

RIZALINA GUEVARRA, ELIZABETH MACLEAN AND ZENAIDA MACLEAN, ASSISTED BY THEIR MOTHER, RIZALINA GUEVARRA, JOSEFINA DE GUZMAN, ASSISTED BY HER HUSBAND RAFAEL DE GUZMAN, AND JOHNNY L...

G.R. Nos. L-49017 and L-49024. August 30, 1983

Ponente: VASQUEZ, J.

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VASQUEZ, J.:

Private respondents Cristina C. Recio and Roque Recio filed a complaint dated October 31, 1973 in the Court of First Instance of Rizal against petitioners Rizalina Guevarra, Elizabeth Maclean and Zenaida Maclean, represented by their mother, Rizalina Guevarra, Josefina de Guzman (assisted by her husband Rafael de Guzman) and Johnny Lara on two principal causes of action, the first, for the annulment of a deed of sale of a parcel of land and the improvements thereon located in Makati, Rizal; and the second, to annul two deeds of sale of certificates of stocks, or for the recovery of the value thereof. They further prayed for the recovery of moral and exemplary damages, attorney's fees and costs.

The herein petitioners filed their answer to the said complaint traversing the material allegations thereof and interposing a counterclaim. Subsequently, petitioner Rizalina Guevarra filed a supplemental counterclaim against private respondents, and a third-party complaint against the Security Bank and Trust Company praying that she and her brother, Antonio de Guzman, be declared joint owners of 2/3 of the proceeds of Banker's Acceptance Certificate No. 3355 and the interest thereon, which is in the possession and custody of the third-party defendant bank. Both the supplemental counterclaim and third-party complaint were admitted by the respondent trial court.

After the filing of the aforementioned pleadings, private respondent Cristina C. Recto, on May 16, 1975, filed a motion for partial summary judgment on the first and second causes of action alleged in the complaint. Attached to the said motion are affidavits of both private respondents.

On May 30, 1975, the Recios filed another motion to order the Security Bank and Trust Company to pay the aforementioned Banker's Acceptance Certificate No. 3355 to private respondent Cristina C. Recio. The said motion was granted by the respondent trial court then presided by Judge Nicanor S. Sison (now deceased) in an order dated June 3, 1975, which directed the Security Bank and Trust Company to pay the full amount of the said certificate to private respondent Cristina C. Recio upon the filing of a bond in the amount of P170,000.00.

On May 30, 1975, the petitioners filed a motion for the inhibition of Judge Sison on the ground that he was supposed to reach the compulsory retirement age of 70 years on June 4, 1975. (Original Record, Vol. II, p. 419.) The record does not show any resolution of said motion for inhibition. It appears, however, that even after the said motion for inhibition was filed, Judge Sison continued to act on the case.

On June 3, 1975, the petitioners filed their opposition to the motion for partial summary judgment. On June 4, 1975, Judge Sison resolved the said motion by rendering a "Judgment", the dispositive portion of which reads as

follows:

"(a) Under the first cause of action, annulling the deed of sale Annex 'A' as well as Transfer Certificate of Title No. T-349450 of the Register of Deeds of Rizal to issue a new title in lieu thereof to plaintiff Cristina C. Recio's name;

(b) Under the second cause of action, annulling the deeds of sales Annexes 'B' and 'C' thereof as well as the transfer made as a consequence thereof to defendant Josefina C. de Guzman and Rizalina Guevarra and directing the corresponding corporation to cancel the stock certificates in the aforesaid de-fendants' names and issue new ones in lieu thereof to plaintiff Cristina C. Recio's name and to deliver to, and/or transfer to the name of, plaintiffs all of their fruits, be they stock or cash dividends;

(c) Ordering restoration of plaintiffs to the rightful ownership of the subject properties and their fruits as above prayed for being impossible by virtue of any sale or disposition thereof by defendants, ordering de-fendants to pay plaintiffs, jointly and severally, the fair market value of the properties sold or disposed of at the time of such sale or disposition, which in any case should not be lower than P350,000.00 for the house and lot, and P1,000,000.00 for the shares of stock, together with the reimbursement of the value of the fruits thereof, be they stock or cash dividends;

(d) Sentencing defendants Josefina C. de Guzman, Rizalina Guevarra, Rafael de Guzman and Johnny Lara, jointly and severally, to pay plaintiffs moral damages in the amount of P50,000.00;

(e) Ordering the same defendants to pay to plaintiffs jointly and severally attorney's fees in the amount of P25,000.00."

