan Pangan sold the same to the herein plaintiffs for a valid and sufficient consideration, the Court believes and so holds that said land is owned by the plaintiffs in fee simple x x x"[12].

As can be gleaned from the aforequoted decision, the respondent court did not rule on the sole issue in the case as agreed upon by all the parties during the pre-trial conference. Instead, the court assumed the prior ownership of Juan Pangan over the disputed land. And yet, under Section 4, Rule 20 of the Rules of Court, admissions during the pre-trial conference bind all the parties and the court, unless modified upon request before trial to prevent manifest injustice.

3. Section 3, Rule 38 of the Rules of Court provides:

SEC. 3. Time for filing petition; contents and verification. - A petition provided for in either of the preceding sections of this rule must be verified, filed within sixty (60) days after the petitioner learns of the judgment,

order, or other proceeding to be set aside, and not more than six (6) months after such judgment or order was entered, or such proceeding was taken; and must be accompanied with 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.

There is no question that the petitioners' motion (petition) for relief from judgment was filed on time. To recapitulate, upon receipt on 1 April 1977 of the adverse decision dated 29 March 1977, petitioners filed on 22 April 1977 a verified motion (petition) for relief from judgment. This was denied by the court because the said motion (petition) lacked an affidavit of merit as required by the Rules. However, on 17 May 1977, and still within the sixty (60) day period from the time petitioners received the adverse decision and within six (6) months from the date of entry of said adverse decision of 29 March 1977, petitioners re-filed the motion (petition) for relief from judgment together with an affidavit of merit. In denying the motion (petition) of petitioners, dated 17 May 1977, the lower court clearly committed a reversible error.

Considering that the petition for relief was filed within the prescribed period and that the herein petitioners appear to have a meritorious and plausible defense, the respondent judge should have ordered the reopening of the case for the reception of defendants' evidence.

WHEREFORE, the petition is GRANTED. The orders of the respondent Judge issued on 23 February 1977, 14 March 1977, 18 March 1977 and 1 June 1977 as well as the decision rendered on 29 March 1977, are hereby annulled and set aside. The respondent judge, or his successor, is directed to reopen the case for the reception of the evidence for the petitioners (as defendants in the court a quo) and thereafter to render a decision in accordance with the evidence and the law. No costs.

SO ORDERED.

Yap (Chairman), Melencio-Herrera, Paras, and Sarmiento, JJ., concur.

[1] Original B, Rollo p. 24

[2] Original C, Rollo p. 25

[3] Original E, Rollo p. 28

[4] Original G, Rollo p. 31

[5] Original H, Rollo p. 35

[6] Original J, Rollo p. 42

[7] Original K, Rollo p. 45

[8] Original D, Rollo p. 27

[9] Original A, Rollo p. 22

[10] Id.

[11] Id.

[12] Decision, pp. 2-4

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