

ROSA S. FOJAS AND THE HEIRS OF JOSE A. FOJAS, PETITIONERS, VS. ANACLETO NAVARRO, RESPONDENTS.

G.R. No. L-26365. April 30, 1970

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Appeal from resolutions of the Court of Appeals setting aside its original decision affirming the lower court's judgment and order-ing the remand of the case to the trial court for further proceedings.

The case originated on April 7, 1959, with the institution by petitioners as plaintiffs of an action in the Court of First Ins-tance of Rizal, Pasay City Branch, against private respondent as defendant for recovery of possession of a parcel of land with damages.[1] On July 20, 1959, the date scheduled for trial with due notice to the, parties, respondent-defendant and his counsel failed to appear and petitioners plaintiffs presented their evidence ex-parte.

The trial court thereafter rendered its decision on Aug-ust 7, 1959, with the following dispositive portion:

“WHEREFORE, the defendant ANACLETO NAVARRO is hereby ordered to remove the stone wail and 'chicken-cyclone' wire fence, from Lot No. 3 in question, and to pay plaintiffs the sum of SEVEN HUNDRED (P700. 00) PESOS, as attorney's fees, and the costs.”

Respondent-defendant failed to perfect an appeal from the said decision and instead filed on September 10, 1959, a motion for relief from judgment. His counsel, Atty. Francisco Ventura, alleged that he had mistakenly noted in his diary the date of trial to be July 22, 1959 instead of July 20, 1959, and that he realized his mistake in noting the date of hearing only when he and res-pondent appeared in court on the later date for the trial and were informed that it had been held two days before as scheduled. On January 23, 1960, the trial court denied said motion for lack of merit. His motion for reconsideration of such order having been likewise denied, respondent-defendant perfected an appeal to the Court of Appeals with the lone assignment of error that the trial court had erred in denying his motion for relief from judg-ment.

On July 15, 1965, the Court of Appeals, through its then Presiding Justice Conrado Sanchez, promulgated its decision finding no merit in the appeal thus:

"The lone error assigned in appellant's brief squarely presents the issues as to whether or not the trial court acted within the law in denying the motions for relief from judgment.

"For a motion of this nature to prosper, movant must under oath: First, show fraud, accident, mistake or excusable negligence, and second, state facts consisting his good and subs-tantial defense. Section 3, Rule 38, Rules of Court. It is in this context that we now examine appellant's position.

'Appellant alleges mistake in having anno-tated in his diary the date of trial to be July 22, 1959, instead of July 20, 1959. Is this sufficient?

"The affidavit in support of the motion states that on July 22, 1959, defendant and his counsel appeared in court; that they were informed by the court that the trial was held on July 20; that counsel consulted his diary

and discovered the mistake; that he showed that mistake to the trial judge. The circumstances surrounding this alleged negligence remain unconvincing. The first legal step by defendant to relieve himself from the effects of that decision was taken on September 10, 1959. As early as July 22, 1959, both defendant and counsel knew that the trial proceeded as scheduled. Theirs was the duty to move the Court promptly thereafter to reopen the case to afford them an opportunity to test plaintiffs' evidence and submit their own. They did not. Defendant received notice of the decision on August 11, 1959. And yet, he waited until September 10, 1959 to move for relief. While this move was still within the 60-day reglementary period, the delay in fil-ing the same smacks of laches and cast a serious doubt upon the veracity of defendant's claim of excusable negligence. In these circumstances, if we are to grant relief we would be establishing a precedent which would open virtually the flood-gates to unmeritorious averments of excusable negligence. x x x.

"But, on the assumption that there was excusable negligence, would the cry of fraud justify reopening of the case? Defendant's averment is that the plaintiffs knowingly obtained title to the property without notifying appellant who claims to be the owner thereof. Upon two grounds, this claim does not merit consideration:

"1. The land registration proceedings under which plaintiffs obtained title to the property is a proceeding in rem. The notice thereof published in the Official Gazette binds the whole world. It matters not, as defendant avers, that he did not receive personal notice of the application. Personal notice is not necessary to give the court jurisdiction. Notice in the Official Gazette 'To All Whom It May Concern' implies that the whole world are made parties defendant; unknown claims are foreclosed, thereby. x x x

"2. The decree of registration over the land in question was issued in plaintiffs' favor on 26th of April, 1955. Plaintiffs' Torrens title No. 1 covering this land was issued by the Commissioner of Land Registration on July 11, 1955. Defendant's answer to the complaint was filed as aforesaid on April 29, 1959. The one-year period set forth in Section 38 of the Torrens Act had, by that time already elapsed. The title had become indefeasible, no longer open to collateral attack upon ground of extrinsic fraud. x x x" (Decision of the Court of Appeals, July 15, 1965, pp. 4-7, Annex 'A' of the Petition for Certiorari).

