

B. S. CHAINANI, PETITIONER, VS. HON. TIBURCIO TANCINCO, ETC. ET AL., RESPONDENTS.*G.R. No. L-4782. February 29, 1952*

Ponente: PARAS, C.J.

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Tomas de Vera filed in the Court of First Instance of Manila, for the recovery of rentals, Civil Case No. 6353 against Mirchandani, Civil Case No. 6354 against Chainani, and Civil Case No. 6355 against B. Hemandas. On the other hand, Chainani, in his own behalf and as assignee of Mirchandani and B. Hemandas, filed an action against Tomas de Vera for reduction of rentals. The court tried the four cases jointly. In the meantime, Mary Burke Desbarats and Ewald E. Selph, the latter as executor of the estate of Dr. W. J. B. Burke, deceased, filed a complaint in intervention as owners of the building involved and lessors of Tomas de Vera. On September 14, 1950, the court rendered a decision, dismissing the complaint of Chainani and sentencing the three defendants, Chainani, Mirehandani and Hemandas, to pay the rentals prayed for by Tomas de Vera.

On September 18, 1950, Chainani went to the Clerk of the Court of First Instance, from whom he asked and received in his own name a copy of the decision. On October 18, 1950, Atty. Antonio Barredo in turn asked and received from the same Clerk of Court a copy of the decision, signing the receipt as follows: "For the defendants, J. G. Barrera by A. Barredo."

The attorney of record of the three defendants was Jesus G. Barrera of the law firm of Barrera, Calanog and Alafritz. Atty. Barredo's appearance in the litigations took place when, as already stated, he received a copy of the decision for Atty. Barrera and when, on November 17, 1950, he filed a motion for new trial signed as follows:

"BARRERA, CALANOG & ALAFRIZ

and

ANTONIO BARREDO

By: (Sgd.) ANTONIO BARREDO

Attorneys for the defendants

5th Floor, Pilipinas Bldg.,

Manila"

The intervenors opposed the motion for new trial, while Tomas de Vera moved for execution of the judgment, in turn opposed by the defendants. On April 19, 1951, the court issued an order granting the motion for new trial as to Mirchandani and Hemandas, and denying it as to Chainani, on the ground that his 30-day reglementary period for filing a motion for new trial, counted from September 18, 1950, when Chainani personally received a copy of the decision, had already expired. In the same order, the court directed the issuance of a writ of execution against Chainani. The present petition for mandamus was thereupon instituted in this Court by Chainani.

The question that arises is whether the 30-day reglementary period for filing petitioner's motion for trial should be computed from the date he personally received a copy of the decision rendered on September 14, 1950, or from

the date Atty. Barredo received a copy of said decision on behalf of the petitioner's attorney of record.

Section 2 of Rule 27 of the Rules of Court provides as follows: "Every order required by its terms to be served, every pleading subsequent to the complaint, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment or similar papers shall be filed with the court, and served upon the parties affected thereby. If any of such parties has appeared by an attorney or attorneys, service upon him shall be made upon his attorneys or one of them, unless service upon the party himself is ordered by the court. Where one attorney appears for several parties shall only be entitled to one copy of any paper served upon him by the opposite side."

In the case of *Notor vs. Daza*, 43 O. G. 850[*], we have already ruled that "every written notice", used in section 2 of Rule 27, includes a decision. Implementing the mandate that, where a party has appeared by an attorney, service upon him should be made upon his attorney, this Court has held that a notice given to the client and not to his attorney, is not a notice in law. (*Palad vs. Cui*, 28 Phil. 44; *Notor vs. Daza*, [1] 43 O. G., 850, *Perez vs. Isip*, [2] 46 O. G., Suppl. 1, p. 1.)

Accordingly, as the petitioner was represented by Atty. Barrera, the receipt by the petitioner on September 18, 1950, of a copy of the decision cannot be considered a valid notice, since it is not pretended that service on the petitioner himself was ordered by the lower court. It is immaterial or unimportant that the petitioner volunteered to get the copy, because the purpose of section 2 of Rule 27 is obviously to maintain a uniform procedure calculated to place in competent hands the orderly prosecution of a party's case.

The contention of respondent Tomas de Vera that Atty. Barredo was not authorized to receive copy of the decision on behalf of petitioner's attorney of record J. G. Barrera, cannot alter the conclusion that the motion for new trial filed for the petitioner on November 17, 1950, was within the 30-day reglementary period. Assuming that Atty. Barredo could not receive service of notice, the motion for new trial was filed even before the reglementary period had begun to run. There can be no question about the authority of Atty. Barredo to file the motion for new trial, especially in view of the motion of Atty. Barrera of February 6, 1951, making of record the appearance of Atty. Barredo, praying for favorable action on the latter's motion for new trial, and seeking the denial of the motion for execution filed by respondent Tomas de Vera.

Wherefore, the order of the respondent Judge of April 19, 1951, denying petitioner's motion for new trial, is hereby set aside, and said respondent is directed to act on the motion for new trial on its merits. So ordered with costs against the respondents other than the respondent

Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo, and Bautista Angelo, JJ., concur.

* 76 Phil., 850.

[1] 76 Phil., 850.

[2] 81 Phil., 218.

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