

ALEJANDRO ABAO, PETITIONER AND APPELLANT, VS. HON. MARIANO R. VIRTUCIO, ET AL., RESPONDENTS AND APPELLEES.

G.R. No. L-16429. October 25, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

On November 20, 1958, J. M. Tuason & Co. Inc. (the principal respondent herein) filed with the Municipal Court of Quezon City, a complaint for forcible entry (Civil Case No. 5367) against herein petitioner Alejandro Abao alleging, inter alia, that it is the registered owner of a parcel of land known as the Santa Mesa Heights Subdivision, situated in Quezon City, described in Transfer Certificate of Title No. 1267 (37686-Rizal) issued by the Office of the Register of Deeds of Quezon City, and that on or about January 12, 1958, petitioner, by means of force, strategy, and stealth, unlawfully entered into the possession of a portion (100 square meters, more or less) of said land, and constructed his house thereon, and praying that petitioner be ordered to vacate the said land and remove his house and other construction thereon.

On November 26, 1958, petitioner was served with summons setting the case for hearing on December 8, 1958. Petitioner filed no answer.

On the date set for hearing of the case (December 8), petitioner's wife, Maria C. Abao, appeared in court, in representation of her husband. She admitted in open court the allegations of the complaint, and requested up to January 15, 1959, to remove their house constructed on respondent company's premises. The latter agreed to her (Maria's) request and, consequently, the Municipal Court of Quezon City, on the same date, rendered judgment of the following tenor:

"SENTENCIA

"En esta demanda de desahucio comparecio Maria C. Abao en representacion de su esposo demandado y despues de admitir lo alegado en la demanda pidió que se les conceda un plazo para remover su casa hasta el 15 de enero, 1959, a cuya peticion la representaci6n demandante se conformo y pidio que se dicte senten-cia a tenor de dicha peticion.

"En su virtud se ordena al demandado que deje vacante el terreno ocupado por su casa hasta el 15 de enero, 1959, y pague las costas. Entendiendose que en el caso de no dejar vacante tal como se ordena en esta sentencia el demandado pagara a la corporation demandante la suma de P30.00 mensual a partir del 16 de enero, 1959, hasta la fecha de la remocion de dicha casa y entregue a la demandante la porcion de terreno ocupada por la casa mencionada.

"Asi se ordena."

On December 11, 1958, the Clerk of Court sent by ordinary mail copies of the above-quoted decision to both parties (See Annex 1, Respondent's Brief). Petitioner allegedly received a copy of the decision on December 16, 1958.

On July 14, 1959, respondent company filed a motion for execution of said decision. The Municipal Court set said motion for hearing on July 18, 1958. However, on the latter date, counsel for petitioner filed a motion for postponement of the hearing. In an order of the same date, the Municipal Court reset the hearing of said motion on August 22, 1959.

On August 1, 1959, before the date of the hearing of the motion for execution, counsel for petitioner filed a motion for reconsideration of the main decision and for new trial, on the ground that he learned of said decision only when petitioner served him a copy of the motion for execution dated July 14, 1959, and that Congress had declared under Republic Act No. 2616 that "the owners of the land in question are the Deudors." To this motion, respondent company filed an opposition on August 7, 1959. On August 22, 1959, the Municipal Court denied said motion for reconsideration and new trial, in an order which reads:

"ORDER

"This is a motion for reconsideration and for new trial filed by the counsel for the defendant, to which motion an opposition was filed by the plaintiff's counsel.

"After studying both pleadings and the oral argument of both parties given in open Court, in the last and to-day's hearing, this Court believes and is of the opinion that the said motion for reconsideration and for new trial is untenable and cannot be sustained by this Court for lack of merit and legal basis. This Court believes that the proper remedy is provided in Section 1, Rule 38 of the Rules of Court, if he has still a remedy.

"Wherefore, premises considered, said motion for reconsideration and for new trial is hereby denied for lack of merit and legal basis.

"So ordered."

On August 28, 1959, the Municipal Court issued an order for the issuance of a writ of execution.

On September 3, 1959, petitioner filed with the Court of First Instance of Rizal, a petition for certiorari or relief from judgment, with preliminary injunction (Special Civil Action No. Q-4658).[1] Said petition was, on the same date, dismissed by the court in an order which reads:

"ORDER

"This is a petition for 'writ of certiorari or relief from judgment with preliminary injunction'. In order to determine the sufficiency of the petition to justify the issuance of an order requiring¹ the respondents to answer, the Court went over the records of the case.

