

LEOPOLDO SALCEDO, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND REMEDIOS V. RODRIGUEZ, RESPONDENTS.*G. R. No. L-18480. January 31, 1963*

Ponente: BARRERA, J.

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This is a petition for review of the decision of the Court of Appeals dismissing the petition for mandamus filed by Leopoldo Salcedo, to compel the Court of First Instance of Quezon to approve the record on appeal in Civil Case No. 42-G of said court and nullify the writs of execution issued therein against him. Insofar as pertinent to the instant proceeding, the facts of the case are as follows:

In January, 1956, Remedios Rodriguez filed in the Court of First Instance of Quezon a complaint against Leopoldo Salcedo (Civ. Case No. 42-G), to compel, recognition of her child named Ricardo Eulogio Rodriguez, allegedly begotten by defendant, for support, damages, attorney's fees, and costs. Corresponding summons appeared to have been on July 25, 1956, served on defendant at his residence through his housemaid Nenita Baltazar, of legal age and sufficient discretion to understand the importance thereof. In view of his failure to file an answer within the reglementary period, defendant was declared in default on September 4, 1956, and plaintiff was allowed to introduce her evidence.

On November 27, 1956, the court rendered judgment ordering defendant Salcedo to acknowledge Ricardo Eulogio Rodriguez as his illegitimate child; to give said child a monthly support of P200.00, computed from the date of the filing of the action until he reaches the age of majority; to pay plaintiff Rodriguez moral damages in the sum of P10,000.00, actual damages for P20,000.00, exemplary damages for P5,000.00, and P1,000.00 as attorney's fees, and costs.

On February 21, 1958, the court issued an alias writ of execution against defendant's properties in Quezon City. Claiming to have learned of the decision against him for the first time only when served with the writ of execution, defendant Salcedo filed on February 24, 1958 an urgent motion seeking to set aside the decision and the corresponding order of execution. This motion was set for hearing during which defendant Salcedo was allowed to testify and adduce evidence to support his allegations therein. On September 19, 1958, the court denied the motion, on the ground that it was filed out of time and for lack of supporting affidavit of merit. On October 24, the court denied the second motion for reconsideration of the default order filed by defendant. No appeal has been taken from these orders of denial. On January 22, 1959, a second alias writ of execution was issued by the lower court.

Almost four (4) months thereafter, or on May 4, 1959, Salcedo filed a petition for certiorari in the Court of Appeals (CA-G.R. No. 24770-R) questioning the legality of the service of summons in the case and, consequently, the jurisdiction of the lower court to validly render judgment against him. Overruling his allegations, the Court of Appeals, in its decision of November 19, 1959, dismissed the petition and held that in view of the absence of evidence to the contrary, service of summons on his housemaid is valid service on

defendant. Instead of asking for the review of the Court of Appeals' dismissal of his petition, Salcedo filed with the trial court for the first time a notice of appeal from the decision on the merits, and a motion for extension of time to file a record on appeal. The motion for extension of time was denied and the appeal ordered dismissed by the court on January 14, 1960. On January 26, 1960, the court issued the third alias writ of execution.

Salcedo then filed a petition for mandamus in the Court of Appeals (CA-G. R. No. 27157-R) to compel approval by the lower court of the record on appeal, obtaining a writ of preliminary injunction therein to suspend execution of the decision. On May 20, 1961, the Court of Appeals rendered judgment dismissing the petition for mandamus, and holding that the trial court committed no abuse of discretion in issuing the order of execution complained of and in denying his petition for extension of time to file a record on appeal. It is from this order of dismissal that the instant petition for review has been instituted.

The petition is without merit. The question of the validity or sufficiency of the service of the summons on defendant, now petitioner Salcedo, on which he predicates his contention that the trial court acquired no jurisdiction over his person and, therefore, the judgment against him was null and void, has already been previously raised by him in his two motions for reconsideration and relief, seeking to set aside the judgment and explaining his failure to appear and file his answer, which motions were denied by the trial court on September 19, and October 24, both in 1958. As already stated, no appeal has been taken from any of these orders of denial, and they therefore became final. It is true that months later, or on May 4, 1959, petitioner filed a petition for certiorari in the Court of Appeals, raising the same question, but again the petition was dismissed, the Court upholding the validity of the summons. Again no petition for review of this order of the Court of Appeals has been filed, and the order of dismissal thus became final. In the face of these facts, the trial court committed no error in denying petitioner's subsequent motion for time to present a record on appeal from the judgment rendered on the merit of the case and the orders of denial of the motions for reconsideration, which judgment and orders have long become final. As a consequence, neither did the Court of Appeals err in denying Salcedo's petition for mandamus to compel the trial court to give due course to his belated appeal.

Wherefore, the present petition to review the decision of the Court of Appeals in CA-G.R. No. 27157-R is hereby dismissed and the judgment rendered therein affirmed. The preliminary writ of injunction heretofore issued is dissolved. Costs against the petitioner. So ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Paredes, Dizon and Regala, JJ., concur.

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