

MELECIO B. QUETULIO, ET AL., PLAINTIFFS AND APPELLANTS, VS. ILDEFONSO GANITANO, DEFENDANT AND APPELLEE

G.R. L-21173. June 23, 1966

Ponente: BARRERA, J.

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BARRERA, J.:

Appeal from the order of the Court of First Instance of Ilocos Norte in Civil Case No. 35.13, setting aside its previous order declaring defendant in default.

On March 23, 1962, plaintiffs Melecio and Apolinar Quetulio, Dominica Hernando, and Maria Ringor filed a complaint against defendant Ildefonso Ganitano for an accounting of the products of a parcel of land described in the complaint.

To this complaint, defendant, on July 18, 1962, filed an answer alleging that plaintiffs have no right or interest in the parcel of land from which the products claimed to be accounted for were produced, because they executed a deed of quitclaim disclaiming any right or interest in the land described in the complaint. Said answer was filed within the reglementary period.

On July 28, 1962, plaintiffs filed a motion to declare defendant in default, on the ground that they were not furnished a copy of the answer. On the same date, the trial court through Judge Ortega, issued an order declaring defendant in default, on the sole ground that he failed to serve plaintiffs a copy of his answer.

On August 19, 1962, defendant filed a verified motion to set aside the order of default insisting that a copy of his answer was, on July 19, 1962, within the reglementary period, sent to plaintiffs' counsel (Atty. Harold Hernando) by ordinary mail, contained in an envelope bearing the letterhead of his counsel (Atty. Jesus B. Ruiz), which envelope was duly served and delivered to a housemaid of said Atty. Hernando at the latter's residence.

In a hearing conducted on the motion to set aside the order of default, it was established without contradiction, through the testimony of defendant's counsel, Atty. G. Jesus B. Ruiz, and Gregorio Ramel, letter-carrier of Sarrat, Ilocos Norte, that Atty. Ruiz filed copy of the answer in the office of the Clerk of the Court of First Instance of Ilocos and on July 19, 1962, mailed a copy of said answer to plaintiffs' counsel by ordinary mail. On the other hand, the mail-carrier declared that he served and delivered to a housemaid of Atty. Hernando plaintiffs' counsel, an ordinary mail letter bearing the letterhead "G. Jesus B. Ruiz" on July 19, 1962 and said letter was the only one he delivered in the house of Atty. Hernando on that date.

On October 5, 1962, the trial court issued an order setting aside the order of default. Hence, this appeal by the plaintiffs.

The lone issue to be decided in this appeal is whether or not the trial court acted rightly in setting aside the order of default in question.

Appellants maintain that the trial court erred in setting aside the order of default, considering that appellee's

motion to set aside, dated August 19, 1962, was not accompanied with an affidavit of merit as required by Section 3, Rule 38, of the Rules of Court, stating that he has a meritorious defense.

As correctly pointed out by the trial court, appellee's motion is under oath and in that motion, it is stated in paragraph 6:

"6. That the defense is good and reliable. As it appears in the answer filed in court, the defendant purchased the land in question by virtue of a deed of absolute sale duly registered in the Office of the Register of Deeds of Ilocos Norte,, and the plaintiffs also acknowledged in another deed that they have no interest in the land in question which is a part of that bigger parcel sold to defendant as referred to above."

To our mind, this is substantial compliance with the provision of Section 3, Rule 38 of the Rules of Court and takes the place of an affidavit of merit. For as the trial court aptly observed, "if this defense is true certainly, the defendant (appellee herein) has a good case." At any rate, the Rules of Court must be interpreted liberally (Sec. 2, Rule ,1), in order to promote their object and facilitate the application of justice the rival claims of the contracting parties.¹ And, there is no showing that prejudice will be caused to appellants if the case were tried on the merits.

Wherefore, the order of the court a quo complained of is hereby affirmed, with costs against the appellants. So ordered.

Concepcion, C. J., Reyes, J. B. L., Regala, Makalintal, Bengzon, J. P., Zaldivar and Sanchez, JJ., concur.

Order affirmed.

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