

CONCHITA CORTEZ, ELENA CORTEZ, ROSENDO CORTEZ, JUDINA CORTEZ AND FERNANDO CORTEZ, PETITIONERS, VS. HON. COURT OF APPEALS, HON. JUDGE FELIX R. DOMINGO OF BRANCH XV, COURT OF FIRS...

G.R. No. L-32547. May 09, 1978

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the propriety of the service of a decision of the Court of Appeals upon appellants' lawyer, who claimed that he had ceased to be their counsel but who was not authorized to withdraw from the case.

The question is whether, after the record had been remanded to the trial court and after a writ of execution had been issued, the Court of Appeals could still set aside that decision on the theory that it did not become final because it had not been properly served upon the appellants.

1. On August 12, 1960, Judge E. Soriano of the Court of First Instance of Manila rendered a decision ordering defendants Kuy Guam Kay, Ltd. and Macario Supan to pay solidarily the sum of four thousand pesos as damages to the plaintiffs, the heirs of Severino Cortez (Civil Case No. 34092). The court found that, due to the driver's negligence, a truck owned by Kuy Guam Kay, Ltd. and driven by Macario Supan on August 20, 1957, hit and killed Severino Cortez in Misericordia Street, Sta. Cruz, Manila.

2. Defendants Kuy Guam Kay, Ltd. and Supan appealed to the Court of Appeals (CA-G. R. No. 28400-R). During the pendency of that appeal, Judge Luis B. Reyes of the Court of First Instance of Manila in his decision dated June 12, 1961 in Criminal Case No. 41549 acquitted Supan of homicide through reckless imprudence.

3. Because of that acquittal, Kuy Guam Kay, Ltd. and Supan filed petitions in the Court of Appeals dated July 14, 1961 and March 26, 1966 to re-open Civil Case No. 34092 so that the judgment of acquittal could be presented in evidence. The latter petition was denied on June 15, 1966.

4. On November 17, 1969 the Court of Appeals rendered a decision affirming the judgment of the lower court in Civil Case No. 34092 with the modification that the amount of damages was increased to P12,000. A copy of that decision was served on November 21, 1969 on Atty. Joaquin C. Yuseco, the defendants-appellants' counsel of record. However, Atty. Yuseco returned that copy and informed the Court by letter that he had ceased to be the lawyer for defendants-appellants Supan and Kuy Guam Kay, Ltd. The Court of Appeals in its resolution of January 13, 1970 noted Yuseco's letter and made the observation that Yuseco had "not filed any formal motion for the withdrawal of his appearance" in that case. The Court of Appeals then sent copies of the decision to the defendants-appellants themselves by registered mail but the copies were not delivered because they were unclaimed.

5. Thereafter, there was an entry of judgment indicating that the decision of the Court of Appeals became final and executory on December 8, 1969. The record was remanded and was received in the lower court on March 25,

1970. Notices to that effect were sent to Attys. Pacifico Garcia and Yuseco, the parties' counsels of record.

6. On May 30, 1970 a writ of execution was issued by the lower court. The sheriff levied upon five freight trucks and an adding machine owned by Kuy Guam Kay, Ltd. He scheduled the auction sale on June 26, 1970. Instead of guarding the trucks and adding machine, the sheriff allowed the manager of the firm to have custody thereof so that they could be used in the firm's business. On June 26, two trucks and the adding machine were turned over to the plaintiffs. The other three trucks were sequestered away by the manager of defendant firm.

7. On June 23, 1970 defendant firm, through a new lawyer, filed in the Court of Appeals a motion for reconsideration and suspension of execution. It alleged that there was no valid service of the decision upon it; that the decision is contrary to the ruling in *Corpus vs. Paje*, L-26737, July 31, 1969, 28 SCRA 1062 (that the acquittal of the accused of the crime of homicide through reckless imprudence is a bar to the civil liability), and that the increase of the damages from P4,000 to P12,000 was unwarranted since the plaintiffs did not appeal.

8. The Court of Appeals in its resolution of July 1, 1970 set aside the entry of judgment, ordered the lower court to elevate the record of the case, and required plaintiffs Cortez to comment on the motion for reconsideration. The plaintiffs opposed the motion. The record was re-elevated to the Court of Appeals.

