

**FRANCISCO CELESTIAL, MARTINA MORA, ET AL.,
PLAINTIFFS-APPELLEES VS. JOSE L. GESTOSO AND ESTRELLA TAJO,
DEFENDANTS-APPELLANTS.**

G.R. No. L-19546. April 30, 1968

Ponente: ZALDIVAR. J.

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ZALDIVAR. J.:

This is an appeal, direct to this Court, by the defendants-appellants Jose L. Gestoso and Estrella Tajo from the order of the Court of First Instance of Davao, dated September 24, 1960,, denying said defendants-appellants' motion to set aside the order of default and the decision rendered in Civil Case No. 3153 and from the order, dated November 22, 1960, denying the motion for reconsideration of the order of September 24, 1960.

The facts, as shown in the record of this case, are as follows:

Enrique Celestial and Martina Mora, husband and wife, obtained a homestead patent, on September 29, 1949, over a parcel of land situated at Callawa, Davao City with an area of 118,526 square meters. Subsequently, Original Certificate of Title No. P-60, covering said parcel of land, was issued in favor of said spouses. On September 25, 1955, the Celestials sold the aforementioned property to defendants Jose L. Gestoso and Estrella Tajo for the sum of P6,000.00, as a result of which OCT No. P60 was cancelled and in lieu thereof Transfer Certificate of Title No. 7024 was issued in the name of the Gestosos. After the death of Enrique Celestial his widow, Martina Mora, and his children, Francisco Celestial, Victoriana C. de Lopez, Felisa C. de Suazo, and Eulalia Celestial, notified the spouses Jose L. Gestoso and Estrella Tajo, on July 13, 1959, of their desire to redeem the land, invoking the provisions of Section 119 of the Public Land Act which allows the patentee or his heirs to repurchase the homestead sold by him within a period of five years from the execution of the sale. However, in spite of the notice to redeem, the spouses Gestoso refused to reconvey the same. So, on October 17, 1959, Francisco Celestial, and his mother and sisters, filed an action against the spouses Gestoso in the Court of First Instance of Davao for reconveyance, docketed as Civil Case No. 3153. Rodrigo Celestial, a brother and co-heir, was made party-defendant because of his refusal to join as party-plaintiff.

On October 30, 1959, defendant Rodrigo Celestial filed his answer stating, among others, that it is not true that he refused to repurchase the land in question but what is true is that, like his mother, brother and sisters, he has no money to redeem the property, and that he refused to be joined as plaintiff because he did not want to be made a dummy of other persons who would cause the repurchase of the property in the names of the heirs of Enrique Celestial without giving said heirs any compensation. Defendants Gestoso, on the other hand, filed a motion to dismiss the complaint upon the grounds that it states no cause of action and that Francisco Celestial, who is allegedly representing the other heirs, has no capacity to sue. This motion to dismiss was denied by the lower court in its order dated December 21, 1959.

On December 29, 1959, plaintiffs moved ex parte to declare defendants Gestoso in default. Upon receipt of the order of the court setting the motion for default for hearing on January 21, 1960, defendants Gestoso filed their

opposition thereto upon the ground that said defendants had filed a motion to dismiss the complaint. Defendants Gestoso received the order of the court denying the motion to dismiss on January 11, 1960. On January 12, 1960, said defendants filed a motion for reconsideration of the court's order denying their motion to dismiss. On February 11, 1960, two orders were issued by the court — one, denying the motion of plaintiffs to declare defendants Gestoso in default;^[1] and the other denying defendants' motion for reconsideration of the order which denied the motion to dismiss.

On April 25, 1960, plaintiffs filed another ex parte motion to declare defendants Gestoso in default, and the lower court, without setting the said motion for hearing or notifying defendants thereof, as was - previously done granted the ex parte motion in an order it issued on April 28, 1960, and forthwith allowed plaintiffs to present their evidence. On July 25, 1960, the lower court rendered a decision ordering defendants Gestoso to reconvey the land covered by Transfer Certificate of Title No. T-7024 to plaintiffs upon payment by the plaintiffs to said defendants of the sum of P6,000.00, to deliver the property to the plaintiffs upon the execution of the deed of reconveyance, to pay plaintiffs attorney's fee in the sum of P500.00, and to pay the costs.

