

MARIA L. HERNANDEZ ET AL., PLAINTIFFS AND APPELLEES, VS. HILARION CLAPIS ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. L-3027. October 03, 1950

Ponente: TUASON, J.

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TUASON, J.:

This is an appeal from an order of the Court of First Instance of Davao denying a motion to set aside an order of default.

The appellants were defendants in the justice of the peace court of Tagum, Davao, in an action for forcible entry and unlawful detainer, damages, etc., and lost, except as to damages which the Justice of the Peace said had not been conclusively proved.

In due time, they filed a notice of appeal through Attorneys Parreño, Parreño and Flores, their counsel in the justice of the peace court who had their law offices in Bacolod City.

On the 18th of October, 1947, the above-mentioned attorneys received from the clerk of the Court of First Instance notice of the receipt of the record, and were reminded that the period for interposing a demurrer, or an answer was to begin from the date of the receipt of said notice. No answer or demurrer was filed.

On November 18, the date for which the case had been set for hearing, Attorney Juan B. Espolong, signing as co-attorney of Emilio B. Parreño, Geronimo R. Flores and Jose M. Kimpo, the first two of whom had been defendants' attorneys in the court of the justice of the peace, filed a written motion to dismiss, alleging, among other grounds, "that, after all, the right to the possession of the property in question is to be determined by such agency of the Government : as has been officially entrusted with the disposition of the same." It was stated in effect that the property in question was a so-called dummy land and that the plaintiffs had no interest therein.

In view of the fact that the plaintiffs were furnished with a copy of the above motion to dismiss only on the day the case was to be heard, November 18, their attorneys moved for postponement of the consideration of the said defendants' motion, and the court reset it for November 27.

On the latter date, the plaintiffs filed a written opposition to the motion to dismiss and asked for continuance of the case on the merits. The plaintiffs' motion to continue the trial was there and then granted.

On December 10, the court denied the defendants' motion to dismiss for want of merit. On the same date the attorneys for the plaintiffs for the first time moved, orally, to adjudge the defendants in default for failure to answer within the period prescribed by the Rules of Court. This motion was found well founded and default judgment was entered.

It is this order which is the subject matter of the present appeal.

Section 1 of Rule 9 and Section 7 of Rule 40 of the Rules of Court provide:

"Section 1 (Rule 9). Time and contents.—Within fifteen days after services of summons the defendant shall file his answer and serve a copy thereof upon the plaintiff. The answer shall contain a concise statement of the ultimate facts on which he relies for his defense.

"Sec. 7 (Rule 40). Reproduction of complaint, on appeal.—Upon the-docketing of the cause under appeal, the complaint filed in the justice of the peace or municipal court shall be considered reproduced in the court of first instance and it shall be the duty of the clerk of the court to notify the parties of that fact by registered mail, and the period for making an answer shall begin with the date of the receipt of such notice by the defendant."

The defendants and appellants impugn the validity of the notice sent their attorneys in Bacolod City. They contend that such notice should have been sent to the defendants themselves, who were right in Davao. They argue that the attorneys who appeared for them in the justice of the peace court should not have been presumed to be their attorneys in the court of first instance, the justice of the peace court not being a court of record. They point to Section 7 of Rule 40 which makes it "the duty of the clerk of court to notify the parties." They contend that although, ordinarily, notice to the attorneys is notice to the parties, yet, it is said, that is true only where the attorneys have entered their formal appearance in the court of first instance personally or by their pleadings.

This contention is not well taken. We are of the opinion that notice in this case was properly sent to the attorneys. The entry of appeal by these attorneys from the justice of the peace to the court of first instance was equivalent to the said attorneys' appearance in the higher court. This was in consonance with the spirit of Section 7 of Rule 40, with forensic practice, and above all, with realities. They were not only rightly presumed to continue to be attorneys of the defendants but in fact did continue to be so.

It was Attorney Geronimo R. Flores of the Bacolod City law firm of Parreño, Parreño and Flores who filed the answer in the justice of the peace court, handled the defendants' case and filed the appeal. After the case was elevated on appeal he continued acting as counsel for the defendants in the court of first instance, although in the latter court Attorney Espolong of the law firm of Kimpo and Espolong in collaboration with his law partner and with Emilio B. Parreño and Geronimo R. Flores signed the pleadings alone. And on the front cover of the brief for the defendants-appellants filed with the Supreme Court, "Parreño and Flores" and Kimpo and Espolong" appear as attorneys for the appellants although Attorney Espolong again signed the brief alone.

