

**BRIGIDA BARDE, JOSEFINA BARDE AND VILMA BARDE,
PLAINTIFFS-APPELLEES, VS. SOCORRO POSIQUIT, ASTERIO BARDE,
LEONORA BARDE, JOSE BARDE, ALFREDO BARDE, DOLORES BARDE
AND VIOLETA BAR...**

G.R. No. L-29445. August 15, 1988

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal from the July 2, 1968 Order of the then Court of First Instance of Albay, 10th Judicial District, Branch III, presided over by Hon. Roberto Zarbano, denying the Petition for Relief from Judgment.

The late spouses Claro Barde and Juana Cordial be-got three (3) children, namely: Brigida, Pedro and Rafael. During their lifetime, they were the absolute owners and possessors of the land now in controversy, a 173 square meter residential land situated in Centro, Ligao, Albay, covered by Original Certificate of Title No. RO-14356 (35942). Juana died ahead of Claro. After the death of Claro, his son Pedro registered the ques-tioned land exclusively in his name. Pedro died on July 12, 1967, leaving as his heirs his widow Socorro Posiquit and their children - Asterio, Leonora, Jose, Alfredo, Dolores and Violeta. Rafael is also dead and he was survived by two (2) daughters - Josefina and Vilma.

On December 31, 1967, Brigida and the heirs of Rafael, herein appellees, filed with the then Court of First Instance of Albay a complaint for Reconveyance and Partition with Damages against Pedro's heirs. The same was docketed therein as Civil Case No. 3606. In the said complaint, among others, it was alleged that Pedro, in bad faith, caused to be registered in his name the questioned property, to the exclusion of the other heirs, by virtue of an affidavit of adjudication decla-ring that he was the only son and therefore, the sole heir of the deceased Claro Barde.

On January 22, 1968, Pedro's heirs, herein appellants, filed their Answer, where they admitted that they and herein appellees are all heirs of the late spouses Claro Barde and Juana Cordial, but while the heirs of Rafael, Vilma and Josefina, are entitled to 1/6 each, Brigida has already waived and renounced her 1/3 share in favor of Pedro after receiving the sum of P150.00 as evidenced by a document, Annex "A" (Record on Appeal, pp. 10-11). They, however, aver that they suggest and welcome an amicable settlement of all the heirs, considering that the property involved is of small value, consisting only of 173 square meters. Likewise, they claim that their continuous, adverse and undisturbed possession of the land is but in keeping with the wish, desire and verbal will of the late Claro Barde, who in life, had been ailing for many years under their care, aid and attendance, and that in consideration of such care and attention for him in his ailment, he had given the land in question to them. On the other hand, Brigida and Rafael received their corresponding shares in the inheritance in the form of other proper-ties. By way of counterclaim, herein appellants demand reimbursement of funeral expenses of Claro Barde in the amount of P1,000.00; and P500.00 for the medicine, doctor's services and other miscellaneous expenses while Claro Barde was ailing for many years under their care and attention.

On February 16, 1968, herein appellees filed their Answer to the Counterclaim.

On January 23, 1968, a notice for pre-trial was sent to Atty. Jaucian, counsel for herein appellants only but without proper notices to defendants. Said notice was returned unclaimed and so was a copy of the order setting the case for hearing on April 5, 1968. Thus, on April 5, 1968, an order was issued allowing the plaintiffs-appellees to present their evidence in the absence of the defendants-appellants and their counsel (Record on Appeal, pp. 12-13).

On April 6, 1968, the court rendered a Decision in favor of the herein appellees (Ibid., pp. 14-16), which was amended on the same date, by an Order to correct what is obviously a typographical error (Record on Appeal, pp. 14-15).

The dispositive portion of the amended decision reads:

"WHEREFORE, judgment is hereby rendered:

"(a) Directing the plaintiffs and defendants to partition the parcel of land in question into 3 equal parts, 1/3 to correspond to Brigida Barde; 1/3 to the children of Rafael Barde and 1/3 to the children of Pedro Barde. If within 15 days from the date the decision becomes final, the parties do not partition the land in accordance with this decision, the Court will appoint a commissioner to effect the partition; and

"(b) Sentencing the defendants to pay the plaintiffs the sum of P100.00 as attorney's fees and to pay the costs of the suit." (p. 15, Record on Appeal; p. 28, Rollo)

On May 9, 1968, herein appellants filed a Motion for New Trial (Ibid., pp. 17-19), which was opposed by the herein appellees (Ibid., pp. 20-23), and denied by the trial court on May 11, 1968 (Ibid., pp. 24-25).

On June 3, 1968, herein appellees filed a motion for the issuance of a writ of execution and for the appointment of a commissioner to effect the partition (Ibid., p. 28). The court, acting on the same, in an Order dated June 8, 1968 (Ibid., pp. 29-30), appointed Surveyor Cristobal O. Fama as commissioner.

On July 4, 1968, the herein appellants, with a new lawyer, filed a Petition for Relief from Judgment alleging among others, that defendants-appellants were never notified of the pre-trial and/or trial of this case or of the hearing thereof; either by the court or by their counsel, for which reason they were not able to present their good and valid defense of waiver by one of the heirs and the right to reimbursement for the expenses of the deceased; which good, valid and substantial defense may probably alter the decision of the trial court in the case at bar (Ibid., pp. 31-39).

On July 9, 1968, the herein appellees filed a motion praying that herein appellants Alfredo Barde and Socorro Posiquit be ordered to appear before the court and explain why they should not be held in contempt of court for allegedly preventing the segregation survey of the land by the appointed commissioner (Ibid., pp. 39-41).

On July 11, 1968, the herein appellees filed a Motion to Dismiss the petition for relief from judgment, the same having been filed out of time (Ibid., pp. 42-43).

