

**LINO VICTORINO, LETICIA PIKE, FRANCISCA VDA. DE PIKE,
AGA-TONA NATIVIDAD, FELISA LAKAMBAKAL, NORMA PIKE AND
MAXIMO STA. ANA, PLAINTIFFS-APPELLEES, VS. HONORIA LAO AND
PRIMITIVO ...**

G.R. No. L-24456. May 28, 1970

Ponente: TEEHANKEE, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/335f59f8ecb1/>

TEEHANKEE, J.:

Two direct appeals on questions of law by the contending parties relating to the same case decided by the Court of First Instance of Rizal.

From the decision rendered by the trial court on March 5, 1964 granting plaintiffs' complaint for rescission of contracts refund of payments made and attorney's fees, defendants appealed in Case L-24456, claiming that their counsel was not notified of the hearing set for February 26, 1964 at which the trial court received plaintiffs' evidence in the absence of defendants and that they have been therefore deprived of their day in court.

Upon defendants' filing of their notice of appeal, expressly appealing the decision to this Court, without asking for the elevation of the evidence, they filed their record on appeal. Plaintiffs objected to the approval thereof, on the ground that certain specified material pleadings and records which were omitted should be included therein. The trial court, however, overruled plaintiffs' opposition, ruling that the additional matters were not material for purposes of the appeal and approved on January 15, 1965 defendants' record on appeal without requiring any amendment there-of. Plaintiffs appealed from said order in Case L-25273 and filed their own record on appeal, including the additional pleadings and records omitted from defendants' record on appeal, which was likewise approved in due course on July 3, 1965 by the trial court.

The Court ordered on January 5, 1966 the consolidation of these two appeals, in view of their reference to the same case between the same parties.

The records show that upon joinder of the issues, plaintiffs' counsel filed a motion dated August 16, 1963 to set the case for trial, setting the same for consideration by the trial court on August 31, 1963, with due notice to defendants' counsel. The trial court granted the same, and pursuant thereto, the clerk issued and mailed to the parties' counsels on October 15, 1963 the Notice of Hearing, advising them of the hearing of the case set for February 28, 1964 at 8:30 a.m. The initial of the mailing clerk attesting to the mailing of the notice of hearing on October 15, 1963 appears on the court's copy thereof in the record of the case.

At the hearing of February 28, 1964, the trial court noting that "defendants and their counsel did not appear notwithstanding the fact that notice of hearing was sent to the latter as early as October 15, 1963" allowed plaintiffs to submit their evidence ex-parte. It thereafter rendered under date of March 5, 1964 its decision in favor of plaintiffs, as follows:

"From the evidence submitted, it appears that defendants Honoria Lao and Primitivo Lao are the registered

owners of two parcels of land described in, and covered by, Original Certificate of Title No. 2079 of the Register of Deeds of Rizal; and that said defendants had sub divided said parcels of land and is now known as the 'Fatima Subdivision.' A copy of the subdivision plan was submitted in evidence as Exh. C. It was also established that they appointed Felipe L. Pike as their sales administrator of the subdivision lots (Exh. A); that the subdivided lots were then offered for sale to the public with assurance that subdivision road, canals, drainage and other subdivision improvements would be constructed; that because of these assurance of the defendants, plain-tiffs bought several lots and signed the corresponding deeds to buy by installments the said lots as shown by the agreements, Exhibits B. B-1 to B-13 inclusive; that in accordance with the terms embodied in said Agreements, plaintiffs had made down payments and monthly installment payments as follows:

- a) Lino Victorino P 4,290.40
- b) Leticia Pike 1,683.60
- c) Francisca Vda. de Pike 2,581.00
- d) Agatona Natividad 924.50
- e) Felisa Lakambakal 2,849.90
- f) Norma Pike 4,068.00

"When defendants failed to construct and make improvements in the subdivision in order that the subdivided lots purchased by the plaintiffs may be occu-pied, the latter made written demands upon the former asking that subdivision roads and other improvements assured to them would be constructed (Exhs. D, D-1 to D-6 inclusive) that because defendants failed to comply with their assurances to the buyers of the subdivision lots to construct roads and other improvements, plain-tiffs were compelled to file the instant action for the rescission of their contracts and for damages.

