

MARTINA SAMUDIO AND EMILIANO SAMUDIO, PLAINTIFFS AND APPELLEES, VS. THE MUNICIPALITY OF GAINZA, CAMARINES SUR, DEFENDANT AND APPELLANT.*G. R. No. L-8990. February 28, 1957*

Ponente: ENDENCIA, J.

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The record discloses that on August 26, 1952, the plaintiffs filed an action against the defendant municipality of Gainza, Camarines Sur., for the recovery and declaration of ownership over the northern portion of the land described in paragraph 4 of the complaint, alleging that they were the owners of said portion and that the defendant, in the month of May, 1952, made several intrusions thereon claiming adverse possession thereof. After proper summons, the defendant, through the Provincial Fiscal of Camarines Sur, asked the lower court that it be given time to answer the complaint up to September 30, 1952, but the extension granted was only up to September 26, 1952 as per order entered on September 13, 1952, of which the Provincial Fiscal was notified on September 16, 1952. Defendant filed, however, its answer only on September 27, 1952, one day after the expiration of the ten days' extension. On that same day the plaintiffs filed a petition for default on the ground that the Provincial Fiscal had not filed the answer in behalf of the defendant within the ' extended period granted to him for filing such answer.

On September 30, 1952, the lower court granted the petition and declared the defendant in default, and by its order of October 11, 1952, set the case for October 15, 1952 for the presentation of plaintiffs' evidence in support of the complaint. Thereafter, or to be more exact, on October 30, 1952, the trial court rendered its decision declaring the plaintiffs as the lawful owners of the land in question.

On October 17, 1952, the Provincial Fiscal learned of the decision, hence he filed a motion for the reconsideration of the order of default and for the setting aside of the decision on the ground that the one day delay in the filing of the answer was due to excusable neglect because of the great pressure of official business and work in his office; that, at any rate, no substantial right of plaintiffs shall be injured by setting aside the order of default and the decision, and that the defendant has a strong, just and valid defense, to wit, that in the justice of the peace court of Gainza, the defendant had defeated the plaintiffs in Civil Case No. 5, for forcible entry and detainer; that the land in question was donated to the defendant municipality of Gainza by Casimiro Imperial, father of Josefa Imperial, the vendor of said land unto the plaintiffs; that said donation took place during the Spanish regime, and since then the defendant had been in possession of the land in question as owner thereof. Plaintiffs opposed the motion, alleging that there was no answer filed by the defendant when the petition for default was presented on September 27, 1952, and that the judgment in favor of the defendant rendered by the justice of the peace of Gainza only refers to material possession and not to ownership of the land in question.

On November 11, 1952, the lower court denied the aforementioned motion for reconsideration, for lack of merit, and on November 25, 1952, the defendant filed a so-called motion for new trial on the ground of "accident,

mistake and excusable negligence which ordinary prudence could not have guarded against and by reason of which the defendant has been impaired in its right, and that the defendant has strong, just and valid defense such that if the order of default and decision be set aside and a new trial be held, the decision would probably be in favor of the defendant."

On November 25, 1952, plaintiffs opposed the foregoing motion, contending that the same "is not proper and does not merit the attention of the court, and that the ground on which defendant relies for a new trial had already been decided by the court as meritless. After hearing, the motion for new trial was denied by the court in its order dated January 12, 1953, of which the Provincial Fiscal was notified on January 13, 1953.

On January 15, 1953, the Provincial Fiscal filed the, following notice of appeal:

"Combs now the defendant Municipality of Gainza, by the undersigned Provincial Fiscal and hereby makes known that it appeals to the Court of Appeals from the Order of the Court declaring the defendant in default, issued on September 30, 1952; from the Court's decision rendered on November 15, 1952; from the order denying the motion for reconsideration issued on November 11, 1952, and from the order denying the motion for new trial issued on January 12, 1953, all in favor of the plaintiff and against the defendant with the defendant municipality of Gainza as appellant and the plaintiffs Martina Samudio and Emiliano Samudio as appellees."