Accordingly, the Court of Appeals affirmed the decision appealed from with costs against the respondent-appellant.

Copy of this decision was sent by registered mail No. 87 on July 19, 1965 addressed to respondent's attorney of record, Francisco Ventura, at his address of record, 1589 Mayhaligue, The present case before us arose at this juncture, for thereafter respondent's counsel of record from its inception, Atty. Ventura, just faded from the scene and was no longer heard from. Without Atty. Ventura having withdrawn as respondent's counsel of record, Messrs. Crisologo and Encarnacion of 304 Alliance Building, Manila filed on August 25, 1965, their appearance as counsel for respondent-appellant in the appellate court. They subsequently filed a "Manifestation and Motion" praying that they be furnished with a copy of the appellate court's decision which was opposed by petitioners on the ground that respondent's counsel of record, Atty. Ventura, had already been validly served with copy of said decision.

The appellate court in its resolution of September 9, 1965,[2] however, granted the "Manifestation and Motion" of Attys. Crisologo and Encarnacion, who were served with copy of the decision on November 18, 1965. Said counsel then filed on December 6, 1965 a motion for reconsideration of the decision which was duly opposed by petitioners.

The original division of the court that rendered the decision was apparently split 2 to 1 for denial of the motion for reconsideration, and the ponente, Justice Sancheza was thereafter promoted as a member of this Court. His successor, then Presiding Justice Fred Ruiz Castro, now a distinguished member of this Court, issued on January 24, 1966, a special order appointing three associate justices to sit with the two remaining justices in a Special Division of Five[3] to decide the said motion for reconsideration.

On February 25, 1966, the appellate court's Special Division of Five issued its split resolution (3 to 2) granting the motion for reconsideration, setting aside the decision of July 15, 1965 as well as the appealed decision of the trial court, and remanding the case to the trial court for further proceedings.

Petitioners in turn filed on March 18, 1966 their motion for reconsideration of the appellate court's resolution of February 25, 1966 on the ground, among others, that the original decision had already become final and executory in August, 1965 before Attys. Crisologo and Encarnacion filed their motion for reconsideration of September 6, 1965. On July 11, 1966, the appellate court's Special Division of Five, by the same split vote, issued its resolution denying petitioners' motion for reconsideration, rejecting the grounds adduced by them in support thereof as follows:

"True it is that a copy of the decision was posted by registered mail on July 19, 1965, to be sent to Atty. Francisco Ventura at his registered address. But the latter was returned unclaimed and there is nothing in the record to show when the notice to Atty. Francisco Ventura to receive said letter was sent to him by the Postmaster of Manila. x x

"1. There is no proof when the registry notice addressed to the original defendant-appellant's counsel, Atty. Francisco Ventura, advising him to receive the letter containing the decision of July 15, 1965, was sent to him by the Postmaster of Manila. It is not enough that a letter be sent by registered mail. What is important is that the addressee be notified and advised to receive it in order that service may be deemed effective after the lapse of five days from the sending of the first notice. Even granting that a notice was sent to Atty. Francisco Ventura, it must be shown that he received it, or someone else of sufficient discretion did so for him. If the addressee is not notified as above indicated it is not just that he be considered as having been served with notice upon the expiration of five days from the sending of the first notice.

"2. When, on August 25, 1965, Attys. Floro Crisologo and Ramon Encarnacion, Jr. entered their appearance for the defendant-appellant, presumably with the consent of the latter, Atty. Francisco Ventura was for good cause replaced by his client because of failure to contact him.

"(3) When this Court by resolution of September 9, 1965, ordered that copy of the decision of July 15, 1965, be served upon the new counsel, Attys. Floro Crisologo and Ramon Encarnacion, Jr., notwithstanding plaintiffs-appellees' opposition, that action was practically an order approving the change of attorney for defendant-appellant. This was done in the interest of justice so as not to permit the neglect, inattention or irresponsible actions of an attorney to prejudice his client, provided the latter is not chargeable with neglect in protecting his rights. x x x"

Petitioners in the meantime had requested the appellate court's clerk to request information from the Manila Postmaster as to the service of the decision by registry mail to respondent's counsel of record, and the Manila Postmaster had on July 30, 1966 replied to the clerk's inquiry that "(I)n connection with your letter under date of July 11, 1966 concerning your registered letter No. 87 posted at Manila on July 20, 1965 and addressed to Atty. Francisco Ventura, Manila, please be informed that according to our records, said registered letter was returned to you as sender and was receipted for by Mr. G. Reyes on August 25, 1965, because it was not called for by the addressee despite the three notices sent to him on July 20, 30 and August 3, 1965."