"It was established further that the payments made by the plaintiffs were admitted by the defendants when they entered into a compromise agreement with their sales manager, Mr. Felipe L. Pike, in another case docketed as Civil Case No. 6959 of this Court entitled 'Felipe L. Pike, vs. Primitivo Lao, et al', a copy of which compromise agreement was submitted in evidence as Exhibits E and E-1; that the subdivision plan of the Fatima Subdivision has not yet been approved by the Bureau of Lands and the Land Registration Commission which makes it improbable for defendants to issue separate titles corresponding to the subdivision lots; that the parcels of land constituting the subdivision had been mortgaged without the knowledge of the plaintiffs herein and if ever said mortgage is foreclosed irreparable damage will be caused to herein plaintiffs.

"Plaintiffs did not adduce evidence with respect to plaintiff Maximo Sta. Ana and instead their counsel manifested that the complaint with respect to him be dismissed for lack of interest to further prosecute it.

"WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against defendants as follows:

"1. Declaring the agreements designated as Contracts Nos. 34, 48, 47, 36, 35, 40, 41, 42, 38, 37, 43, 44 and 45 of the Fatima Subdivision (Exhi-bits B, B-1 to B-13 inclusive) as rescinded, null and void;

"2. Ordering defendants to refund jointly and severally to the plaintiffs, as follows:

- a) Lino Victorino P 4,290.40
- b) Leticia Pike..... 683.60
- c) Francisca.Vda. de Pike..... 2,851.00
- d) Agatona Natividad..... 942.50

e) Felisa Lakambakal..... 4, 068.00

with legal interest of 6% per annum from the filing of this complaint and until fully paid;

"3. Ordering defendants to pay jointly and severally the plaintiffs except Maximo Sta. Ana the sum of P500.00 as reasonable attorney's fees; and

"4. For defendants to pay the costs.

"The complaint of plaintiff Maximo Sta. Ana is dismissed without prejudice and without costs."

Upon receiving notice of the decision, defendants' counsel filed their Motion to Set Aside Decision and for New Trial alleging that no annotation on appeared in the records to show that the notice of hearing was ever sent to him and that "due to the inadvertence on the part of the clerk in charge of sending notice to parties, defendants' counsel was never notified of the said case. "No affidavit of merits was submitted by defendants. The trial court denied the motion since "no affidavit of merits has been submitted and so the Court is not in a position to know whether or not defendants have a valid and meritorious defense."

Pending perfection of defendants' appeal, the trial court, upon plaintiffs' motion alleging that defendants have been exhausting all their remaining assets, thus endangering plaintiffs' right to re-cover on their judgment due to the delay ensuing from defendants' appeal, issued a writ of execution of the judgment pending appeal. Defendants sought the annulment of such execution order in an action of certiorari filed on September 18, 1964[1] on the same allegations that the trial court conducted a hearing without a notice of hearing to them and they were thus deprived of their day in court. The Court dismissed defendants' petition in its decision rendered under the pen of Justice Fernando on November 25, 1967, holding defendants' main ground of attack "that the motion for the issuance of the writ of execution filed by (plaintiffs) was 'unverified'" to be without merit since "there is no such requirement under the Rules of Court. A motion of the prevailing party with notice to the adverse party allows the Court to 'order execution to issue even before the expiration of the time to appeal, upon good reasons to be stated in a special order.'" With reference to the alleged nullity of the trial court's decision, the Court had earlier noted that as to the alleged lack of notice of hearing, "(T)he answer of respondents(plaintiffs) dated October 16, 1964, denied the truth of the above assertion with allegation that respondent Judge did not hear the case on February 28, 1964, until after he was informed by a deputy clerk that notice of such trial to petitioners (defendants) was sent as early as October 15, 1963. Parenthetically it may be observed that this issue, the pertinence of which is not so apparent in this petition for certiorari being more connected with the case on the merits, apparently has been abandoned in the memorandum of petitioners (defendants) dated January 25, 1965, as noted by respondents (plaintiffs) in their reply memorandum of February 8, 1965."