Judge Sison issued two other orders in the case dated June 4 and 5, 1975. (Original Record, Vol. II, pp. 436, 468, 469.) He subsequently resolved on June 6, 1975 a motion to raffle the case to another branch of the court filed by private respondent Roque Recio on June 4, 1975, on the ground that Judge Sison "will soon retire." (Ibid., p. 442.)[1]

A copy of the partial summary judgment was served on the petitioners on June 6, 1975.

On July 7, 1975 (the last day of the period of appeal, July 6, 1975 being a Sunday), petitioners filed an omnibus motion for a reconsideration of the summary judgment, the order of June 3, 1975 and two orders both dated June 5, 1975. An opposition to the said omnibus motion was filed by the private respondents on September 2, 1975.

The omnibus motion for reconsideration was denied by the trial court in an order dated December 29, 1975 issued by the then Judge (later Justice) Onofre Villaluz. The petitioners received a copy of the order of denial on January 5, 1976.

The following day, or on January 6, 1976, the petitioners filed their notice of appeal, a cash appeal bond, and a motion for extension of time to file the record on appeal for a period of not less than thirty days from said date. Private respondents filed their opposition to the said motion for extension of time to file record on appeal on the ground that the petitioners' omnibus motion for reconsideration was filed after July 7, 1975. They countered with their own motion for the execution of the summary judgment rendered by the trial court. Judge Villaluz set the motion for extension of time to file the record on appeal for hearing on January 13 and 16, 1976, at which hearing the parties adduced both oral and documentary evidence.

On May 24, 1976, the trial court, then presided by Judge Nelly L. Romero Valdellon, issued an order denying the motion of petitioners for extension of time to file record on appeal, and granting the motion of private respondents for the execution of the summary judgment for the reason that the said omnibus motion for reconsideration was not filed on July 7, 1975. On May 31, 1976, on motion of the private respondents, Judge Valdellon appointed

respondent Sheriff Rene Salvador and respondent Bailiff Eustaquio Parada as Special Sheriffs to enforce the writ of execution.

On June 10, 1976, the petitioners filed two separate petitions in the former Court of Appeals for mandamus, certiorari and prohibition with preliminary injunction, docketed in said Court as CA-G.R. Nos. SP-05555 and SP-05618. In a decision promulgated on September 20, 1977, the former 8th Division of the Court of Appeals, dismissed both petitions.[2] Acting on a motion for reconsideration filed by the petitioners on September 27, 1977, a division of five denied the motion for reconsideration in a resolution dated September 12, 1978.[3]

The instant petition was filed in the Supreme Court to review the aforementioned decision of the Court of Appeals and the resolution denying a reconsideration of the same. The petition was given due course after the respondents filed their comment to the same. The parties were required to submit simultaneous memoranda which was duly complied with.

The petitioners have raised the following issues:

The respondent courts committed a grave abuse of discretion (1) in holding that the omnibus motion for reconsideration was not filed on July 7, 1975; (2) in ruling that a motion for reconsideration is essential before a petition for certiorari could be instituted; (3) in issuing the order of June 3, 1975 ordering the Security Bank and Trust Company to pay the full amount of P250,000.00 under Security Bank and Trust Company Banker's Acceptance Certificate No. 3355 to private respondent Cristina C. Recto on a mere motion and without any hearing; and (4) in rendering a summary judgment despite the fact that controversial issues of facts are raised and disputed by the parties in their respective pleadings.

The questioned decision of the respondent Court of Appeals resolved the petitions filed in said court only on what it called the two vital issues of the case, namely: (a) Whether or not the omnibus motion for reconsideration was filed on July 7, 1975; and (b) Whether the petitioners' failure to file a motion for reconsideration of the questioned orders of the trial court was fatal. There was no discussion at all on the question of whether or not the partial summary judgment was validly rendered, nor on the validity of the questioned order of June 3, 1975 regarding the payment of the proceeds of the Banker's Acceptance Certificate. The concentration of the dissertation made by the trial court, the Court of Appeals and in the several motions and memoranda of the private respondents was on the alleged lateness of the filing of the omnibus motion for reconsideration which caused the summary judgment to have become final and executory.