"The Court finds from the allegations of the petition, that the decision of the respondent Judge (of the Municipal Court) has already become final and executory, hence, certiorari cannot be availed of. Regarding the relief from judgment, the Courts finds the following fundamental defects.

1. The petition does not have an affidavit of merit wherein are stated the fraud, accident, mistake, or excusable negligence, and the facts relied upon by the petitioner to constitute his valid defense in the original case.
2. The petition was filed beyond the six-month period as the decision of the Court is dated December 18, 1958.
3. The petition is vague and confused. In its allegations and, therefore, the same cannot be a basis for the relief asked for.

"Finally, the Court wishes to invite the attention of counsel for the petitioner, that it seems not proper to file plea/lings in Court, which are lacking in material allegations. The petition filed by petitioner, does not reflect some of the data contained in the original documents. Furthermore, the Court wonders why there are blank spaces in the petition, which through resourcefulness could be filled up.

"Wherefore, the petition filed in this case is hereby dismissed, without special pronouncement as to costs.

"So ordered."

On September 18, 1959, petitioner filed a motion for reconsideration of said order and for admission of an amended petition. Said motion was denied by the Court on September 26, 1959, in an order reading:

"ORDER

"Upon going over the records of the case and after proper computations, the court finds that it took the herein petitioners a period of 9 months within which to appeal from the decision in this case, which is beyond the reglementary period prescribed by law on the matter.

"In view thereof, the court hereby denies the herein motion for reconsideration and for Admission of Amended Petition dated September 10, 1959, filed by counsel for petitioner.

"So ordered."

Hence, this appeal.

The only question to be determined in this appeal is whether the lower court correctly dismissed petitioner's petition for certiorari or relief from judgment filed on September 3, 1959.

We think the court acted correctly. The decision of the Municipal Court which is sought to be annulled or set aside is dated December 8, 1958. Even assuming that the notice sent to petitioner by ordinary mail on December 11, 1958 did not constitute a valid service of the decision^[2] and that petitioner had legal notice thereof only on July 14, 1959 when he was served with copy of respondent's motion for execution, still his petition for relief filed on September 3, 1959, while within the 60-day period (from July 14) was, nevertheless, outside of the 6-month time (from December 8, 1958, the date the judgment was taken against him) required in Section 3 of Rule 38.

Moreover, as correctly found by the lower court, the petition was not accompanied by "affidavits of merit wherein are stated the fraud, accident, mistake, or excusable negligence, and the facts relied upon by petitioner to constitute his valid defense in the original case." Needless to say, such a defect is fatal (*Price Stabilization Corporation vs. Court of First Instance of Manila, et al.*, 97 Phil., 153), and justifies the denial by the court of the relief sought (*Coombs vs. Santos*, 24 Phil., 446; *McGrath vs. Del Rosario*, 49 Phil., 330; *Villanueva, et al. vs. Alcoba*, 101 Phil., 277; 55 Off. Gaz. [3] 422),^[3] for it is the affidavits of merit that serve as jurisdictional basis for a court to entertain a petition for relief (*Omandam vs. Director of Lands*, 95 Phil., 450).^[4]

Wherefore, the orders (dated September 3, 1959 and September 26, 1959) of the court a quo appealed from, are hereby affirmed, with costs against the petitioner. So ordered.

Paras, C.J., Bengzon, Padilla, Bautista Angelo, Labrador, Gutierrez David, and Paredes, JJ., concur.

Reyes, J. B. L., J., concurs in the result.

Orders affirmed.

[1] Presumably under the provisions of sections 1 and 3 of Rule 38 of the Rules of Court.

[2] "*Centenera vs. Yatco* 106 Phil., 1064; 57 Off. Gaz., [27] 4923.

[3] See also *Daipan vs. Sigabu*, 25 Phil., 184; *Mapua vs. Mendoza*, 45 Phil., 424; *Bank of P.I. vs. De Coster*, 47 Phil., 594; *Baron vs. Sampang*, 50 Phil., 756; *Philippine Guaranty Co. vs. Belando*, 53 Phil., 410; *Paz vs. Inandan*,

75 Phil., 608.

[4]See Francisco, Rules of Court in the Philippines, Vol. I (Part II), 1957 Ed., pp. 787-788.

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