Defendants in this appeal, stress that they have been denied due process in that the trial court merely "relied on the notation made by the clerk that a notice was sent to the parties. However, there was no evidence to show that such notice was served or received by the parties concerned." [2]

Defendants' appeal must fail for the following reasons:

1. With regard to defendants' claim that through inadvertence of the clerk in charge of sending notices to parties, their counsel was never notified of the hearing set for February 28, 1964, defendants have failed to substantiate their bare assertion in the manner required by Rule 37, section 2 of the Rules of Courts. Said Rule requires such motions for new trial to "be proved in the manner provided for proof of motions.[3] Here, as against the fact of record that notices of the hearing were sent to the parties as far as four months back on October 15, 1963, per the attesting initial of the mailing clerk, as noted by the trial court, the record fails to show that defendants ever presented any counter-affidavit of the court personnel in charge of sending out the notices or asked the trial court

to receive any oral testimony or deposition to substantiate their barren claim of non-receipt of the notice of hearing.

2. Their complaint that "the court failed or refused to verify from its employees, more particularly, the clerk-in-charge of the sending of notice to parties concerned and custodian of registry re-ceipts and registry return cards"[4] is misdirected, for notwithstanding plaintiffs' opposition invoking the legal presumption of service of the notice of hearing "which is not overcome by the mere allegation of defendants' counsel that there is no annotation on the records of this case that he actually received such notice,"[5] defendants did nothing to support their claim. It was incumbent upon them as the movants -- and not on the trial court which had correctly taken note of the early notice of hearing sent to defendants in reliance on the presumption of regular performance of official duty and of receipt in the regular course of the mail of notices duly directed and mailed,[6] -- to conduct such verification and submit the corresponding court document supporting their claim of alleged non-mailing of the notice to their counsel. For defendants merely to assert that the notice was not received by their counsel -- as against the attesting initial of the mailing clerk that said notices were duly sent -- is to beg the question.

3. Defendants committed yet another grave error in appealing directly to this court, without elevation of the evidence. Plaintiffs raised the question directly before the Court in his Motion to Dismiss Appeal of August 27, 1965[7] but defendants stated categorically in their opposition thereto of September 1, 1965 that they "appealed this case to this Honorable Tribunal on purely question of law which involved 'due process of law.'"[8] Defendants themselves have foreclosed any review of the trial court's finding of fact that "notice of the hearing was sent to (their counsel) as early as October 15, 1963", for in a direct appeal to this Court on questions of law (as against a general appeal to the Court of Appeals with the elevation of the evidence which opens the entire findings of fact and of law of the trial court to review) appellants "must be deemed to have accepted as conclusive what the lower court found as established by the evidence, only questions of law being brought to us for review." [9] It is pertinent in this connection that in the action for certiorari of Lao vs. Mencias,[10] supra, instituted by defendants to stop the execution of the judgment against their pending appeal, it was noted that they apparently abandoned their claim therein of not having been sent the notice of hearing.

4. Finally, defendants' cause suffers from the fatal defect of their not having submitted with their motion for new trial an affidavit of merits stating facts, and not mere conclusions, constituting their valid defense, which would enable the trial court to properly determine whether or not they have a valid and meritorious defense to warrant its setting aside its judgment and reopening the case. The trial court therefore committed no error in denying the motion. As held consistently by the Court and restated in Chingan vs. LaGuardia[11] "petitioner's failure to attend on the date of hearing due to lack of appropriate notice, supposing it to be true, would not suffice to justify the relief provided in Section 1, Rule 37 of the Rules of Court, as Section 2 thereof requires that an affidavit or affidavits of merit must be attached to the motion as a condition sine qua non. Petitioner failed to comply with such requirement of Section 2, and this is fatal. The trial court, therefore, correctly refused to reopen the case." Plaintiffs properly raised this fatal issue against defendants before the trial court, but instead of attempting to cure the same, defendants have persisted in their futile stand even in their brief that "We cannot discuss the facts of the case because there were no facts yet adduced in our presence. We believed (sic) that the facts adduced during the ex-parte hearing of the case at bar cannot bind, in our opinion, the defendants-appellants, as the fundamental law of the land was violated." [12] A perusal of defendants' answer to the complaint and of the documentary evidence for plaintiffs as set out in the trial court's decision strongly bears out plaintiffs' assertion that it would have been a waste of time to have a new trial as the material allegations of plaintiffs' complaint, based on documentary evidence, could not possibly have been overcome or disproved by defendants. In fact, defendants have not even attempted in their brief to dispute the findings of fact and judgment of the trial court.

