

JUAN GOROSTIAGA, PLAINTIFF AND APPELLEE, VS. MANUELA SARTE, DEFENDANT AND APPELLANT.*G.R. No. L-45622. May 05, 1939*

Ponente: MORAN, J.

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On May 27, 1936, Juan Gorostiaga, plaintiff-appellee, instituted an action against Manuela Sarte to recover the sum of P2,285.51. An answer was filed by Attorney Gregorio A. Sabater in the name of the defendant, wherein a general denial was made, and several defenses interposed, among them, that the defendant was physically and mentally incompetent to manage her estate. At the trial, the defendant did not appear in court and her non-appearance had not been accounted for. On September 21, 1936, judgment was rendered sentencing the defendant to pay the amount claimed. On December 23, 1936, a motion under section 113 of Act No. 190 was filed by the general guardian of the defendant, praying that all the proceedings had against the defendant be declared null and void for lack of jurisdiction over her person. The motion was denied; hence, this appeal.

There is no question about the facts. On May 18, 1936, that is, nine days prior to the institution of the action against the defendant, a petition for guardianship was filed with the lower court in favor of the defendant, on the ground that she was incompetent to manage her estate by reason of her physical and mental incapacity. After hearing the petition, wherein depositions of alienists were presented, the court issued an order declaring that the defendant Manuela Sarte "se halla fisica y mentalmente incapacitada para administrar sus bienes por raz6n de debilidad senil, cuya inteligencia si bien le permite sostener una conversacion por algunos minutos de una manera satisfactoria, no tiene la consistencia necesaria para atender a sus necesidades y administrar sus propios bienes."

Although this order was issued on December 3, 1936, it relates to the incapacity alleged in the petition of May 18, 1936. Consequently, the incapacity thus declared existed at least on the date of the filing of the petition, that is, on May 18, 1936, nine days prior to the institution of the action in the present case. In fact, according to the evidence relied upon by the lower court, the defendant was incompetent to manage her affairs for about two or three years prior to her examination by the alienists. It appears thus clear that during all the proceedings in the case at bar, from the time of the filing of the complaint to the rendition of the judgment, the defendant was physically and mentally unfit to manage her affairs, and there having been no summons and notices of the proceedings served upon her and her guardian, because no guardian was then appointed for her, the court trying the action acquired no jurisdiction over her person (sec. 396, No. 4, of Act No. 190).

It is argued that Attorney Gregorio A. Sabater appeared for the defendant in the case and filed an answer in her behalf and that the attorney's authority is presumed as well as the capacity of the defendant giving the authority. But this presumption is disputable and it is here entirely rebutted by no less than an order of the same court declaring the defendant physically and mentally unfit to manage her estate since at least May 18, 1936. If the defendant was thus incompetent, she could not have validly authorized the attorney to represent her. And if the authority was given by her relatives, it was not sufficient except to show the attorney's good faith in appearing in the case.

It is contended that the issue as to the incapacity of the defendant was pleaded in defendant's answer and was squarely decided and that therefore it cannot be reopened unless on the ground of newly discovered evidence. That answer was, however, filed by an attorney not validly authorized to appear for the defendant who had never been in court except when her guardian filed a motion to quash all the proceedings for lack of jurisdiction. In matters of this kind, affecting the jurisdiction of the court and the validity of all the proceedings, the court, instead of observing a passive attitude, should take the initiative of, and exercise utmost care in, ascertaining the facts. And although the evidence gathered at the trial is insufficient, if, after judgment, the lack of jurisdiction is clearly shown, and there has been no waiver thereof, as in this case where a waiver could not have been possible, it is the duty of the court to set aside all the proceedings, take the necessary steps to acquire jurisdiction, and grant a new trial. The position taken by the lower court in this case can hardly be reconciled with its position in the guardianship proceedings.

Appellee contends that in the motion filed by the guardian under section 113 there is no showing of mistake, inadvertence, surprise or excusable negligence as grounds for relief provided therein. It is, however, more than a surprise to the defendant that she be tried and sentenced without valid summons or notice. And as to the affidavits of merit required to be attached to a motion under section 113, they are not necessary, as we have already held, where the court acted without jurisdiction over the defendant's person. (*Coombs vs. Santos*, 24 Phil., 446.)

Judgment is reversed, all the proceedings had in the lower court are hereby declared null and void, and the case is remanded to the court below for new trial after the guardian has pleaded to an amended complaint duly served upon him making him a party defendant. With costs against appellee.

Avanceña, C. J., Villa-Real, Diaz, Laurel, and Concepcion, JJ., concur.

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