

ELEUTERIO BACARRO, PETITIONER, VS. THE HONORABLE COURT OF APPEALS (FIFTH DIVISION), THE HONORABLE BERNARDO TEVES, JUDGE OF THE COURT OF FIRST INSTANCE OF MISAMIS ORIENTAL, 15TH...

G.R. No. L-28203. January 22, 1971

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Petitioner Eleuterio Bacarro seeks the reversal of a resolution of the Court of Appeals dismissing the present case.

Petitioner is the registered owner of Lot No. 2955 of the Cadastral Survey of Cagayan, containing an area of 10,364 square meters, more or less, located in the barrio of Macasandig, Cagayan de Oro City, Misamis Oriental. Alleging that on September 16, 1964, he was compelled by the Municipal Judge of Baungon, Imbatug, Bukidnon, to appear before the latter's office and then and there coerced and forced, under threat of prosecution and loss of said Lot No. 2955, in its entirety, to execute a deed of reconveyance of one-half thereof to herein respondent Vivencia Velez Vda. de Gaerlan, petitioner, acting through Atty. Tommy C. Pacana, filed with the Court of First Instance of Misamis Oriental a complaint, dated April 26, 1965 - which was docketed as Civil Case No. 2521 of said Court [] against Mrs. Gaerlan, for the annulment of said deed of reconveyance, with damages and other incidental reliefs.

In her answer with counterclaim, dated May 13, 1965, filed by Atty. Pantaleon Z. Salcedo, Mrs. Gaerlan admitted the execution of the contested deed of reconveyance before the municipal judge of Baungon, Bukidnon, and alleged that the subject matter of said deed is part of a bigger lot of over 15,000 square meters, which, long before the war, had been entrusted to the care and administration of petitioner's father; that, upon the latter's death, said land was partitioned between petitioner and his brother, Nicolas Bacarro, who got a portion of about 5,000 square meters, the rest, with an area of over 10,000 square meters, having been left with petitioner herein; that, through fraud and grave abuse of confidence, petitioner and Nicolas Bacarro had caused their respective shares in said land to be registered in their names; and that heeding the pleas for mercy of Mrs. Gaerlan and her daughter, Miss Pilar Gaerlan, petitioner executed freely and voluntarily the contested deed of reconveyance.

On September 13, 1966, Attys. Cecilio P. Luminarias and Alfredo C. Caballero entered their appearance, in said Case No. 2521, as counsel for petitioner herein, "in collaboration with Atty. Tommy C. Pacana, x x x with a request that henceforth notices and other processes incident hereto be likewise furnished" said attorneys. On the same date, Hon. Bernardo Teves, as Judge of the Court of First Instance of Misamis Oriental, Branch IV, issued, in said Civil Case No. 2521, an order reading:

"Considering the manifestation of Atty. Salcedo for the defendant, which is well-taken, the plaintiff is hereby directed to make the proper amendment to his complaint within ten (10) days and furnish a copy of the document to Atty. Salcedo. Failure to comply with this order will result in the dismissal of this complaint."

On September 27, 1966, Mrs. Gaerlan filed a written manifestation inviting attention to the fact that petitioner had not complied with said order of September 13, 1966, despite the expiration of the period of time therein set forth, and to the case of *Castillo v. Sebullina*[1] in which the Supreme Court upheld the dismissal of said case, by the trial Judge, upon refusal of counsel for the plaintiff to recall the witnesses whose testimony had been taken, at a former hearing, before another judge, said counsel having insisted on their right to rely upon the transcript of the notes taken of the aforementioned testimony. Thereupon, Judge Teves issued an order of the same date (September 27, 1966) dismissing the complaint as well as - "upon manifestation of Atty. Salcedo" - the counterclaim of Mrs. Gaerlan.

On or about October 25, 1966, a "motion for reconsideration and/or new trial" was filed by Atty. Caballero, on behalf of petitioner herein, "after duly relieving his previous counsel." In support thereof, petitioner alleged, inter alia, that Mrs. Gaerlan had not filed any pleading objecting to his complaint; that Mrs. Gaerlan is the one in possession of the contested deed of reconveyance in her favor; and that when the case was called before Branch II of the Court, her counsel was furnished by petitioner's counsel, in open court, a true copy of the contested document, after the filing of her answer. Petitioner's affidavit of merit was attached, as Exh. A, to said motion. In said affidavit, petitioner asserted that the land in question had been acquired by his father by virtue of a deed of sale executed, in his favor, by Mrs. Gaerlan, on October 8, 1909, and duly acknowledged before a notary public on the same date, copy of which deed of sale is attached as Exh. A-1 to said affidavit of merit and to the motion for reconsideration and/or new trial; that, at the hearing of the lot in question in the corresponding cadastral proceedings, nobody, except the petitioner herein, claimed said lot; and that he had not been furnished copy of the contested deed of reconveyance.

