

**ALLISON J. GIBBS, FINLEY J. GIBBS AND ESTATE OF A.D. GIBBS,
PLAINTIFFS, VS. THE COURT OF FIRST INSTANCE OF
MANILA(BRANCH V), BUENAVENTURA OCAMPO, EULOGIO
RODRIGUEZ, SR., LUZON S...**

G.R. No. L-1460. January 30, 1948

Ponente: PADILLA, J.

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PADILLA, J.:

An action for declaratory relief was brought in the Court of First Instance of Manila (Civil Case No. 71093). The relief prayed for is a declaration that the debt of two of the defendants secured by a mortgage on real property is still unpaid; that said defendants, jointly and severally, are liable to pay it within 90 days from and after the repeal of the Executive Order on debt moratorium, and, if not paid within such period, that the mortgaged property will be sold at public auction to satisfy the mortgage debt, Interests, and costs; that the mortgage duly recorded on the back of the Torrens certificate of title covering the mortgaged property, which was cancelled upon a release of the mortgage executed by the Custodian of Enemy Property of the Japanese Military Administration on 29 July 1943, is still valid and subsisting, said mortgage release and cancellation of the mortgage memorandum on the Torrens certificate of title being null and void; that the mortgage on the property noted on the Torrens certificate of title covering said property in favor of the other defendant, the Philippine National Bank, should be cancelled.

The defendants admit the execution of the mortgage in favor of the plaintiffs, but deny that they defaulted in the payment of the stipulated installments and that the release of the mortgage is illegal. They allege that they were coerced by the Japanese Military Administration to make the payment to satisfy the mortgage debt owed to the plaintiffs.

After hearing, judgment was rendered as prayed for in the plaintiffs' complaint. On 26 October 1946, the attorney for the defendants was notified of the judgment. On 25 November, a motion for extension of time to file a petition for a new trial was presented. On the following day (26 November), a petition to set aside the judgment was filed. On 24 December, the petition was denied, On 27 December, the attorney for the defendants was notified of the order denying the petition to set aside the judgment; and on the same date, he filed the notice of appeal, the record on appeal, and the appeal bond. Plaintiffs objected to the allowance of the record on appeal, on the ground that the judgment had become final on 25 November 1946, the date of the expiration of the reglementary period. On 14 May 1947, the trial court, presided over by the Hon. Buenaventura Ocampo, allowed the record on appeal, holding that the order entered by Judge Gutierrez David on 24 December 1946 denying the petition to set aside the judgment for lack of merit was tantamount to granting the extension of time asked by the defendants. In view of the allowance of the record on appeal, petitioners instituted this original action to annul the order of 14 May 1947 which allowed the record on appeal, on the ground that the judgment in said civil case had become final and executory.

Counsel for the respondents allege in their answer that from 26 October, when they were served with a copy of

