

DIOSDADO ESPINOSA, PETITIONER, VS. HON. NICASIO A. YATCO OF THE COURT OF FIRST INSTANCE OF RIZAL AND J.M. TUAZON & CO., INC., REPRESENTED BY GREGORIO ARANETA, INC., RESPONDENTS.

G. R. No. L-16435. January 31, 1963

Ponente: REGALA, J.

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REGALA, J.:

This is a petition for certiorari and mandamus filed by Diosdado Espinosa to annul the order of the Court of First Instance of Rizal (Branch V) in Civil Case No. Q-4064, denying his petition for relief from judgment under Rule 38, and/or to compel the respondent Judge to approve his record on appeal in connection with the appeal which he was trying to take from the aforesaid order.

The petition was given due course and to stay execution of the lower court's decision, upon petitioner's filing a bond of P500.00, the writ of preliminary injunction prayed for was issued by this Court.

The record shows and it is not disputed that on March 5, 1959, herein respondent J. M. Tuazon & Co., represented by Gregorio Araneta, Inc., filed said Civil Case No. Q-4064 in the court below against Diosdado Espinosa, herein petitioner, for the recovery of possession of a parcel of land registered in its name and covered by Transfer Certificate of Title No. 1267 of the land records of Quezon City.

In due time, defendant filed his answer. The issues having thus been joined, the lower court, on May 15, 1959, set the case for hearing on June 25, 1959, with proper notice to both parties. When that date arrived, however, counsel for defendant verbally moved for continuance of the hearing, claiming that his client "has not come bank from s. mission by the Office of the President of the Philippines." Considering that the case had been set for hearing as early as May 15, 1959, so that defendant has had ample time to prepare for trial, or to make a timely motion for postponement, if necessary, the lower court denied counsel's verbal motion for continuance, and thereafter heard plaintiff's evidence. Counsel for defendant also failed to cross-examine plaintiff's witnesses and did not present any evidence for his client, whereupon the case was submitted for decision.

The following day, June 26, 1959, the lower court rendered a decision against the defendant and in favor of plaintiff corporation. In said decision, defendant's verbal motion for postponement was again passed upon and ruled out as unmeritorious.

Defendant received a copy of the decision on June 30, 1959, but instead of filing a motion for new trial, or of appealing therefrom, he filed on August 27, 1959, —long after the decision had already become final and executory—a "petition to set aside judgment." It is alleged that his absence at the hearing of June 25, 1959 was due to mistake and/or excusable negligence, as explained in his affidavit attached to the petition, and that he has good and valid defenses which he could prove if given a chance. Plaintiff corporation opposed the petition on the grounds that the facts alleged therein do not constitute mistake or excusable neglect to warrant the setting aside

of the decision; that defendant is guilty of laches and consequently not entitled to relief; and that if defendant really has a meritorious defense, the same could have been presented at the hearing of June 25, 1959 even in his absence.

Acting upon the petition, the lower court denied the same for lack of merit in its order of September 5, 1959, copy of which was received by defendant on September 17, 1959. Not satisfied with the order, defendant on October 16, 1959 filed a motion of appeal, appeal bond and record on appeal. Plaintiff corporation again filed its opposition and on October 24, 1959, the lower court disapproved the record on appeal, stating that the decision rendered in the case had become final and executory as of July 30, 1959.

Arguing that he was appealing from the order dated September 5, 1959, which denied his petition for relief, and not from the decision rendered in the case, defendant on November 14, 1959 filed a motion to set aside the order of October 24, 1959. The motion, however, was denied. From that order of denial, defendant brought the case to this Court thru the present petition for certiorari and mandamus.

The petition is devoid of merit.

We are not impressed by defendant's pretense that he has valid and meritorious defenses which he can prove if granted a reopening of the hearing. It appears that he merely reiterated in his affidavit some of the allegations he made in his answer, i.e., that he and his predecessors in interest have been in open, continuous and quiet possession of the lot in question in the concept of owners since 1893; that the said lot is not covered by plaintiff's title, and assuming that it is included therein, such inclusion was obtained illegally and thru fraud. Needless to say, such allegations cannot stand in the face of plaintiff's indefeasible title to the land under the Torrens System, the validity of which cannot be collaterally attacked. What is more, the facts or circumstances constituting the alleged fraud in the issuance of the title have not been alleged, and the claim that the lot in dispute is not covered by plaintiff's title and that defendant thru his predecessors in interest has been in open and continuous possession thereof in the concept of owner since 1893, are mere conclusions or opinions, and as such are not valid.

In any event, this Court has already held that "the relief provided for by Rule 38 is of equitable character and is allowed only in exceptional cases: where there is no available or other adequate remedy." (Santos vs. Manila Electric Co., et al., G. R. No. L-7735, December 29, 1955, citing Palomares, et al. vs. Jimenez, et al., 90 Phil., 778.) In the present case, defendant had another adequate remedy available to him which was either a motion for new trial, or appeal from the adverse decision of the lower court, especially since it is not pretended that said defendant was prevented by fraud, accident, mistake or excusable negligence from filing such motion or taking the appeal. Thus, after June 30, 1959, when defendant admittedly received a copy of the decision, he had plenty of time within which to file a motion for new trial or to perfect an appeal. He did not, however, pursue any of those remedies within the time allowed by law, and instead filed a petition for relief, allowing in the meantime the judgment to become final and executory. The rule is that relief will not be granted to a party who seeks to be relieved from the effects of a judgment when the loss of the remedy at law was due to his own negligence (Robles et al vs. San Jose, et al., 99 Phil., 658; 52 Off. Gaz., 6193; Smith Bell and Co., Ltd. vs. Philippine Milling Co., 107 Phil., 160. or a mistaken mode of procedure (49 C.J.S. p. 617; Santos vs. Manila Electric Co., et al., supra). To sustain, defendant's petition for relief now would be tantamount to reviving the right of appeal which has already been lost either because of inexcusable negligence, or due to a mistaken mode of procedure by counsel.

Wherefore, the petition for certiorari and mandamus is denied, and the preliminary injunction heretofore issued dissolved, with costs against petitioner.

Bautista. Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes and Makalintal, JJ., concur.

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