The motion was denied by Judge Teves in an order dated November 14, 1966, copy of which was served on the same day upon Atty. Pacana. Notice of said order was not received by Atty. Caballero until March 15, 1967, on which date he filed the corresponding notice of appeal, appeal bond and record on appeal. On March 31, 1967, Mrs. Gaerlan objected to the approval of said record on appeal, upon the ground, among others, that the period to appeal should be reckoned from November 14, 1966, when copy of the order of the same date was served upon Atty. Pacana, and that the orders of September 27 (dismissing the complaint) and November 14, 1966 (denying the motion for reconsideration and/or new trial) were, therefore, final and executory, when Atty. Caballero filed, on March 15, 1967, the notice of appeal, appeal bond and record on appeal. Upon this ground, Judge Teves disapproved the record on appeal and dismissed petitioner's appeal in an order dated April 15, 1967. Petitioner's motion for reconsideration of this order was similarly denied on May 27, 1967.

On May 30, 1967, petitioner filed with the Court of Appeals a petition - docketed therein as CA-G. R. No. 39632-R - against Judge Teves and Mrs. Gaerlan, to review by certiorari the afore-mentioned orders of Judge Teves. By a resolution dated July 17, 1967, the Court of Appeals dismissed said petition, upon the ground that the period to appeal from the orders complained of should be computed from said notice to Atty. Tommy C. Pacana, on November 14, 1966, and that, consequently, the notice of appeal, appeal bond and record on appeal filed by Atty. Caballero on March 15, 1967, were "three months late." Hence, the present petition for review against the Court of Appeals, Judge Teves and Mrs. Gaerlan.

The issue in this case hinges on whether or not petitioner's period to appeal from the order of Judge Teves, dated November 14, 1966, denying his (petitioner's) motion for reconsideration and/or new trial, of October 25, 1966, began to run on November 14, 1966, when copy of said order was served upon petitioner's original counsel, Atty. Pacana, or on March 15, 1967, when notice of said order was served upon Atty. Caballero. Citing *Olivares and Colegio de San Jose vs. Leola, et al.*², Judge Teves adopted the first alternative and so did the Court of Appeals.

We hold otherwise. It is true that, in *U. S. vs. Borromeo*,³ the Supreme Court held that:

"x x x. No substitution of attorneys will be allowed unless the following requisites concur:

"1. There must always be filed a written application for such substitution.

"2. There must always be filed the written con-sent of the client to such substitution.

"3. There must always be filed the written con-sent of the attorney substituted if such consent can be obtained.

"4. In case such written consent can not be procured, there must be filed with the application for sub-stitution proof of the service of notice of such motion in the manner required by the rules upon the attorney to be substituted.

"Unless these formalities are complied with no substitution will be permitted and the attorney who pro-perly appeared last in the cause before such applica-tion for substitution will be regarded as the attorney of record and will be held responsible for the proper conduct of the cause."

It is conceded that this rule governs the substitution of attor-neys, but this is not the question confronting Us. By entering his appearance on September 13, Atty. Caballero did not substitute Atty. Tommy C. Pacana, but became one of the attorneys for the petitioner herein, "in collaboration with Atty. Pacana." Neither did Atty. Caballero substitute or try to substitute the latter on Octo-ber 25, 1966, when petitioner's motion for reconsideration and/or new trial, of that date, was filed. Atty. Caballero was petitioner's counsel since September 13, 1966. The statement in said motion for reconsideration and/or new trial of October 25, 1966, to the effect that, through Atty. Caballero, petitioner, "after duly reliev-ing his previous counsel," moved "for the reconsideration of the order of x x x September 27, 1966, and/or for new trial," had the effect of retaining Caballero, or continuing his services, as coun-sel for the petitioner, and dropping Atty. Pacana as such counsel.