It is conceded that if the omnibus motion for reconsideration was, indeed, filed on July 7, 1975 as averred by the petitioners, it was filed on time, and it would then be improper for the trial court to rule that the said summary judgment had already become final and executory. As aforesaid, the trial court required the presentation of evidence on this question and, on the basis of the evidence adduced, it ruled that the omnibus motion for reconsideration was not filed on July 7, 1975. The Court of Appeals merely confirmed the said findings by adopting the same *ipsisimis verbis*.

After a careful examination of the record. We are frankly amazed at how the lower courts have arrived at said conclusion. In attempting to show that the omnibus motion for reconsideration was not filed on July 7, 1975, private respondents relied almost exclusively on the testimony of private respondent Roque Recio who declared that no motion for reconsideration was filed up to the close of office hours on July 7, 1975, as attested to by a certification issued by Marcelo Buenaventura, Special Deputy Clerk of Court, which reads as follows:

"TO WHOM IT MAY CONCERN:

This is to certify that according to the entry book of this Office, no motion for reconsideration of the decision

or notice of appeal has been filed by the defendants in Civil Case No. 18522 of this Court, entitled 'Cristina Recio, et al. vs. Josefina de Guzman, et al.

Pasig, Rizal, July 7, 1975.

NICANOR G. SALAYSAY
Clerk of Court

By:

(Sgd.) MARCELO BUENAVENTURA

Sp. Deputy Clerk of Court "

The above certification was held to prevail over direct and clear evidence of record which shows the seasonable filing of the omnibus motion for reconsideration on July 7, 1975, consisting of the following:

1. The rubber stamp imprinted on the first page of the omnibus motion for reconsideration, bearing the date "7/7/75" initialed by Amparo Varinuevo, an employee of the Receiving Section of the Office of the Clerk of Court;
2. The testimony of Amparo Varinuevo that she actually received the said motion during office hours in the afternoon of July 7, 1975;
3. The testimony of Maria Antonio, Receiving and Filing Clerk in the Office of the Clerk of Court that she saw the motion inserted in the Entry Book during the first hour of July 8, 1975;
4. The entry of the omnibus motion in the record book for July 7, 1975;
5. The testimony of Special Deputy Clerk of Court Buenaventura explaining the certification issued by him;
6. The testimony of Atty. Romulo Galapon, counsel for the petitioners that he actually filed the omnibus motion in the afternoon of July 7, 1975; and
7. The registry receipt attached to the omnibus motion for the copy mailed to the counsel for private respondents, bearing the date of July 7, 1975. (Original record, Vol. II, p. 488.)

The following are excerpts from the testimonies of witnesses Varinuevo, Antonio and Buenaventura who were presented by the petitioners in the trial court:

Varinuevo, on direct examination:

"ATTY. GALAPON:

Q Mrs. Varinuevo, you stated that you are an employee of the CFI of Rizal?

A Yes, sir.

Q Were you already an employee of the CFI of Rizal on July 7, 1976?

A Yes, sir.

COURT:

Did you report that date?

A Yes, your Honor.

Q What time did you report?

A 8:00 A.M., your Honor.

Q What time did you leave at noon?

A 12:00 noon, your Honor.

Q What time did you report back?

A 1:00 P.M., your Honor.

Q What time did you leave?

A 4:30 P.M., your Honor.

ATTY. GALAPON:

Q Between the hours of 3:30 and 4:30 P.M. on July 7, 1975, do you remember what you did?

A Yes, sir. My table is in the mezzanine. But between that time, when I came down, I found out that somebody was filing something and because the clerk in charge - the receiving clerk was not there, I learned that she went home to attend a funeral, I pitched in and I received the pleading.

Q What is the name of this clerk in charge?

A Maria Antonio.

Q Showing you a pleading dated July 7, 1975, consisting of 11 pages and appearing therein is a stamp pad of the CFI of Rizal, Pasig, Rizal, and there is an initial on the same, will you please identify this initial if you know it?

A That is my initial.

Q There is the figure 7/7/75. Whose handwriting is that, if you know?

A Mine.

ATTY. GALAPON:

That is all." (pp. 6-10, TSN, January 13, 1976.)

On cross-examination:

"Q In this particular case, did you go down to receive the Omnibus Motion Atty. Galapon was filing?

A I went down without knowing if there were filers there. But if there are filers, I am supposed to pitch in and I found out there were filers and I pitched in and received.

Q Aside from the Omnibus Motion you received that date, July 7, 1975, did you receive any other paper?

A Yes, sir, I received others.