Their respective memoranda having been filed by both parties (Ibid., pp. 43-49), the trial court, in an Order dated July 22, 1968, denied the petition (Ibid., pp. 58-62).

Hence, this appeal, with the appellants raising the following alleged errors:

I

THE LOWER COURT ERRED IN FINDING THAT THE PETITION FOR RELIEF FROM JUDGMENT IS NOT THE PROPER REMEDY AND WAS FILED WITH SAID COURT OUT OF TIME.

II

THE COURT A QUO ERRED IN NOT HOLDING THAT ITS ORDERS AND THE PROCEEDINGS HAD IN THIS CASE BEGINNING WITH THE NOTICE OF PRE-TRIAL OF JANUARY 23, 1968; ORDER FOR TRIAL OF FEBRUARY 26, 1968; ORDER OF APRIL 5, 1968; DECISION OF APRIL 6, 1968; ORDER OF APRIL 6, 1968; ORDER OF MAY 11, 1968; ORDER OF JUNE 8, 1968, WERE ALL NULL AND VOID FOR BEING VIOLATIVE OF DUE PROCESS OF LAW.

III

THE LOWER COURT ERRED IN HOLDING THAT WITH THE FACTS AND CIRCUMSTANCES PREVAILING, THE NOTICE TO APPELLANTS' FORMER COUNSEL IS NOTICE TO APPELLANTS: THE NEGLIGENT ACTS OF APPELLANTS' FORMER COUNSEL BIND SAID APPELLANTS.

The instant petition is impressed with merit.

The main issue in this case is whether or not notice of the pre-trial conference to their counsel is sufficient to bind the defendants-appellants.

The answer is in the negative.

One of the grounds relied upon by the appellants, in seeking to set aside the trial court's Decision of April 6, 1968, is the fact that they were never notified of the pre-trial scheduled and held on February 26, 1968, as required under Section 1, Rule 20, of the Rules of Court.

The trial court is, however, of the view that notice to appellants' counsel is sufficient as their presence is not indispensable during the pre-trial (Record on Appeal, p. 61).

In this connection, it must be stated that while under the old Rules of Court, pre-trial was discretionary, under the Revised Rules of Court, pre-trial is mandatory. Thus, the Rule provides that in any action, after the last pleading has been filed, the court shall direct the parties and their attorneys to appear before it for a pre-trial conference. The reason for the presence of the parties is that one of the purposes of the pre-trial is to consider the possibility of an amicable settlement of the case, and under Section 23 of Rule 138, attorneys cannot, without special authority, compromise their client's litigation. (The Revised Rules of Court in the Philippines by Vicente J. Francisco, Vol. II, p. 3).

In the case of *Samson vs. Court of Appeals* (105 SCRA 781, 787 [1981]), this Court stated -

"x x x. It has been consistently held that notice of the pre-trial conference must be served not only upon the counsel but also upon the party litigants as well. x x x."

and in the case of *Zenith Insurance Corp. vs. Purisima* (114 SCRA 62, 64 [1982]), the court declaration that a party is in default despite the absence of notice to it of the pre-trial was held to be a grave abuse of discretion on the part of the trial court; accordingly, this Court voided the order of default and all the proceedings that transpired subsequent thereto.

This Court ruled:

"'Due notice' not having been clearly established, we are constrained to hold that the Trial Court committed grave abuse of discretion in considering petitioner as in default and in denying its 'Motion for Reconsideration and to Set Aside Order of Default' filed on May 18, 1981. Consequently, the validity of the Order of default

and all the proceedings that transpired subsequent thereto cannot be sustained."

Similarly, in *Pineda vs. Court of Appeals* (67 SCRA 228, 232-233 [1975]), this Court held:

"In the case at bar, however, the private respondents' failure to appear at the pre-trial conference of October 16, 1971 cannot be attributed to them. No notice of said pre-trial was ever sent to respondents. Their absence therefore was justified. Thus, the order of default issued by the respondent Judge clearly ignored the doctrine of procedural due process which demands that a party affected must be given notice and an opportunity to be heard. The lack of notice would mean the nullity of the decision rendered in ordinary cases, since they 'suffer from a fatal infirmity for want of due process' (*Tiglao vs. COMELEC, et al.*, L-35166 and L-31847, August 31, 1970, 34 SCRA 456, 470; *Makabingkil vs. Yatco*, L-23174, September 18, 1967, 21 SCRA 150, 159). x x x. This Court, interpreting these provisions, uniformly emphasized that pre-trial is mandatory, that the parties as well as the counsel, who are required to appear thereat, must be notified of the same (*Lim vs. Animas*, L-29094, April 18, 1975, 63 SCRA 408, 410-411; *International Harvester Macleod, Inc. vs. Co Ban Ling & Sons Co.*, L-26863, October 26, 1968, 25 SCRA 612, 615)."

Hence, there being no question that the appellants were never notified of the pre-trial, all the proceedings that transpired subsequent thereto, are null and void. It is immaterial whether or not the petition for relief from judgment was filed on time, since a judgment void ab initio is non-existent and cannot acquire finality (*Metropolitan Waterworks and Sewerage System vs. Sison*, 124 SCRA 394 [1983]), and therefore, may be attacked directly or collaterally, and the action may be brought even after the time for appeal or review has lapsed (*David vs. Aquilizan*, 94 SCRA 707, 714 [1979]).

PREMISES CONSIDERED, the April 6, 1968 Decision of the trial court is set aside, and this case is REMANDED to the lower court for further proceedings.

SO ORDERED.

Melencio-Herrera, (Chairperson), Padilla, and Sarmiento, JJ., concur.

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