In the face of these circumstances, the mailing of the notice to the attorneys was not only correct but the proper thing to do. If the notice had been sent to the defendants personally, these would have good, practical reason to object that their attorneys were the right persons to deal with; the defendants could well say they knew nothing of court procedure. This precisely is one reason for the rule which requires that notices of pleadings, decisions and orders should be served on attorneys instead of their clients. And this was the very ground of appeal by the same attorneys in a similar case which will be stated more fully hereafter.

The defendants also submit that, as there was a pending motion to dismiss, and as that motion was denied only on December 10, the period of fifteen days within which demurrer or answer was to be filed commenced to run on that date. The objection to this contention, to mention only one, is that the motion to dismiss was itself filed way beyond the 15-day period to file answer or demurrer. No pleading registered out of time can suspend the running of a statutory period that has ceased to run.

As a last resort it is insinuated that the filing by the plaintiffs of an opposition to the defendants' motion to dismiss was a waiver of their right to ask for a judgment by default. This theory must be overruled, mainly on the ground just stated—that the motion to dismiss had no legal standing. Essentially analogous to this case is that of *Mapua vs. Mendoza*, (45 Phil. 424), wherein the Court ruled that, "While it is generally irregular to enter judgment by default while a motion remains pending and undisposed of, yet, where such motion is filed out of time, it would

not be reversible error to enter a judgment by default."

It is clearly apparent that the whole trouble arose from professional carelessness and negligence. How else can we characterize the conduct of attorneys who, having conducted the case before the justice of the peace, filed the appeal, and remained to be the attorneys in the court of first instance, failed or refused to make the necessary pleadings in the latter court on the tenuous grounds that they and not their clients had been notified of the receipt of the record, record which they themselves had caused to be sent up to the higher court? The least that they should have done, as a measure of protection to their clients, if they were thoroughly convinced that the notice was missent, was to tell the clerk of court so.

But from the argument of defendants' former attorneys in the case before referred to, it does not look as if they were honestly convinced of the soundness of the proposition they now sustain. In that case (*Gequiliana vs. Buenaventura*, supra, p. 300), recently decided by us, Attorneys Parreño, Parreño, Flares and Carreon of Bacolod City, who we presume are the same attorneys, except Carreon, who entered the appeal in the justice of the peace court in the case at bar, stoutly advanced the opposite theory. These attorneys' client, also defendant, was notified by the clerk of court of the receipt of the appeal filed by the plaintiff.. The said attorneys contended in connection with their client's failure to file answer in due time, that the notice was wrongly mailed. In a vigorous brief they said, among other things, "The inevitable conclusion is that under the provision of the law on the subject, upon appeal from the Justice of the Peace Court to the court of first instance, the pleadings filed by the respective parties in the Justice of the Peace Court should not be disregarded for they are the sane pleadings which should be the basis of the cause of action and the basis of the defense of both the plaintiff and the defendant, respectively." They concluded that in accordance with Section 2, Rule 27, "(the clerk of court) should have directed the notification required by Sec. 7, Rule 40, of the Rules of Court to the undersigned attorneys who are the attorneys of record for the defendant, as service of the said notification to the defendant, Felipe Buenaventura, in this particular case is not a notification in law which will bind him with all its legal effects." It is an interesting contrast that the defendant in the *Gequiliana-Buenaventura* case resided in the same province where the attorneys had their law offices and so could easily have communicated with them, whereas the defendants in the present case lived in Davao and were six in numbers. Apropos of this, it is not shown that these defendants did not live in scattered localities and that their addresses could be verified from the record like that of their attorneys.

There being no merit in, the appeal, the order of the lower court will be affirmed, and in view of the circumstances hereinbefore set forth, double costs of this appeal will be imposed, to be assessed against Attorneys Parreño, Parreno and Flores Jointly and severally.

Moran, C.J., Ozaeta, Paras, Pablo, Bengzon, Montemayor, and Reyes, JJ., concur.

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