On August 12, 1960, the defendants Gestoso, through counsel, received a copy of the aforementioned decision. The following day, counsel for said defendants sent by registered mail to the court a pleading entitled "Motion to set aside order of default and decision and/or petition for relief from judgment and order of default." In this motion and/or petition these defendants allege that it was only on August 12, 1960 — the day when their counsel received a copy of the decision — that they learned that they were declared in default and that a judgment was rendered against them; that they did not know that the period for them to file the answer to the complaint had run, had even lapsed, because on March 1, 1960 they received only the order of the court, dated February 11, 1960, which denied plaintiff's motion to declare defendants Gestoso in default, said order stating that the motion to dismiss and the motion for reconsideration interrupted the time to answer; that they had not received any order from the court denying their motion for reconsideration of the order which denied their motion to dismiss; that if defendants had been declared in default it was through a mistake, or fraud, or negligence, without any fault on their part. The motion and/or petition was accompanied by the affidavit of Camilo J. Torollo, the clerk in-charge of civil cases assigned to Branch II of the Court of First Instance of Davao City, wherein he declared that on February 11, 1960 he sent to Atty. Bienvenido P. Jaban, counsel for the defendants Gestoso, a copy of the order of the court in Civil Case No. 3153 dated February 11, 1960; that he inadvertently and in honest mistake and good faith failed to include in the envelope sent to Atty. Bienvenido P. Jaban a copy of the order of the court denying defendants' motion for reconsideration of the order that denied said defendants' motion to dismiss complaint. In the said motion and/or petition, defendants Gestoso contend that since their motion for reconsideration interrupted the period within which to file their answer and that they did not get notice of the order denying said motion due to inadvertence, mistake or negligence on the part of an employee of the court, they should not be declared in default. Defendants likewise aver that they have good and meritorious defenses, and if given the opportunity to be heard they would prove that plaintiff Francisco Celestial is merely acting as a dummy of a certain person who is interested to acquire the property for himself; that the redemption price of the land is not P6,000 but P24,000; that the defendants are no longer the owners of the property because they had conveyed same to other persons before the filing of the complaint, and that the other plaintiffs or co-heirs of Francisco Celestial have already waived and renounced their right of redemption. These defenses are embodied in the affidavits of merit accompanying the motion and/or petition, signed by defendant Jose Gestoso and his counsel, Atty. Bienvenido P. Jaban. Plaintiffs filed their opposition to the motion to set aside order of default and decision and/or petition for relief from judgment and order of default. The lower court denied said motion and/or petition, in an order dated September 24, 1960. Upon receipt of said order of denial, on October 8, 1960, defendants Gestoso filed a motion for reconsideration of that order. In this motion for reconsideration said defendants allege — with accompanying

documents to support — that the price that they actually paid for the land in question was not only P6,000.00 but P7,800.00 because they paid the Philippine National Bank the sum of P1,800.00 in order to release the property from the mortgage executed by the Celestial spouses in favor of the bank. To this motion for reconsideration the defendants also attached other documents, namely, (1) the waiver or renunciation by the other plaintiffs of their right to redeem the land from the Gestosos; (2) the revocation by the other plaintiffs of the power of attorney executed by them in favor of plaintiff Francisco Celestial to represent them in the instant case; (3) the confirmation by plaintiffs, except Francisco Celestial, of the sale of the homestead by the Celestial spouses in favor of defendants Gestoso; and (4) the deed of absolute sale executed by defendants Gestoso on October 15, 1959 conveying to the spouses Aldrico Gestoso and Lolita Carson the property in question in consideration of the sum of P24,000.00. On November 22, 1960, the lower court denied the motion for reconsideration. Hence this appeal by the defendants Gestoso, direct to this Court.

The errors assigned by the defendants-appellants in the present appeal boil down to the contention that the court a quo erred in refusing to set aside the order of default and the judgment by default, or in denying defendants-appellants' petition for relief from the judgment by default.

This appeal has merit. In the present case, the record shows that there were two separate orders that were issued by the lower court on February 11, 1960 — one denying the motion of the plaintiffs to declare defendants Gestoso in default; and the other, denying said defendants' motion for reconsideration of the order that denied the motion to dismiss. There are circumstances, borne by the record, which indicate, or warrant the conclusion, that defendants Gestoso did not really receive the copy of the order of February 11, 1960 denying their motion for reconsideration of the order that denied the motion to dismiss the complaint.

In the affidavit of Cirilo J. Torollo, the clerk in charge of civil cases in the court below, subscribed and sworn to by him before his superior, the Clerk of the Court of First Instance of Davao, this employee declared as follows:

"That on February 11, 1960, in connection with my work and duty as a clerk and in-charge with all the civil cases of Branch II of the Court of First Instance of Davao, I mailed a copy of the order of the Court dated February 11, 1960 to Atty. Bienvenido P. Jaban by registered mail at his known address in Cebu City as counsel for the defendants.

"That by reason of the voluminous work communications, appointments, and calls I had on that day of February 11, 1960, I inadvertently and in honest mistake and in good faith placed only the order of the Court dated February 11, 1960 denying the motion to declare defendants in default but failed to include the order dated February 11, 1960 denying the motion for reconsideration to dismiss of the defendant on the honest belief and good conviction that the same order, dated on the same date, are just the same.

"That there was inadvertence and honest mistake because of the circumstances and condition and that it was an ordinary and natural course of event that we only send one copy to the parties instead of two copies.

"That I have overlooked the certification of the Deputy Clerk of Court, Mr. Crispiniano Siega, because of the fact that I was very busy on that time."