On January 16, 1953, the plaintiffs filed their objection to said notice of appeal, appeal bond and record on appeal, alleging that the court has lost jurisdiction to entertain them because they were not filed within the reglementary period for perfecting appeal. On January 19, 1953, the trial court disapproved the notice of appeal, appeal bond and record on appeal on the ground that they were filed out of time. Petition for reconsideration was again filed, and on January 31, 1953, the trial court entered the following order:

"The defendant was declared in default in September 30, 1952. It came to know the order of default on October 10, 1952. It filed a motion for reconsideration on October 17, 1952. Copy of the order of denial was received by said defendant on November 13, 1952. It was not until January 15, 1953 that said defendant filed its notice of appeal, appeal bond and record on appeal. From November 13, 1952 to January 15, 1953 sixty-three (63) days have elapsed and consequently the appeal was not perfected within the reglementary period. It is true that the defendant was notified of the decision in favor of the plaintiff and that it filed motions for reconsideration and new trial, but these motions cannot suspend the running period to appeal from the order of the Court denying the motion to set aside its order of default, because, the defendant is not entitled to a notice of a judgment on default and to appeal from a judgment on default."

Defendant sought reconsideration of this order but it was denied. Defendant then appealed and filed the corresponding record on appeal which was allowed, and thus the case was elevated to the Court of Appeals which, in turn, certified it to this court on the ground that only questions of law, and no question of fact, are involved herein.

It is contended by the appellant that the court erred (1) in declaring the defendant-appellant in default, and in denying the appellant's motion for reconsideration of the order of default and to set aside the judgment in default; (2) in denying approval of the appellant's record on appeal against the order¹ of default; and (3) in not granting the motion of the appellant for a relief of judgment.

Carefully considered, we find the main and decisive question is whether or not the order of the court dated January 31, 1953, quoted above, is correct or, to be more exact, whether the order of default and decision had already become final and executory and therefore unappealable. There is no question that defendant's motion for reconsideration of the order of default and the decision in question, dated October 17, 1952, was filed in due time; that the same was denied on November 11, 1952, and the defendant was notified of said denial on November 13,

1952. From this date, the time to appeal against the order of November 11, 1952, has clearly begun, and therefore that appeal should be perfected not later than December 13, 1952. However, the notice of appeal, the record on appeal and the corresponding appeal bond were filed only on January 15, 1953, hence the appeal in this case was really filed beyond the time allowed by law as it was so found by the trial court. And although on November 25, 1952 the defendant filed his so called motion for new trial, based exactly on the very ground alleged in its first motion for reconsideration dated October 17, 1952, said motion for new trial did not suspend the thirty (30) days granted by law for perfecting an appeal, because it is a mere repetition of the motion for reconsideration of October 17, 1952.

The defendant vigorously insists that the motion for new trial of November 25, 1952 had the effect of suspending the period of time for the perfection of the appeal against the order of November 11, but this contention evidently is not well taken, for, as stated above, that so-called motion for new trial is completely identical to the motion for reconsideration dated October 17, 1952 and consequently it belongs to the category of a pro forma motion for new trial which does not suspend the time to appeal. Accordingly, we find correct the opinion of the lower court that the appeal interposed by the defendant against the order of default, the decision rendered in the case and the order of the court denying the motion for reconsideration of said order of default and decision, was not perfected within the period of time allowed by law and therefore said appeal should be dismissed.

A defendant declared in default has no right to appeal from the decision unless he files under Rule 38 of the Rules of Court a v motion for lifting the order of default on the ground of fraud, mistake or excusable negligence; and if his motion is denied, he may appeal from the order denying it, but the appeal should be perfected within 30 days from the day he was notified of the order denying the motion to lift the order of default. Accordingly, in the present case, the appellant should have filed his notice of appeal, appeal bond and record on appeal within 30 days from November 14, 1952, for he was notified on November 13, 1952 of the order of the court dated November 11, 1952 whereby the motion for reconsideration dated October 17, 1952, was denied. Defendant's notice of appeal was, however, filed on January 15, 1953, and the record on appeal and the appeal bond on January 16, 1953, hence it is evident that defendant's appeal in the case was filed out of time.

Wherefore, finding no errors in the orders appealed from, the same are hereby affirmed.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Conception, and Reyes, J. B. L., JJ., concur.

Felix, J., concurs in the result"

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