Q In this particular case, did you go down to where the regular receiving clerk was stationed just to receive this Omnibus motion filed by Atty. Galapon?

A Yes, sir.

Q How did you know the Omnibus Motion was being filed?

A I received that because it so happened I came down and sat down at the chair of the receiving clerk who was absent to attend a funeral. A fellow and some other fellows came, one at a time, filing their pleadings and I did the work and received them." (pp. 15-17, Ibid.)

On redirect:

"ATTY. GALAPON:

Q Mrs. Varinuevo, you stated that you received pleadings including the Omnibus Motion for reconsideration. Did you enter these pleadings you received in the civil entry book on July 7, 1975 before you left?

A No, sir, I did not enter anything. Nene will be the one to register the same. And the following day she recorded it.

Q By Nene, you are referring to Mrs. Antonio, the regular filing clerk?

A Yes, sir." (p. 41, Ibid.)

Maria Antonio, in turn, declared as follows:

"xxx xxx xxx

Q Do you know where you were in the afternoon about 3:00 P.M. on July 7, 1975?

A At 3:30 P.M. I asked Mr. Buenaventura that I will leave because I will attend a funeral.

Q What time?

A 3:30 P.M.

Q Did you report to the office the following day?

A Yes, sir.

Q What is your duty in the office of the clerk of Court?

A To receive pleadings.

Q When you arrived on July 8, 1975 the next day immediately upon arrival, do you recall what you did?

A At 8:00 A.M. exactly I recorded the pleadings in my drawer and the ones inserted in the record book.

Q Where did you record them?

A Civil Record book.

Q Did you bring the record book for July 8 or 7, 1975?

A Yes, sir.

Q Will you show the Honorable Court what you made, according to you, upon arrival on July 8, 1975?

A Here, sir. (Witness showing page 46 and a date written in red July 7, 1975, Monday.)

Q Go over all the entries that date and determine whether there is such Omnibus Motion for Reconsideration in civil case No. 18522.

A Here, sir. (Witness pointing to page 54 showing the first line.) 18522-Omnibus Motion for Reconsideration.

Q This entry was made for the date July 7, 1975?

A Yes, sir.

ATTY. GALAPON:

That is all." (pp. 44-48, Ibid.)

Explaining how he happened to issue the certification which had been so ponderously relied upon by the private respondents, the Special Deputy Clerk of Court Buenaventura, declared on direct examination:

"xxx xxx xxx

Q Showing you a certification signed by Marcelo Buenaventura, now marked as Exhibit A for plaintiff and Exhibit 1 for defendant, will you go over the same and tell this Honorable Court what relation has this certification to the certification you issued to Atty. Recio about 4:30 P.M. on July 7, 1975?

A This is exactly the certification I issued on July 7, 1975.

Q You stated in this certification that according to the entries in the book of your office no motion for reconsideration was filed in case no. 18522. What do you mean by according to the entry book. Did you look at the entry book of the office?

A I looked at the listing in the entry book and here I based my certification.

Q You did not look at the papers that were placed between the leaves of the entry book and the rush book?

A I looked it over inside the entry book but not in the rush book.

Q You based it in the entry book and it did not show a motion for reconsideration was filed in case 18522?

A Yes.

Q. Did you eventually come to know a motion for reconsideration was filed by the defendants in this case on July 7, 1975?

A I found out about that the following day.

Q You are referring to July 8, 1975?

A The following day.

Q How did you find out that there was in fact a motion for reconsideration filed by the defendant in civil case no. 18522 on July 7, 1975?

A I remember that somebody inquired for the same motion and . . . I don't remember the person exactly, and again I consulted the record and I saw a motion was listed now.

Q What time did you look for the motion for recon-sideration which was filed by the defendant on July 7, 1975?

A I think it was between 9:00 & 10:00.

ATTY. GALAPON:

That is all." (pp. 91-96, ibid.)

On cross-examination, Buenaventura declared:

"xxx xxx xxx

Q You stated in answer to the question of Atty. Galapon, that with respect to the Omnibus motion in question,

you saw that only on July 8 or 9?

A July 8, the following day.

Q But you did not see it on July 7?

A I did not.

Q In spite of the fact that you had gone over the entry book which was kept in the drawer of Mrs. Antonio?

A That is right.

Q You did not search the leaves of the rush book on top of the table?

A The rush book was not on top of the table of Mrs. Antonio.

Q Where was it?

