

PHILIPPINE GUARANTY CO., INC., PLAINTIFF AND APPELLEE, VS. CARMEN BELANDO, DEFENDANT AND APPELLANT.

G.R. No. 31123. August 27, 1929

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

An answer to the complaint having been filed, this case was heard on September 13, 1928, the defendant being absent, on which day the latter's attorney filed the following petition under oath:

"Comes now the undersigned attorney before this Honorable Court, and respectfully states:

"1. That the hearing of this; case was set for eight o'clock this morning.

"2. That the undersigned arrived at the court room at 8.55 this morning and was at once informed by an employee of the clerk's office that the case had been heard shortly after eight o'clock this morning.

"3. That the undersigned's arrival some minutes after the time set is due to the fact that the automobile in which he came from Manila, which he left at seven o'clock a. m, in order to arrive at the time set for the hearing, was detained at Parañaque for over forty minutes on account of tire trouble.

"4. That the defendant has a very strong defense to interpose which would make the decision favorable to her.

"In view of the foregoing, the undersigned prays the court to set aside any order it may have given in connection with the hearing of this case, and to set a new date for the hearing thereof."

At the foot of this instrument was a notice to the attorneys for the plaintiff that on the following Saturday, September 22, 1928, at 9 o'clock in the morning or as soon thereafter as possible, application would be made to the court to grant the petition.

But before September 22d arrived, the court, on the 17th of the same month, rendered judgment in the case sentencing the defendant as prayed for in the complaint.

On September 22d, the motion quoted above was heard, and the court thereupon adopted the resolution inserted as an amendment to the bill of exceptions, (pp. 18 and 19), as follows:

"That at the hearing of the motion quoted in the preceding paragraph, held on September 22, 1928, the court gave the defendant an opportunity to state in open court the merits of her defense which would justify the reopening of the case, the court having called to the attention of the defendant that the allegation contained in the fourth paragraph of her motion, that the defendant has a very strong defense to interpose which would make the decision favorable to her" is a mere conclusion of law, and useless as far as the motion is concerned. But in spite of this opportunity which the court granted to the defendant, she refused to reveal the nature of the just and valid defense she pretended to have for the reopening of the case. At the hearing of the motion the court denied it by the following order:

" ' The motion dated September 13, 1928, is hereby denied because it is not accompanied by affidavits of merit

to show the just and valid defense which the defendant can present should this case be reopened.

" 'Let the defendant's exception to this order be recorded. So ordered.'

"Cavite, Cavite, September 22, 1928."

The reasons given for this appeal are: That the lower court denied the defendant's motion for a new trial; and, that the trial court ordered the amendment of the bill of exceptions as appears on page 18 of said pamphlet.

As to the petition for a new trial, it should be noted first of all that when the case came up for hearing at the date and hour set, the court below had discretion to postpone or not to postpone it, for cause (sec. 130, Code of Civil Procedure); and as at that moment the court saw no reason for postponing the trial, it acted with full authority and within its discretion in proceeding with the hearing of the case in the absence of the party defendant.

The trial having been thus held, the motion quoted at the beginning was filed, praying that all orders given in connection with the hearing be set aside and a new date be set for the same. It was also discretionary with the court below to grant or to deny the petition to set aside the order of the court to proceed with the trial of the case and, therefore, that said trial be also set aside, which is the remedy provided in section 113 of the Code of Civil Procedure, the granting of which depends on the discretion of the court. And the court undoubtedly denied said motion by implication when, four days after the same was filed, it rendered judgment.

In order to decide whether or not the court abused its discretion in denying the petition and deciding the case, it is well to observe that the good defense alleged in the petition, and which in the answer to the complaint is limited to the defendant never having empowered Jose Gomez Marino "to borrow from the plaintiff the amount claimed under the terms alleged in the complaint" (p. 8, bill of exceptions). This defense could not prevail against the evidence presented by the plaintiff during the trial, which included the public instrument of agency executed by the defendant in favor of said Jose Gomez Marino, expressly empowering the latter "to make and accept loans" and "to mortgage" personal and real property belonging to the principal, the herein defendant (clauses 12 and 14 of the document Exhibit A).

But notwithstanding this, and in spite of the fact that said motion for a new trial had been impliedly denied, the court which still had jurisdiction over the litigation, adhering to the setting of the date for the hearing of the motion made by the defendant for September 22, that is, five days after the judgment had been rendered, proceeded to hear said motion and afterwards, in order to ascertain whether or not the defendant's petition should be granted, and doubtless taking into account on the one hand, what the defendant had alleged in her answer as her sole defense, and on the other, the evidence adduced against said defense by the plaintiff, said court gave the defendant an opportunity to explain the nature of the just and valid defense mentioned in the motion. The defendant, however, refused to avail herself of that opportunity, with the result that the court had before it on one side the denial of the agency contained in the answer, and on the other, the credible documentary evidence of the existence and legal sufficiency of said agency. Under such circumstances, the court acted correctly and without abuse of discretion in expressly, formally, and finally denying said motion for a new trial for lack of merit. (Coombs vs. Santos, 24 Phil., 446; Daipan vs. Sigabu, 25 Phil., 184; Mapua vs. Mendoza, 45 Phil., 424; and McGrath vs. Del Rosario and Quiogue de V. del Rosario, 49 Phil., 330.)

Passing to the second and last reason assigned for this appeal, relative to the court's order that an account of what happened at the hearing of the motion referred to, as well as of the cause and ground of said resolution of the court below, be inserted as a part of the order denying the new trial, we find no error in it. Said insertion of the incidents at the hearing of that motion was necessary to clarify the order of denial and to bring out its correctness; and the court had a right to make the insertion, the appellant having omitted it, inasmuch as section 143 of the Code of Civil Procedure so provides in the following terms:

" * * * Within ten days after the entry of the memorandum aforesaid, the excepting party shall cause to be presented to the judge a brief statement of the facts of the case sufficient to show the bearing of the rulings, orders, or judgments excepted to, and a specific statement of each ruling, order or judgment that has been excepted to, for allowance by the judge. The judge shall thereupon, after reasonable notice to both parties and within five days from the presentation of the bill of exceptions to him, restate the facts if need be, and the exceptions, so that the questions of law therein involved, and their relevancy shall all be made clear, * * *"
(Italics ours.)

It is finally alleged that in this particular the trial court abused its authority because counsel for the defendant never refused to explain the nature of the just and valid defense, but told the court that he "was prepared" (so says the appellant's brief, on page 5, though we believe he meant to say "was not prepared") at that moment, to reveal the nature of the defense because it was purely personal to the defendant and the latter was then absent. This does not appear in the bill of exceptions, and we cannot therefore take it into consideration. But even supposing it did appear in the bill of exceptions, the trial court had a right to know whether or not the motion for a new trial was meritorious or not, and it was incumbent upon the defendant to assist and tell the court so much as was necessary to make her application good and cognizable.

There being no ground for the present appeal, the order appealed from is hereby affirmed with costs against the appellant. So ordered.

Avanceña, C. J., Johnson, Street, Villamor, Johns, and Villa-Real, JJ., concur.

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