Petitioners on August 1, 1966 further filed a second motion for reconsideration with motion for leave to file the same, averring that with the postmaster's certification, it was clear that three notices of the registered decision had been duly sent to Atty. Ventura. The second motion was admitted but denied by the appellate court in its resolution of August 11, 1966 by the same split-vote.

Complaining that the appellate court thus decided a question of substance in a way not in accord with law and with our applicable decisions, petitioners sought a review. We gave due course. Respondent having failed to file

his brief, the case was submitted for decision without respondent's brief. We now rule for petitioners.

1. The key issue is whether or not service by registered mail of the appellate court's decision upon respondent's counsel of record should be deemed completed and effected upon the addressee's failure to claim his mail on the fifth day after the first notice of the postmaster in accordance with the provisions of Rule 13, Section 8 of the Rules of Court which read:

"Section 8. Completeness of Service -- Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of five (5) days after mailing, unless the court otherwise provides. Service by registered mail is completed upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect at the expiration of such time."

There is no question that copy of the appellate court's decision of July 15, 1965, in accordance with the Manila postmaster's certification, was posted at Manila by registered mail on July 19, 1965 addressed to Atty. Ventura, respondent's counsel of record at his address of record, and that the same was not called for by the addressee despite three notices sent to him on July 20, 30 and August 3, 1965, so that it was returned to the appellate court as sender on August-25, 1965. Under the above-quoted rule, therefore, service of the decision was deemed effected on Atty. Ventura on July 26, 1965, i. e. , at the expiration of the fifth day after the postmaster's first notice to him on July 20, 1965, and the decision became final 15 days thereafter on August 10, 1965, in accordance with Rule 51, Sec. 10.[4]

The appellate court's decision of July 15, 1965 had thus become final on August 10, 1965, with service thereof having been effected in law on respondent's counsel of record in accordance with a long line of our applicable decisions. In the latest case of *Babala vs. Court of Appeals*,^[5] the Court upheld the appellate court's decision throwing out therein petitioner's appeal for failure of his counsel to claim the registered notice from the appellate court requiring him to pay the docket fees and rejecting his counsel's claim that the postmaster's notices were not turned over to him by the recipient thereof, and reiterated the rule long familiar to practitioners that "it is the duty of counsel to adopt and maintain a system that efficiently takes into account all court notices sent to him."^[6]

In *Pielago vs. Generosa*,^[7] the Court applying the former rule, Rule 27, section 8 of the old Rules of Court (now Rule 13, sec. 8), threw out therein appellant's contention that failure to claim the registered notice merely amounted to an excusable neglect which would warrant the reopening of the case, emphasizing that:

"It is such kind of neglect or inaction that gave life to the provision that service by registered mail is complete and effective, if the addressee fails to claim his mail from the post office within five days from the date of first notice of the postmaster, at the expiration of such time.

The Court, in *Grospe vs. Court of Appeals*,^[8] in further applying the rule as to which should prevail between the date of notice and the date of subsequent actual receipt, ruled that when the addressee fails to claim his mail from the Post Office within five days from the first notice of the postmaster, the service shall take effect at the expiration of such time, regardless of whether the addressee never claimed it or received it afterwards:

"Uera failed to claim his mail within five days from first notice (November 28, 1955); therefore, he is deemed to have received it on December 3, 1955, no matter whether he never claimed it or received it afterwards (as in this case, on December 20, 1955). As we have held in several cases, 'if the addressee is so negligent that he fails to claim his mail from the post office within five days after the first notice by the postmaster, then the service is deemed complete and effective at the expiration of such time.'^[9]

Where the addressee justly shows a valid reason for setting aside the rule's presumption that he should have

received the mail within the five-day period from the postmaster's first notice, the Court has shunned a rigid application that would work an injustice.[10] But such is not the case here.