As to plaintiffs' appeal in Case L-25273, we have noted at the beginning of this decision that plaintiffs, as a practical measure, filed their own record on appeal including therein the additional pleadings and records whose inclusion in defendants' record on appeal was rejected by the trial court on the ground that they were "not material for the proper understanding of the issues involved in case." Plaintiffs' record on appeal was approved without opposition, and the Court has taken due consideration of the excluded pleadings as reproduced in plaintiffs' own record on appeal.

The Court finds that the trial court erred in not ordering the amendment of defendants' record on appeal to cover the inclusion of the pleadings and records as sought by plaintiffs. The three principal items, to wit, plaintiffs' motion for trial dated August 16, 1963; notice of the lower court granting said motion and setting the date of trial for February 28, 1964; and notice of hearing dated October 10, 1963 sent by the Clerk of Court on October 15, 1963 to the lawyers of the parties,[13] were certainly material and "related to the appealed order or judgment and necessary for the proper understanding of the issue involved" as to require their inclusion, as provided by Rule 41, section 6 of the Rules of Court. In *Jai Alai Corporation vs. Court of First Instance of Manila*,[14] the Court, speaking through Justice J. B. L. Reyes, reiterated its injunction that "trial courts should be slow in excluding matters that an appellant wishes to insert in the record," pointing out that "(T)he fear that the inclusion of the rejected pleadings and motions may cause the determination of the appeal to be unnecessarily involved, should yield to the advantage of enabling the reviewing tribunal to have before it all matters necessary to a just determination of the question submitted to it, thereby obviating possible remands or new trials (*Prats & Co. vs. Phoenix Insurance Co.*, 52 Phil., 857)."

The rationale of the cited case applies equally to material matters that the appellee seeks to have included in the appellants' record on appeal, for as was brought out in the earlier case of *Smith Bell & Co. vs. Sta. Maria*,[15] "matters which at first sight appear to be irrelevant, may in the course of an argument on appeal be found to be of value in the determination of the questions at issue."

ACCORDINGLY, the judgment appealed from is hereby affirmed. With costs against defendants-appellants in both cases.

Concepcion, C.J., Reyes, Dizon, Zaldivar, Fernando, and Villamor, JJ., concur.

Makalintal, J., in the result.

Castro, J., on leave.

Barredo, J., concurs in a separate opinion.

[1] *Honorio Lao and Primitivo Lao, petitioners, vs. Hon. Judge Eulogio Mencias, of the Court of First Instance of Rizal, and Lino Victorino, Leticia Pike, Francisca Vda. de Pike, Norma Pike, Agatona Natividad, Felisa Lakambakal, respondents*, G.R. No. L-23554, Nov. 25, 1967, 21 SCRA 1021, notes in parenthesis supplied.

[2] Defendants-appellants' brief, p. 11.

[3] "SEC. 7. Evidence on motion. -- When a motion is based on facts not appearing of record the court may hear the matter on affidavits or depositions presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions."

[4] Defendants-Appellants' Brief, p. 11.

[5] Record on Appeal in G.R. No. L-24456, p. 34.

[6] Rule 131, sec. 5(m) and (v) See *Fojas vs. Navarro*, G.R. No. L-26365, April 30, 1970 and cases cited.

[7] Rollo, p. 13.

[8] *Idem*, p. 17, *sic*.

[9] *Lanzar vs. Guerrero*, G.R. No. L-21581, Aug. 28, 1969, 29 SCRA 107.

[10] See fn. 1.

[11] G.R. No. L-20739, June 30, 1966, 17 SCRA 540 and cases cited. See also *Camia vs. Reyes*, 108 Phil. 513 (1960) *cit. Gonzales vs. Amon*, 98 Phil. 587 (1956).

[12] Defendants-appellants' brief, p. 3.

[13] Plaintiffs' Record on Appeal, pp. 20-21.

[14] 96 Phil. 407 (1955).

[15] 49 Phil. 820 (1926).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.