The lower court had not made any categorical finding that the above-quoted statements of the court employee, Camilo J. Torollo, were not true or were incorrect. The lower court, in its order of September 24, 1960 simply said. "The record shows that copies of the two orders were placed in one envelope and mailed to counsel." Indeed, it really appears in the record as certified to by the Deputy Clerk of Court that copies of the two orders of February 11, 1960 were mailed in one envelope to Atty. Bienvenido P. Jaban. But that certification is precisely rebutted by the sworn statement of Camilo J. Torollo, the employee in-charge of civil cases, to the effect that he "inadvertently, and in honest mistake and in good faith placed only the order of the court of February 11, 1960

denying the motion to declare defendants in default but failed to include the order dated February 11, 1960 denying the motion for reconsideration to dismiss of the defendants . . .” and that he had overlooked the certification of the Deputy Clerk of Court. On the other hand, the statements of Camilo J. Torollo are in accord with the sworn statement of Atty. Bienvenido P. Jaban, counsel for defendants Gestoso, that on March 1, 1960 he received a copy of the order of the court of February 11, 1960 denying plaintiff’s motion to declare defendants Gestoso in default, but that as of August 16, 1960 - the day he made his affidavit -he had not received a copy of the order of the court denying his motion for reconsideration of the order that denied his motion to dismiss the complaint. The statements of Camilo J. Torollo are further bolstered by the fact that three copies of the order denying the motion of defendants Gestoso for reconsideration remained attached to the record of the case, while only two copies of the order denying plaintiffs’ motion for default are attached to the record. This circumstance indicates that indeed the copy of the order denying the motion for reconsideration of the order that denied the motion to dismiss complaint was not forwarded to defendants, otherwise the number of copies of the two orders that remained attached to the record of the case would be the same - two copies each.[2]

Moreover, as shown in the record, the defendants Gestoso, through their counsel, had shown promptness in filing all their pleadings. As a matter of fact, they went to Davao City[3] on January 30, 1960 to appear at the hearing, of their motion for reconsideration of the order denying their motion to dismiss complaint, and of their opposition to plaintiffs’ motion to declare them in default. It is hard for Us to believe that these defendants would neglect to file such an important pleading as their answer to the complaint, if they really had notice that their motion for reconsideration of the order denying their motion to dismiss had been denied by the court.

We are satisfied that if defendants Gestoso had not filed their answer to the complaint, it was because they did not receive notice of the order denying their motion to reconsider the order that denied their motion to dismiss the complaint. These defendants had been laboring under the impression that the period within which they had to answer the complaint had not resumed to run. Much less were they aware that the period within which they had to answer had expired. We have before Us a clear case of parties-defendants that had been declared in default through no fault of their own - but through the fault or negligence of a stranger. And this stranger happens to be an employee of the Court. Upon learning that they had been declared in default, herein defendants-appellants immediately filed a motion and/or petition to set aside the order of default and the judgment rendered pursuant to that order of default.

We have noted that one of the reasons urged by defendants Gestoso in praying for the setting aside the order of default and the judgment by default is that they would prove that the price that they paid for the homestead to the spouses Enrique Celestial and Martina Mora was not only P6,000.00 as alleged in the complaint, and as stated in the decision sought to be set aside, but P7,800.00, because in addition to the P6,000.00 that the spouses Gestoso actually paid to the spouses Celestial, the former also paid the latter’s indebtedness to the Philippine National Bank which was secured by a mortgage on the homestead, and that payment of P1,800.00 was precisely made in order to cancel the mortgage. It is also alleged by the defendants Gestoso that the homestead in question had already been sold by them to the spouses Aldrico Gestoso and Lolita Carson before the complaint in this case was filed. We believe that these defendants should be given a chance to prove these allegations which constitute a meritorious defense, or which should be considered by the court before ordering them to reconvey the land in question, to the plaintiffs and before ordering them to pay attorney’s fees and costs.

Justice and equity demand that the defendants Gestoso, appellants herein, be given relief from the judgment by default that was rendered against them without fault or negligence on their part. And more so, because We believe that they have set up defenses that appear to be meritorious.

WHEREFORE, the order of September 24, 1960 denying the motion to set aside order of default and decision,

and the order of November 22, 1960 denying the motion for reconsideration of the order of September 24, 1960 - both appealed from - are set aside. Consequently, the order of default dated April 28, 1960 and the judgment by default rendered on July 25, 1960, in Civil Case No. 3163 of the Court of First Instance of Davao are set aside; and this case is remanded to the lower court for further proceedings. No pronouncement as to costs.

IT IS SO ORDERED.

Reyes, J.B.L., (Acting C.J.), Dizon, Makalintal, Bengzon, J.P., Sanchez, Ruiz Castro, Angeles and Fernando, JJ., concur.

Orders set aside. Case remanded for further proceedings.

[1] The order reads: "Considering that a motion to dismiss and a motion for reconsideration interrupt the time to answer, the motion for default is not in order."

[2] This circumstance, as pointed out by defendants-appellants, appearing on p. 83, Record on Appeal, was not denied or disputed by plaintiffs- appellees.

[3] Defendants Gestoso and their counsel reside in Cebu City.

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