The question narrows down, therefore, to whether petitioner could - as regards the Court and Mrs. Gaerlan - validly dispense with the services of Atty. Pacana, without securing his consent, or without proof that he had been notified of petitioner's aforemen-tioned motion for reconsideration and/or new trial, or without any notice thereof. The answer is in the affirmative, for "(a) client may at any time dismiss his attorney x x x",⁴ without prejudice, of course, to such rights as the latter may have against the former. Independently of such rights, if any, the relations between Atty. Pacana and petitioner herein, as attorney and client, ceased, therefore, from the filing of said motion for reconsideration and/or new trial, insofar as the Court is concerned, and from the receipt of copy thereof by Atty. Salcedo, insofar as Mrs. Gaerlan was concerned.

Indeed, it was Atty. Caballero, not Atty. Pacana, to whom Atty. Salcedo served copy of his pleading subsequently to October 25, 1966,⁵ thereby indicating that he (Atty. Salcedo) no longer considered Atty. Pacana as one of the attorneys for the petitioner herein. As a matter of fact, in her opposition to the motion for reconsideration and/or new trial, as well as in her opposition to the motion for reconsideration of the order of April 15, 1967, Mrs. Gaerlan referred to Atty. Alfredo Caballero as "Counsel for the Plaintiff, " thus leaving no room for doubt that she no longer con-sidered Atty. Pacana as one of his (petitioner's) attorneys, in view of the statement in said motion for reconsideration and/or new trial, to the effect that he (Atty. Pacana) had been duly re-lieved as petitioner's counsel. Similarly, the order of November 14, 1966, which opens with the statement "acting upon the motion for reconsideration and/or new trial, filed by Atty. Alfredo C. Caballero, counsel for plaintiff x x x" - not one of the attorneys for plaintiff - suggests that Judge Teves had drawn the same con-clusion from the aforementioned statement.

In this connection, it is noteworthy that, although the rule laid down in U. S. v. Borromeo⁶ was quoted with approval in Olivares and Colegio de San Jose v. Leola, et al.⁷, the decision in the latter case explicitly adverted to the fact that the record thereof failed to show that the party concerned "had dispensed with the services" of its

original counsel. In the case at bar, petitioner's aforesaid motion for reconsideration and/or new trial positively stated, not only that he had relieved his previous counsel, but, also, that this had been "duly" done, thereby indicating that the matter had been taken up with Atty. Pacana. In fact, there is no-thing in the record to indicate the contrary or that Atty. Pacana still claims to represent or to be entitled to represent petitioner herein.

Again, in *Rustia vs. Judge of First Instance*⁸, a case was dismissed on motion of the plaintiffs, without the intervention of his attorney of record,⁹ based upon a compromise agreement entered into with the defendant. Although said attorney was notified neither of said motion nor of the order of dismissal, the validity of the compromise agreement and of the order of dismissal was upheld upon the ground that, "(b)y appearing personally and presenting a motion they (plaintiffs) impliedly dismissed their lawyer," for "a client may dismiss his lawyer at any time" and has "an undoubted right to compromise a suit without the intervention of his lawyer." Now, if a party may thus "impliedly" dismiss his counsel, it stands to reason that the dismissal may be made by stating in a pleading, like the above-mentioned motion for reconsideration and/or new trial, that said counsel had been duly relieved as such by his client, even if the former had not been served notice or copy of the motion.

In view of the foregoing, We hold that respondent Judge Teves had committed a grave abuse of discretion amounting to excess of jurisdiction in refusing to approve petitioner's record on appeal and in dismissing his appeal in the aforementioned Civil Case No. 2521, and that the Court of Appeals had, likewise, erred in dismissing the petition for certiorari filed by petitioner herein. Hence, the resolution of the Court of Appeals complained of should be, as it is hereby reversed, and the orders of Judge Teves, dated April 15 and May 27, 1967, are, in turn, annulled. Respondent Judge Teves is directed to give due course to petitioner's appeal in said Civil Case No. 2521, with costs against respondent Vivencia Velez Vda. de Gaerlan. Writ granted.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] 31 Phil. 518.

2 97 Phil. 253.

3 20 Phil. 189, 190-191.

4 Rule 138, section 26, Rules of Court. Underscoring ours.

5 Opposition to the motion for reconsideration and/or new trial (Annex I); Opposition to the approval of the record on appeal (Annex K); Opposition to the motion for reconsideration of the order of April 15, 1967 (Annex O).

6 *Supra*.

7 *Supra*.

8 44 Phil. 62, 65.

9 Whose contract with the plaintiffs stipulated that they could not compromise their claim without his express consent.

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