A I don't know.

Q Did you look for it?

A I did not look for the rush book but the entry book.

Q Was it the request of Atty. Recto that you looked for the motion for reconsideration in that book?

A Nobody asked me to look in any particular book.

Q But he asked whether a motion was filed in this particular case.

A That is true.

Q Did you not feel it necessary to consult the rush book also?

A I did not think it was necessary because . . .

Q You did not feel it necessary in spite of the fact that you were going to issue a certification?

A Yes.

Q And you issued Exhibit A?

A Precisely, the reason I stated in my certification, the statement is in accordance with the entry book, I was not sure whether there were several papers which remained not entered.

Q You did not look for it in the rush book in spite of the fact that Atty. Recio was there since 3:00 P.M.?

A No." (pp. 100-103, Ibid.)

The above testimonies of Amparo Varinuevo, Maria Antonio and Marcelo Buenaventura all tended to show that the certification issued by Buenaventura to the effect that no motion for reconsideration was filed as of July 7, 1975 were merely to attest to the fact that no such motion was listed in the Entry Book of the Office of the Clerk of Court on said date. The actual filing of the motion before the close of office hours on July 7, 1975 had been categorically testified to by Amparo Varinuevo and Maria Antonio. They further explained the reason why, despite such filing, no entry of the same was made in the Entry Book until the following day. Buenaventura himself made it clear in his testimony that his certification was based alone from what appeared in the Entry Book. The failure to enter the motion in whatever book the same is to be registered does not necessarily mean that the motion was not filed at all. What the rule requires is the filing of the motion within the proper time; not the

actual entry thereof which is merely a matter of practice and a pure physical act on the part of the employee charged with such duty. There is no rule requiring entry of such motion, much less to enter the same on the same date it was filed.

We are accordingly of the view that the lower courts committed palpable error in arriving at the conclusion that the petitioners failed to file their omnibus motion for reconsideration on July 7, 1975. In the face of the overwhelming evidence presented by the petitioners to sustain such fact, the lower courts preferred to believe the testimony of private respondent Roque Recio whose bias is undeniable, being a party-in-interest, and who could only declare negatively that the omnibus motion was not filed until up to the close of office hours on July 7, 1975. The lower courts discredited the testimonies of Varinuevo and Antonio, as well as of Atty. Galapon, for alleged inconsistencies as to the exact time of the filing of the omnibus motion and as to whether the same was inserted in the Entry Book or in the Rush Book being kept by Antonio. Capital was made of the circumstance that the hour of filing was not indicated in the rubber stamp showing the date of filing, as required by Section 1, Rule 13 of the Rules of Court, as if such circumstance would negate the fact of filing. This glaring misappreciation of the evidence may not be justified on the stereotype excuse that findings of the lower courts may not be disturbed on appeal, as if such a doctrine is absolute and inviolable to the extent of being a shield against the search of truth and a weapon for the perpetration of injustice.

Another intriguing aspect of this case is the total disregard by the lower courts of the issue regarding the propriety of the summary judgment rendered by the trial court. This issue was raised by the petitioners in their omnibus motion for reconsideration (Original Record, Vol. II, pp. 477, 481), as well as in the opposition of the private respondents to the same. (Ibid., pp. 514, 521.) It was likewise raised in the respondent Court of Appeals, as well as in the instant petition. Strangely, the Court of Appeals passed on said issue sub silencio, and limited its discussion to the question of whether or not the omnibus motion for reconsideration was filed on July 7, 1975. The private respondents now contend that the validity of the summary judgment may no longer be touched upon in the instant proceedings, inasmuch as said judgment had already become final and executory and may now be considered as "the law of the case." (Memo-randum of respondents, Rollo, pp. 90-93.)

Rule 34 of the Rules of Court authorizes the rendition of a summary judgment when, on motion of the plaintiff after the answer to the complaint had been filed, it would appear, during the hearing of the motion for such a judgment, from the pleadings, depositions and admissions on file, together with the affidavits that, except as to the amount of damages, "there is no genuine issue as to any material fact and that the winning party is entitled to a judgment as a matter of law." (Section 3, Rule 34, Rules of Court.) Conversely, the rendition of summary judgment is not justified when the defending party tenders vital issues which call for the presentation of evidence. (Villanueva vs. National Marketing Corporation, 28 SCRA 729.) As was observed in the Viajar vs. Estenzo, 89 SCRA 684:

"Relief by summary judgment is intended to expedite or promptly dispose of cases where the facts appear undisputed and certain from the pleadings, depositions, admissions and affidavits. But if there be a doubt as to such facts and there be an issue or issues of fact joined by the parties, neither one of them can pray for a summary judgment. Where the facts pleaded by the parties are disputed or contested, proceedings for a summary judgment cannot take the place of a trial.

