

GEORGE KALITAS, PETITIONER, VS. CATALINO LIDO AND THE HON. JUDGE VICENTE CUSI, JR., JUDGE OF THE COURT OF FIRST INSTANCE OF DAVAO, RESPONDENTS.

G.R. No. L-22452. April 25, 1969

Ponente: CASTRO, J.

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CASTRO, J.:

The petitioner George Kalitas filed suit in the Court of First Instance of Davao for the recovery of possession of a portion of land situated in Mati, Davao, which, he averred, was being illegally occupied by the respondent Catalino Lido. The respondent denied the charge, claiming that he was and is the owner of the portion in dispute. He contended that although the portion was included in the survey and registration of title in the name of the petitioner, his ownership thereof was thereafter acknowledged by the petitioner in a public instrument, annex "1" of the answer. Accordingly, he asked the court to order the petitioner to execute a deed of cession of the said portion and to surrender his certificate of title so that the necessary annotation could be made thereon.

The petitioner in turn contended that the document on which the respondent bases his claim is a nullity for three reasons: first, because it contravenes the prohibition in the Public Land Law against the alienation of lands within the period of five years; second, because it was not approved by the governor (Davao) as required by the Administrative Code for Mindanao and Sulu, and, third, because it is without consideration.

When the case came up for trial, the parties submitted the case on the following agreed statement of facts:

"1. That on January 1, 1938, the plaintiff was issued by the Secretary of Agriculture and Natural Resources, Homestead Patent No. 46270 for a tract of land described in the complaint, by reason of which the Register of Deeds of Davao, issued Original Certificate of Title No. 2119, dated March 18, 1938, to the plaintiff;

"2. That on February 13, 1959, plaintiff was issued Original Certificate of Title No. T-4970 by virtue of the cadastral proceedings for the same tract of land;

"3. That the following are annotated at the back of Original Certificate of Title No. 2119 in the name of George Kalitas, to wit:

"a. Mortgage in favor of the Agricultural and Industrial Bank dated April 24, 1941;

"b. Mortgage in favor of the R.F.C. dated March 8, 1951;

"c. Release of both mortgages dated March 12, 1961.

"4. That both parties are brothers, belonging to the Non-Christian tribe, called Mandayas;

"5. That on January 29, 1940, George Kalitas executed the instrument marked as Annex '1' of the answer, ratified before Notary Public Juan Naval of Mati, Davao, copy of which is made an integral part of this Stipulation of Facts;

"6. That the instrument Annex '1' stated in the next preceding paragraph does not show on its face approval of the Provincial Governor;

"7. That the mother of both parties died in 1961, ap-proximately two months previous to the filing of this complaint;

"8. That the parcel of land in question, containing an area of approximately 21,240 square meters, is presently occupied by the defendant."

Later, they submitted the following additional stipulation of facts:

"1. - That the property in question produces 500 kilos of copra, more or less, every two months;

"2. - That the defendant was in possession of the property with his mother from 1940 up to the time of the death of his mother and until the present time;

"3. - That the right of the defendant pursuant to Annex '1' Of his answer is not annotated at the back of Original Certificate No. 2119, nor at the back of Original Certificate of Title No. T-4970, issued in the Cadastral proceedings."

Thereafter, the court rendered judgment dismissing the complaint and ordering the annotation of the respondent's owner-ship on the certificate of title of the petitioner. In its decision the court said:

"Annex 1 of the answer is neither a contract nor an agreement, much less within the purview of the provisions quoted above of the Code of Mindanao and Sulu. For Annex 1 is merely an acknowledgment by George Kalitas that Catalino Lido, his brother, is the owner of the land in question. It is a written admission of Catalina Lido's ownership of the land therein described, together with the improvements. But assuming that Annex 1 were a contract of agreement contemplated by the Code, in the light of the purpose of the law, however, it does not apply when the non-Christian is literate. Annex 1 which bears the signature of George Kalitas very much shows that he is not illiterate. And there is no pretension whatsoever on his part that he were."

Kalitas received a copy of the decision on November 7, 1963. On December 4, following, he filed a motion for new trial, offering to submit additional evidence purporting to show that he allowed his brother, Lido, to stay on the land only during the life-time of their mother and that the document of acknowledgment did not express his true intention. According to Kalitas there was need to present additional evidence, because "as matters now stand, this Honorable Court relied merely on the insufficient facts so far stipulated on as it had no occasion to receive evidences from both parties. "In support of his motion Kalitas invoked the last paragraph of the stipulation of facts which reserved to the parties the right to present "(such) additional evidence as may be necessary."