9. On August 18, 1970 the Court of Appeals issued a resolution setting aside its decision of November 17, 1969 and dismissing the complaint on the basis of the said ruling in *Corpus vs. Paje*, supra. Plaintiffs' motion for the reconsideration of that decision was denied.

10. On September 21, 1970, the plaintiffs filed the instant petition for certiorari against the Court of Appeals, Kuy Guam Kay, Ltd. (which had been succeeded by Seven-O-Seven Trucking Co., Inc.) and Macario Supan (who allegedly died in 1962, pp. 150 and 164 of Rollo). The petition is really an appeal from the resolution of August 18, 1970. After the petitioners had posted a bond in the sum of P500, this Court issued a writ of preliminary injunction dated September 30, 1970 to restrain the enforcement of that resolution. Because of that injunction, the petitioners retained the possession of the adding machine and the two trucks (p. 203, Rollo).

The petition is meritorious. We hold that the Court of Appeals had no jurisdiction to set aside on August 18, 1970 its decision of November 17, 1969 which had become final and was in the process of being executed in the lower court to which the record was remanded after entry of judgment had been made in the Court of Appeals.

The 1969 decision became final and executory as to defendant-appellant Kuy Guam Kay, Ltd. because its lawyer of record, Atty. Yuseco, was duly served with a copy of that decision. It is true that Atty. Yuseco returned that copy to the Court with the note that he was no longer appellants' counsel but that return did not nullify the effectiveness of the service upon him since he did not retire from the case with his client's consent or with the Court's authorization (Sec. 2, Rule 13 and Sec. 26, Rule 138, Rules of Court; *Don Lino Gutierrez & Sons, Inc. vs. Court of Appeals and Alvendia*, L-39124, November 15, 1974, 61 SCRA 87, 91; *Magpayo vs. Court of Appeals and People*, L-35966, November 19, 1974, 61 SCRA 115; *Baquiran vs. Court of Appeals*, 112 Phil. 764; *Guanzon vs. Aragon*, 107 Phil. 315, 320).

When a party is represented by an attorney, service of orders and notices must be made upon the latter, and notice to the client and not to his lawyer of record is not a notice in law (*Chainani vs. Tancinco*, 90 Phil. 862).

Thus, it was held that, unless the procedure prescribed in section 26 of Rule 138 is complied with, the attorney of record is regarded as the counsel who should be served with copies of the judgments, orders and pleadings and who should be held responsible for the conduct of the case (*Fojas vs. Navarro*, L-26365, April 30, 1970, 32 SCRA 476, 485).

"In order that there may be substitution of attorneys in a given case, there must be (1) written application for

substitution; (2) a written consent of the client, and (3) a written consent of the attorney to be substituted. And in case the consent of the attorney to be substituted cannot be obtained, there must at least be proof that notice of the motion for substitution has been served upon him in the manner prescribed by our rules." Where the procedure for substitution of attorney is not followed, the attorney who appears to be on record before the filing of the application for substitution should be regarded as the attorney entitled to be served with all notices and pleadings and the client is answerable for the shortcomings of his counsel of record. (Ramos vs. Potenciano, 118 Phil. 1435).

The counsel of record is obligated to protect his client's interest until he is released from his professional relationship with his client. For its part, the court could recognize no other representation on behalf of the client except such counsel of record until a formal substitution of attorney is effected. (Wack Wack Golf and Country Club, Inc. vs. Court of Appeals, 106 Phil. 501, 504).

It is noteworthy that in the instant case even after Atty. Yuseco had returned to the Court the copy of the decision served upon him, the Appellate Court and the lower court continued to serve copies of orders and resolutions upon him as defendants' counsel of record without any objection on his part. He was responsible for the conduct of the case since he had not been properly relieved as counsel of record of the appellants (See U.S. vs. Borromeo, 20 Phil. 189; Olivares and Colegio de San Jose vs. Leola, 97 Phil. 253, 257).

WHEREFORE, the resolution of the Court of Appeals dated August 18, 1970 is reversed and set aside with costs against respondent firm.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Santos, JJ., concur.

Concepcion, Jr., J., did not take part.

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