2. The corollary issue is whether or not the subsequent "Appearance" in the appellate court on August 25, 1965 of Attys. Crisologo and Encarnacion as counsel for respondent (with service by mail of a copy thereof to petitioners' counsel but without service to respondent's counsel of record, Atty. Ventura, nor to respondent himself; and which "Appearance" does not contain the conformity either of respondent or of Atty. Ventura; and with no notice of withdrawal ever having been filed by Atty. Ventura), could serve as a valid substitution of attorneys for respondent. Our rule and jurisprudence on substitution of attorneys are clear that unless the procedure prescribed by Rule 138, Section 26[11] is complied with, the attorney whose appearance is on record before the filing of the application for substitution should be regarded as the attorney entitled to be notified of all notices and pleadings and responsible for the conduct of the case. As early as the old case of *U. S. vs. Borromeo*[12] and restated in *Ramos vs. Potenciano*[13] the Court has consistently held that "x x x in order that there may be substitution of attorneys in a given case, there must be (1) a written application for substitution; (2) a written consent of the client; and) a written consent of the attorney to be substituted. And in case the consent of the attorney to be substituted cannot be obtained, there must at least be proof that notice of the motion for substitution has been served upon him in the manner prescribed by our rules. Unless this procedure is followed the attorney who appears to be on record before the filing of the application for substitution should be regarded as the attorney entitled to be notified of all notices and pleadings."

Under the circumstances of record, there was clearly no valid substitution of attorneys for respondent. The mere unexplained disappearance from the scene and total silence of the counsel of record, Atty. Ventura, could not serve to set aside the service in law upon him of the appellate court's decision of July 15, 1965, much less to allow respondent to produce almost four months time -- from August 10, 1965 when the decision became final upon completion of legal service by registered mail on Atty. Ventura to December 6, 1965, when Attys. Crisologo and Encarnacion filed their motion for reconsideration -- and obviously attempt stretch thereby the 15-day period to seek a reconsideration of the decision notwithstanding its finality.

In the old case of *Aznar vs. Norris*,[14] the Court has held that the mere appearance of a second attorney on behalf of a litigant does not authorize a presumption that the authority of the first attorney of record has been withdrawn. In *Wack-Wack Golf and Country Club, Inc. vs. Court of Appeals*,[15] the Court pointed out that even if the counsel-law firm of record has arranged with its client for its impending relief from the case and its substitution by new counsel, "it is under obligation to protect the client's interest (which includes appearance at the hearing) until its final release from the professional relationship with such client. For its part, the court could recognize no other representation on behalf of the client except such counsel of record until a formal substitution of attorney is effected. Thus, any agreement or arrangement such counsel of record and its client may reach regarding the presentation of the client's case in court is purely their private concern. Proceedings in court cannot be made to depend on them. The lack of coordination or understanding between the two law firms in the instant case cannot be considered as a legal excuse or falling within the ambit of excusable negligence to justify the granting of relief from the order declaring the client in default or, as in this case, from a decision entered after presentation of evidence in his absence." [16]

3. In the absence of any credible representation or manifestation on the record on the part of respondent nor of his counsel of record, it was patent error for the appellate court to rule in its second resolution of July 11, 1966 that with the appearance on August 25, 1965 of Attys. Crisologo and Encarnacion for respondent, "presumably with the consent of the (respondent)", "Atty. Francisco Ventura was for good cause replaced by his client because of failure to contact him." Their absolute silence on this score repels such a presumption. No explanation

whatever is made by respondent, as to when he first learned of the decision or whether he sought out his attorney of record and in fact failed to contact him, as unjustifiably presumed by the appellate court, or if he did contact him, what explanation in turn was given to him by the latter. Likewise, Atty. Ventura, whom the appellate court took note of as a busy practitioner and pre-bar reviewer in various Manila law colleges, has not essayed to give any explanation whatever for his failure to claim the registered copy of the decision, despite the three notices sent to him by the Manila postmaster, but simply vanished from the case. Petitioners indicate that respondent had made some unsubstantiated representation that Atty. Ventura had moved his office to a new address, but it is settled law that counsel must notify the Court of any change of address^[17] and that clients are bound by the errors and neglect of their counsel.^[18]