the judgment rendered by the respondent court in the case, to 25 November, the last of the 30-day period, attorney Jose W. Diokno, was alone handling the cases of the law office, because the other partner, Ramon Diokno, was in the United States, prepared several briefs and pleadings in three cases, appeared at the trial of several cases pending in the Electoral Tribunal of the Senate and in the Courts of First Instance of Manila and Occidental Negros, and went to the province of Pampanga to interview witnesses to be presented in the protest pending in the Electoral Tribunal of the Senate and in a criminal case filed in Mabalacat, Pampanga, against Alejandro Simpauco, representative for the first district of Tarlac; that for that reason, on 20 November the draft of the petition to set aside the judgment was not finished, and anticipating that he could not file it on the last day of the reglementary period, on said date he dictated a motion for extension of time; that this was typed on 21 November while he was attending the hearing of the protest before the Electoral Tribunal of the Senate, but it was not finished until the afternoon of that day; that on the following day, 22 November, he went to Pampanga in connection with Criminal Case No. 390 entitled "People vs. Simpauco et al.," and to gather evidence to be presented in the electoral protest referred to, but before departing for Pampanga, he instructed Ceferino Torres, one of his stenographers, to serve a copy of the motion for extension of time upon the Plaintiffs and to file the original in court after the service; that a copy thereof was served on the plaintiffs in the morning of 22 November, but the original was not filed on that day; that he returned from Pampanga in the night of 22 November and only learned in the morning of 23 November, which was Saturday, that the motion for extension had not been filed; that in view of that fact, and believing that by exerting efforts he might finish the petition to set aside the judgment on the 25th of November, he asked the stenographers whether they could finish in one day the typing of the petition to set aside the judgment, and the stenographers answered him that they could; that he asked one of his stenographers to work the following day, 24 November, which was Sunday, and by working the whole afternoon of 23 November, the whole day and night of 24 November, he finished the draft of the petition to set aside the judgment before 8 o'clock in the morning of 25 November, and upon arrival of the stenographers in the office in the morning of that day, he distributed the work among them with instructions to finish the typing of the petition before 4 o'clock in the afternoon of that day, the stenographers assuring him that they could do it; that in the morning of 25 November he appeared at the trial of a criminal case in the Court of First Instance of Manila (People vs. Lezano et al.), and upon his return to the office at noon he found out that the stenographers had not finished the typing of the petition to set aside the judgment, and foreseeing that they could not finish it before 4:00 p.m. he caused to be filed the motion for extension of time referred to above, a copy of which had already been served upon the plaintiffs on 22 November; that the typing of the petition to set aside the judgment was finished by the stenographers at 4 o'clock in the afternoon of 25 November, and after the pages had been arranged, sewed and corrected, he sent stenographer Cesar Lerum to serve a copy of the petition upon the plaintiffs, and after serving it to file the original in court; that a copy thereof was served upon the plaintiffs before 5:00 p.m. of 25 November, the last day of the reglementary period, and immediately thereafter stenographer Cesar Lerum repaired to the office of the clerk of the Court of First Instance of Manila to file the original, but he (Lerum) found out that the clerk in the office of the clerk of court in charge of the filing of pleadings had gone home; that he (Lerum) attempted to deliver it to an employee who happened to be in the office of the clerk of court but the latter refused to accept it for filing telling him to return early in the morning of the following day; that on 26 November, said stenographer returned to the office of the clerk of court and filed the original petition to set aside the judgment; that at the hearing of the petition on 7 December both parties submitted it without argument; that at such hearing the plaintiffs did not object to the petition to set aside the judgment on the ground that it had been filed beyond the reglementary period; that on 24 December, the petition was denied, and a copy of the order denying it was served upon the attorney for the defendants on 27 December; that on the last mentioned date, the notice of appeal, the record on appeal, and the appeal bond were filed; that on 2 January 1947, the plaintiffs objected to the allowance of the record on appeal, on the ground that the petition to set aside having been filed on 26 November 1946, or

beyond the reglementary period, the judgment had become final and executory; that the question as to whether the petition had been filed on time was discussed in several pleadings filed by both parties, the defendants setting forth in their pleadings the facts hereinabove mentioned which were supported by the oath of the attorney for the defendants and of his stenographers; and that on 14 May, the respondent court overruled the objection of the plaintiffs, allowed the record on appeal, and ordered its certification to this Court.

The motion for extension of time filed on 25 November, or within the time prescribed by the rules of court, did not stop the running of the reglementary period for perfecting the appeal (*Alejandro vs. Endencia*, 64 Phil. 321). The petition to set aside the judgment was filed on the following day under the circumstances hereinabove described. The service of a copy thereof the previous day on the attorneys for the plaintiffs did not make the filing thereof as of the date of service. But the trial court held that the order entered on 24 December denying the petition to set aside the judgment was equivalent to granting the motion for extension of time. Whether a motion for extension of time to submit a petition for new trial filed on the last day of the reglementary period may be deemed granted by an order denying a petition to set aside the judgment filed the day following the filing of the motion for extension of time need not be passed upon, because after a careful and mature consideration of the facts submitted to the trial court at the hearing held for the allowance of the record on appeal and reiterated in this original case before us, which caused the delay of one day in the filing of the petition to set aside the judgment, we have come to the conclusion that such delay was due to excusable neglect. We believe that the trial court, after due consideration of the circumstances surrounding the failure of the defendant's attorney to file the petition to set aside the judgment within the 30-day period required by the rules of court, was of the opinion that the delay was due to excusable neglect, and for that reason relieved the defendants from the effect thereof by allowing the record on appeal. True, the trial court allowed it upon the express ground that the order denying the petition to set aside the judgment was an Implied grant of the motion for extension of time, but we believe that it also took into consideration the facts surrounding the delay in the filing of the petition to set aside the judgment, and in addition to the express ground such facts weighed upon its mind and led it to allow the record on appeal. As the trial court relieved the defendants from the effect of their attorney's failure to file the petition to set aside the judgment within the reglementary period on the ground of excusable neglect, the filing thereof on the 31st day after notice of judgment still within the period (*Santiago vs. Valenzuela*, L-670, 30 April 1947, 44 Off. Gaz., 3291). On 27 December, the attorney for the defendants was notified of the order entered on 24 December denying the petition to set aside the judgment. On that same date (27 December), the notice of appeal, the record on appeal, and the appeal bond were filed. Such being the case, the trial court did not act without jurisdiction, did not exceed its jurisdiction, nor did it abuse its discretion, when it allowed the record on appeal and ordered its certification to this Court.

Petition denied, without costs.

Moran, C.J., Parás, Feria, Pablo, Perfecto, Hilado, Briones, and Tuason, JJ., concur.

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