

FAUSTA AGCANAS, ET AL., PLAINTIFFS AND APPELLEES VS. BRUNO MERCADO, ET AL., DEFENDANTS AND APPELLANTS.*G. R. No. L-15808. April 23, 1963*

Ponente: MAKALINTAL, J.

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Appeal by defendants from the Court of First Instance of Isabela on a question of law.

On November 25, 1956 plaintiffs filed this action to recover portions of a parcel of land in Isabela, and damages. Under date of December 4, 1956 defendants filed a motion for a bill of particulars, with notice of hearing on December 8, but since the motion was actually received in court only on December 12 the court set it for hearing on December 22. On December 17, however, defendants filed a motion to dismiss the complaint, with a prayer that consideration of their motion for a bill of particulars be held in abeyance pending resolution of their motion to dismiss. On December 22, 1956, the date set by the court for the hearing of the motion for a bill of particulars and by defendants for the hearing of their motion to dismiss, the court issued an order postponing consideration of both motions to December 29,. On March 7, 1957 the court denied the motion to dismiss and ordered defendants to answer the complaint within the reglementary period provided for by the Rules of Court. Hearing of the case on the merits was set for October 29, 1957, notice of which was duly received by defendants. Defendants not having filed their answer, plaintiffs, on October 17, 1957, moved to have them declared in default. On the same day the court issued the order of default, together with another order commissioning the clerk of court to receive plaintiffs' evidence. On October 21, 1957 defendants moved to cancel the hearing scheduled for October 29, on two grounds, one of which was that their motion for a bill of particulars had not yet been resolved. The motion to cancel was set for hearing on October 26, 1957. When defendants arrived in court on that day they learned, that an order of default had been issued, so they immediately filed a motion asking that the same be set aside, that their pending motion for a bill of particulars be resolved and that they be given a reasonable period thereafter within which to file their answer to the complaint. On December 13, 1957 the court denied the motion, and rendered its decision in favor of plaintiffs and against defendants. On January 4, 1958 it denied defendants' motion for reconsideration of the order of denial. On January 24, defendants filed their record on appeal (to this Court from the order of December 13, 1957), but as they subsequently filed a petition for relief from the judgment by default, they asked that consideration and approval of their record on appeal be held in abeyance until said petition had been resolved. The request, was granted. Defendants' petition for relief, which was filed on January 28, 1958, was denied on March 21, as was also, on September 20, 1958, their motion for reconsideration of the order of denial. On October 4, 1958 the court denied likewise their motion for a writ of preliminary injunction to restrain execution of the judgment by default. Hence this appeal.

Appellants' eighteen assignments of error may be reduced to a single proposition: Whether or not upon denial of a defendants' motion to dismiss the reglementary period within which to file an answer resumes running even though the motion for a bill of particulars of the same defendants is still pending and unresolved.

Both a motion to dismiss and a motion for a bill of particulars interrupt the time to file a responsive pleading. In

the case of a motion to dismiss, the period starts running again as soon as the movant receives a copy of the order of denial, [1] In the case of a motion for a bill of particulars, the suspended period shall continue to run upon service on the movant of the bill of particulars, if the motion is granted, or of the notice of its denial, but in any event he shall have not less than five days within which to file his responsive pleading. [2]

When appellants filed a motion to dismiss, they requested that resolution of their previous motion for a bill of particulars be held in abeyance. This was but practical, because if the court had granted the motion to dismiss there would have been no need for a bill of particulars. Resolution of the motion for that purpose was necessary only in the event that court should deny, as it did, the motion to dismiss, in which case the period to file an answer remained suspended until the motion for a bill of particulars is denied or, if it is granted, until the bill is served on the moving party.

The lower court deemed appellants to have "tacitly waived their right to push through the hearing of the motion for bill of particulars," because of their failure to set it for hearing or to ask the clerk of court to calendar it after denial of the motion to dismiss. Appellants did set the motion for hearing on December 8, 1956, although it was not heard on that day because it arrived in court only on December 12. Thereafter they did not have to reset it, as the clerk of court scheduled it for hearing on December 22, 1956. And on that day the court issued an order that "the consideration of the motion to dismiss, as well as the bill of particulars, is hereby postponed to December 29, 1956. As to whether or not both motions were actually heard on December 29 does not appear of record. But heard or not, the motions should be considered submitted, and it was the clear duty of the court to resolve the motion for a bill of particulars, as it did the motion to dismiss. No action having been taken thereon until the present, the period to answer has not yet expired. The lower court, therefore, erred in declaring appellants in default and in taking all the subsequent actions it did in the case.

The order of default issued and the decision rendered by the trial court are set aside and the case is remanded for further proceedings, pursuant to the Rules. Costs against plaintiffs-appellees.

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

[1] Sec. 4, Rules 8, Rules of Court.

[2] Sec. 2, Rules 16, Rules of Court.

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