The motion was denied by the court in its order of December 14, 1963, a copy of which was received by Kalitas on the same day. On December 16, 1963 Kalitas gave notice that he was appealing "from the order of this Honorable Court ... dated December 14, 1963," and, on January 7, 1964, he submitted to the court for approval a record on appeal.

Lido filed an opposition on the ground that the appeal should have been taken not from the order of December 14, 1963, denying the motion for new trial, because that order was interlocutory, but from the decision on the merits, and that because of Kalitas' fail-ure to do so, the decision became final on December 17, 1963. Accordingly, he moved for dismissal of the appeal, which the court granted in its order of January 11, 1964.

Kalitas moved for reconsideration and, failing in this regard, filed the present petition for certiorari and mandamus.

1. The petitioner's main grievance is that the lower court denied him a new trial for the presentation of additional

evidence to support his claim that the instrument of acknowledgment did not express his true intention as he does not even understand the language (Spanish) in which it is written. According to him, the right to present additional evidence is expressly reserved to him in the stipulation of facts which he and the respondent submitted to the court.

The petitioner obviously misconceives the function of the reservation clause in the stipulation of facts. The right to present evidence, in addition to an agreed statement of facts, must be invoked before the case is submitted to the court for decision. The petitioner does not claim that during the trial he offered to present evidence and that the court did not allow him to do so. Nor does he assert that his failure to make use of his right was due to fraud, accident, mistake or excusable neglect, or that the evidence he wanted to present constituted newly-discovered evidence so as to entitle him to a new trial under Rule 37.[1] Rather, his claim is that he has a right to adduce additional evidence based on the reservation made in the stipulation of facts.

We hold that the lower court correctly and properly denied his motion. This is not of course to say that the court could not reopen the case for the reception of additional evidence, for it could.[2] But whether it would was well within its discretion, and we are not prepared to say that in denying the petitioner's motion the court acted capriciously or whimsically.

2. Nonetheless, it is contended that the petitioner had a right to appeal from the order denying him new trial, under the second paragraph of section 2 of Rule 41 which reads as follows:

"A judgment denying relief under Rule 38 is subject to appeal, and in the course thereof, a party may also assail the judgment on the merits, upon the ground that it is not supported by evidence or it is contrary to law."

Once more the petitioner is in error. Rule 38 provides relief from a final judgment in cases where a party is deprived of a hearing because of fraud, accident, mistake or excusable neglect.[3] The rule further provides that the petition for relief must be filed within sixty days after the party learns of the judgment but not later than six months after entry of the judgment.[4] If the petition is denied, the party may, according to the above-quoted provision, appeal from the order of denial.

In the case at bar, it is plain that what the petitioner filed was not a petition for relief under Rule 38, as the petition was not based on any of the grounds, nor was it filed under the conditions, already stated. It was simply a motion to reopen the trial, with the result that, upon its denial, the appeal should have been taken not from the order denying the motion but rather from the judgment on the merits, deducting the time during which the motion was pending. Thus section 3 of Rule 41 provides:

"How appeal is taken. - Appeal may be taken by serving upon the adverse party and filing with the trial court within thirty (30) days from notice of order or judgment, a notice of appeal, an appeal bond, and a record on appeal. The time during which a motion to set aside the judgment or order or for a new trial has been pending shall be deducted, unless such motion fails to satisfy the requirements of Rule 37."

As the petitioner received a copy of the trial court's decision on November 7, 1963, the thirty-day period of appeal began to run on the following day until December 4, 1963 when he filed a motion for new trial. A total of twenty-seven days had thus passed, so that when the petitioner was notified on December 14, 1963 of the denial of his motion, he had only three days left for perfecting an appeal. This means that he had only up to December 17, 1963 within which to appeal. It is true that he filed a notice of appeal on December 16, but as he did not submit a record on appeal until January 7, 1964, the decision of the trial court became final on December 17, 1963. The lower court, therefore, did not err in dismissing his appeal.

ACCORDINGLY, the petition is denied, at petitioner's cost.

Reyes, J.B.L., Acting C.J., Dizon, Makalintal, Zaldivar, Sanchez, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

Concepcion, C.J., voted in favor of this opinion before going on official leave.

[1] Sec. 1(a)(b).

[2] See, e.g., *Alvarez v. Guevara Wee*, 47 Phil. 12 (1924); *Capellania de Tambubong v. Antonio*, 8 Phil. 683 (1907).

[3] Sec. 1.

[4] Sec. 3.

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