An examination of the Rules will readily show that a summary judgment is by no means a hasty one. It assumes a scrutiny of facts in a summary hearing after the filing of a motion for summary judgment by one party supported by affidavits, depositions, admissions, or other documents, with notice upon the adverse party who may file an opposition to the motion supported also by affidavits, depositions, or other documents (Section 3, Rule 34). In spite of its expediting character, relief by summary judgment can only be allowed after compliance with the minimum requirement of vigilance by the court in a summary hearing considering that

this re-remedy is in derogation of a party's right to a plenary trial of his case. At any rate, a party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, or that the issue posed in the complaint is so patently unsubstantial as not to constitute a genuine issue for trial, and any doubt as to the existence of such an issue is resolved against the movant."

The case at bar may not, even by the most liberal or strained interpretation, be considered as one not involving genuine issues which need the presentation of evidence to determine which of two conflicting assertions of fact is correct. A cursory examination of the pleadings will show that the private respondents' causes of action are to annul documents of sale which were allegedly executed by private respondent Cristina C. Recio on the ground of fraud, deceit, misrepresentation and due influence and intimidation. These allegations were all denied in the answer filed by the petitioners. The issue thus raised may not be categorized as not genuine so as to dispense with a formal trial and to authorize the rendition of summary judgment.

The invalidity of the summary judgment rendered by the trial court stems not only from the circumstance that such a kind of judgment is not proper under the state of the pleadings filed in the case, but also from the failure to comply with the procedural guidelines for the rendition of such a judgment. The motion does not contain a notice of hearing. After the private respondents filed a motion to set the private respondents' supplemental counterclaim for hearing on May 22, 1975, Judge Sison scheduled the said motion for hearing on May 28, 1975 "to coincide with the hearing of the motion for partial summary judgment dated May 16, 1975 filed by the plaintiffs set for hearing on the same date." Attys. Ferry and Galapon, counsels for the herein petitioners, were served with the said order of Judge Sison on May 25, 1975 and May 24, 1975, respectively, or only four and five days, respectively, before the date of the hearing. This is contrary to the requirement under Section 3 of Rule 34 that a motion for summary judgment "shall be served at least ten days before the time specified for the hearing." The minutes of the hearing held on May 28, 1975 show that the counsel for the herein petitioners prayed that they be given up to June 3, 1975 within which to file appropriate pleadings, after which the motion for summary judgment shall be deemed submitted for resolution. (Original Record, Vol. II, p. 412.)

On June 3, 1975, the petitioners filed their opposition to the motion for partial summary judgment contending principally that such a kind of judgment may not be rendered in the case inasmuch as their answer tenders genuine issues which need a trial on the merits. (Ibid., pp. 438-441.) No counter-affidavits were filed by the petitioners but in their aforementioned opposition, they argued why a summary judgment is not proper in the case. On June 4, 1975, the day following the filing of the opposition to the motion for summary judgment, the court rendered its summary judgment in the case, which granted not only the relief prayed for in the private respondents' first and second causes of action but also an award of damages which is not even prayed for in any of the said causes of action.

As earlier observed, the burden of the discussion in this case centered on the timeliness of the filing of the omnibus motion for reconsideration of the said summary judgment. Viewing this issue from another angle, it may rightly be said that such elaborate and elongated argumentation on this question is hardly material to resolve the issue at bar. Both parties appear to have assumed the correctness of the proposition that the summary judgment in question was appealable; hence, their dispute as to whether or not the period of appeal had lapsed or not by the time the motion for the reconsideration of the decision was filed. We consider this assumption to be erroneous.

It will be noted that the judgment in question is a "partial summary judgment." It was rendered only with respect to the private respondents' first and second causes of action alleged in their complaint. It was not intended to cover the other prayers in the said complaint, nor the supplementary counterclaim filed by the petitioners against the private respondents, nor the third-party complaint filed by the petitioners against the Security Bank and Trust Company. A partial summary judgment "is not a final or appealable judgment." (Moran, Vol. 2, 1970 Edition, p.