4. The appellate court majority's reason that "(E)ven granting that a notice was sent to Atty. Francisco Ventura, it must be shown that he received it, or someone else of sufficient discretion did so for him" was likewise grave error. This is contrary to the legal presumption "that a letter duly directed and mailed was received in the regular course of the mail"^[19] which, under the Rules, is "satisfactory, if uncontradicted." We have here the uncontradicted certification of the Manila postmaster that three notices of the registered decision were sent to Atty. Ventura, but he did not call for it. Atty. Ventura as the addressee is the only person who can dispute competently the postmaster's certification that he was sent the said notices, but he chose to keep silent, and to throw unrealistically on petitioners the burden of still showing that he did receive said notices would be against all considerations of public policy and sound administration of justice. Furthermore, even if Atty. Ventura had denied receiving the three notices -- and in fact, he has not so denied -- the Court has held that "(B)etween the denial of a party and the assertion of an official whose duty it is to send notices, the choice should not be difficult to make,"^[20] reaffirming the criterion established in earlier cases that such denials cannot prevail over the positive statement of the duly authorized postal official which "is fortified by the legal presumption that official duty was regularly performed."^[21]

5. The end result is that the appellate court's decision of July 15, 1965 is declared to have become final on August 10, 1965, pursuant to the provisions of Rule 13, Section 8. In view thereof, the resolution of February 25, 1966 setting aside said decision and remanding the case to the trial court for further proceedings, as well as the subsequent resolutions of July 11, 1966 and August 11, 1966 "practically approving" the substitution of Atty. Ventura by new counsel, could produce no legal effect, because they were beyond the jurisdiction and authority of the appellate court. Because of the finality of the decision, there was no longer any pending case in the appellate court wherein respondent's counsel of record would yet be substituted by new counsel.

ACCORDINGLY, the writ of certiorari is hereby granted. The appellate court's decision of July 15, 1965 in favor of petitioner is declared to have become final on August 10, 1965 and its subsequent resolutions of February 25, 1966, July 11, 1966 and August 11, 1966 are annulled and set aside. With costs against private respondent.

SO ORDERED.

Concepcion, C.J., Reyes, JBL, Dizon, Makalintal, Zaldivar, Barredo, and Villamor, JJ., concur.
Ruiz Castro and Fernando, JJ., in the result.

[1] Civil Case No. 1944-P of the Court of First Instance of Rizal, Pasay City Branch.

[2] Court of Appeals' Resolution of July 11, 1966, page 4, Rollo, p. 46.

[3] Justices Gatmaitan, Yatco and Perez, with Justices Esguerra and Enriquez.

[4] "Sec. 10. Entry of Judgment. -- The judgment shall be entered upon the expiration of fifteen (15) days after service of notice thereof upon the parties. x x "

[5] L-23065, February 16, 1970.

[6] See also *Baring vs. Cabahug*, L-23229, July 20, 1967, 20 SCRA 696, 699; *Colcol vs. Philippine Bank of Commerce*, L-21137, November 7, 1967, 21 SCRA 890, 892; *Enriquez vs. Bautista*, 79 Phil. 220 (1947); *Islas vs. Platon*, 47 Phil. 162 (1924).

[7] 73 Phil. 654 (1942) quoted in *Martinez vs. Martinez*, 90 Phil. 697 (1952).

[8] 106 Phil. 1144 (1959).

[9] Quoting from *Pielago vs. Generosa*, supra, see also *Viacrusis vs. Estenzo*, L-18457, June 30, 1962, 5 SCRA 560-564.

[10] *Cabuang vs. Bello*, 105 Phil. 1135 (1959).

[11] "Section 26. Change of attorneys. -- An attorney may retire at any time from any action or special proceeding, by the written consent of his client filed in court. He may also retire at any time from an action or special proceeding, without the consent of his client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire. In case of substitution, the name of the attorney newly employed shall, be entered on the docket of the court in place of the former one, and written notice of the change shall be given to the adverse party. x x x "

[12] 20 Phil. 189 (1911).

[13] *Ramos vs. Potenciano*, L-19436, Nov. 29, 1963, 9 SCRA 589; See *Baquiren vs. Court of Appeals*, L-14551, 2 SCRA 583; *Rodriguez vs. Fernandez*, 54. O. G., 1802; *Olivares vs. Leola*, 97 Phil. 253 (1955).

[14] 3 Phil. 636 (1904).

[15] 106 Phil, 501 (1959).

[16] Emphasis supplied.

[17] *Juane vs. Garcia*, L-21115, Oct. 29, 1968, 25 SCRA 801.

[18] *Ocampo vs. Caluag*, L-21113, Apr. 27, 1967, 19 SCRA 971 and cases cited.

[19] Rule 131, Sec. 5(m).

[20] *Grafil vs. Feliciano*, L-27156, June 30, 1967, 20 SCRA 616.

[21] *Enriquez vs. Bautista*, 79 Phil. 220, 222 (1947); *Islas vs. Platon*, 47 Phil. 162 (1924).

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