189, citing several cases.) "It is merely a pre-trial adjudication that said issues in the case shall be deemed established for the trial of the case." (Francisco, Rules of Court, Vol. II, p. 429.) The nature of a partial summary judgment is expressly provided for in Section 4 of Rule 34 of the Rules of Court, which reads as follows:

"SEC. 4. Cases not fully adjudicated on motion. - If on motion under this rule, judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel shall ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly."

The partial summary judgment rendered by the trial court being merely interlocutory and not a final judgment, it is puerile to discuss whether the same became final and executory due to the alleged failure to appeal said judgment within the supposed period of appeal. What the rules contemplate is that the appeal from the partial summary judgment shall be taken together with the judgment that may be rendered in the entire case after a trial is conducted on the material facts on which a substantial controversy exists. This is on the assumption that the partial summary judgment was validly rendered which, as shown above, is not true in the case at bar.

The above discussion renders it unnecessary to resolve the issue of whether the two separate petitions for certiorari, prohibition and mandamus filed by the petitioners in the former Court of Appeals should have been dismissed for the reason that the petitioners did not file a motion for the reconsideration of the judgment and orders therein sought to be annulled. Moreover, the circumstances obtaining in this case, particularly the fact that the trial court had already ordered the execution of the partial summary judgment and the questioned orders of the trial court, necessitated the recourse to the urgent remedy pursued by the petitioners. The situation easily falls under one of the recognized exceptions to the rule that a motion for reconsideration should first be availed of before filing a petition for certiorari, prohibition and mandamus.

We also deem it unnecessary to discuss, in this instance, the validity of the questioned order of June 3, 1975 which ordered the Security Bank and Trust Company to pay the full amount of P250,000.00 of Banker's Acceptance Certificate No. 3355 to private respondent Cristina C. Recio upon the filing of a bond in the amount of P170,000.00. It appears that the motion of private respondent Cristina C. Recio praying for such relief was duly served on petitioners five days before the date was set for hearing, in which the petitioners' appeared but failed to file any opposition. In any event, it further appears that the giving of the proceeds of the said Banker's Acceptance Certificate No. 3355 was not an adjudication of the ownership thereof in favor of private respondent Cristina C. Recio. Her ownership of the said sum was provisional and conditioned upon the filing of a bond in the amount of P170,000.00 which is more than the value of the 2/3 share of the said Banker's Acceptance Certificate No. 3355 claimed by petitioners Rizalina Guevarra and her brother, Antonio de Guzman. The bond expressly stipulates that it is conditioned to answer for whatever damages that the Security Bank and Trust Company or any of the petitioners may suffer "in the event that said Cristina Recio is declared not entitled to the said amount in the instant case or any other case."

It may not be said, therefore, that the questioned order of June 3, 1975 was an adjudication of the supplemental counterclaim filed by petitioner Rizalina Guevarra, nor of the third-party complaint filed by her against the Security Bank and Trust Company. As already mentioned above, the partial summary judgment rendered by the trial court did not include such claims which still remain pending and unresolved. Petitioner Rizalina Guevarra may properly seek to set aside or modify the said order of June 3, 1975 in the trial court taking cognizance of Civil Case No. 18522.

WHEREFORE, judgment is hereby rendered reversing and setting aside the decision of the former Court of Appeals in CA-G.R. Nos. SP-05555 and SP-05618; and annulling the summary judgment rendered by the trial court in Civil Case No. 18522, and the orders dated May 24, 1976 and May 31, 1976 issued therein. The private respondents shall pay the costs.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, Relova, and Gutierrez, Jr., JJ., concur.

[1] There is nothing clear in the record as to the exact date when Judge Sison reached the compulsory retirement age. In petitioners' motion for inhibition, they alleged that Judge Sison was to retire on June 4, 1975. (Ibid., p. 419.) In their omnibus motion for reconsideration, petitioners stated that Judge Sison was retiring on "June 5 or 7, 1975." (Ibid., pp. 477-478.) The record does not reveal any actuation on the part of Judge Sison after June 6, 1975.

[2] Justice Samuel Reyes as Ponente, concurred in by Justices Emilio A. Gancayco and Mama D. Busran.

[3] Justice Samuel Reyes as Ponente, concurred in by Justices Emilio A. Gancayco and Jose Jimenez. Justice Buenaventura de la Fuente concurred in the result, with Justice Busran writing a dissenting opinion.

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