

MARCELA DIONISIO, PETITIONER, VS. ROSARIO JIMENEZ, ERNESTO P. HERNANDO, COMMISSIONER CESARIO DE LEON, THE HONORABLE JUDGE BIENVENIDO A. TAN, AND SEVERO ABELLERA, RESPONDENTS.

G.R. No. L-7364. July 31, 1954

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for certiorari which seeks the annulment of all the proceedings had in Case No. 480 of the Workmen's Compensation Commission as well as those had in Civil Case No. 2354 of the Court of First Instance of Rizal in so far as they may affect petitioner, Marcela Dionisio, on the ground that the latter was not served with summons, nor notified, nor given an opportunity to be heard in said proceedings and, therefore, unless nullified, she will be deprived of her property without due process of law.

This petition stems from a claim for compensation and notice of injury filed by Rosario Jimenez on August 2, 1952 before the Workmen's Compensation Commission against Esperanza Lime Factory seeking compensation for the death of her husband who met an accident while in the employ of the factory as a laborer (Case No. 480). Copy of the claim was served on the manager of respondent—one Esperanza Antonio de Carranglan.

On January 23, 1953, respondent, through her manager, answered the claim which under section 37 of the Workmen's Compensation Act as amended takes the form of a report, known as Employer's Report of Accident. In said report it was stated that the owner licensee of the factory is Marcela Dionisio. The claim and the report are the main pleadings in a compensation case, which correspond to the complaint and answer in an ordinary civil case.

The claim was set for hearing through a referee at which petitioner and respondent, each represented by counsel, presented their evidence. After the reception of the evidence, the referee rendered judgment on July 30, 1953 ordering respondent to pay to petitioner-claimant the sum of P4,000 as compensation, plus burial expenses not exceeding P200, and the sum of P41 as costs. It was stated in the decision that the amount of compensation may be paid on installment basis provided that, in case of failure to pay one installment, the claimant may ask for the payment of the whole claim without any reduction. This judgment was promulgated on August 5, 1953 and as no petition for review was filed with the Commission within the reglementary period, the same became final and executory.

Availing herself of this decision which had become final for lack of appeal or a petition for review as above stated, petitioner filed an urgent petition with the Court of First Instance of Rizal in order that it may be enforced pursuant to section 51, of Act No. 3428, as amended by Republic Act No. 772, and said petition was docketed in said court as Civil Case No. 2354. This petition was heard *ex parte* and thereafter the court, in a decision rendered on October 27, 1953, reaffirmed the judgment of the Workmen's Compensation Commission. This decision also became final and, forthwith, petitioner filed a motion for the issuance of a writ of execution, which was granted,

and the sheriff proceeded to levy upon a parcel of land belonging to Marcela Dionisio who is the owner of the factory which was adjudged as party responsible for the compensation both by the Workmen's Compensation Commission as well as by the Court of First Instance of Rizal. It is for these reasons that Marcela Dionisio now comes before this Court seeking the annulment of all the proceedings as already stated in the early part of the decision.

It is the contention of petitioner that all the proceedings had before the Workmen's Compensation Commission as well as of the Court of First Instance of Rizal which culminated in the rendition of the judgment which the widow seeks now to enforce by virtue of a writ of execution are null and void because she has never been summoned, nor notified, nor given any opportunity to be heard, and that, unless nullified, and the writ of execution is given due course, the effect would be to deprive her of her property without due process of law.

In every case arising under the Workmen's Compensation Act (Act No. 3428, as amended by Republic Act No. 772), the proper respondent is the employer or person for whom the victim has rendered the service. The word "employer" has a definite legal meaning. Thus, under section 39 of said Act as amended, the word 'employer' includes every person or association of persons, incorporated or not, public or private, and the legal representative of the deceased employer. It includes the owner or lessee of a factory or establishment or place of work or any other person who is virtually the owner or manager of the business carried on in the establishment or place of work * * *." (Italics supplied.) In the instant case, it is true that the claim was originally filed by Eosario Jimenez, the widow against the Esperanza Lime Factory, naming as manager Esperanza Antonio de Carranglan. But it is likewise true that the connection of Marcela Dionisio with said factory appears well established. Thus, in the report submitted by Esperanza Antonio de Carranglan in answer to the claim, she stated that the owner and licensee of the factory was Marcela Dionisio, she being merely a manager thereof, while at the hearing of the case she not only reiterated this fact but even added that Marcela Dionisio is her mother. It cannot therefore be denied that the summons served upon her as manager of the Esperanza Lime Factory was made not only in accordance with the law but is valid and binding upon Marcela Dionisio upon the theory that service upon the manager is service upon the owner. The fact that the Esperanza Lime Factory is merely a trade name is of no moment, for the word "employer" includes any association of persons whether incorporated or not, or any other person who is virtually the owner or manager of the business.

On the other hand, the law regarding service of notice of injury or claim for compensation support this view. Thus, section 26 of the Workmen's Compensation Act (Act 3420) provides that if the employer is a corporation the notice may be served on "any agent in charge of its business at the place where the injury was received", and supplementing this provision, we have section 9, Rule 7, of the Rules of Court which provides that when persons associated in business are sued under a common name the service may be effected "upon the person in charge of the office or place of business maintained in the common name", and section 15, Rule 3, which allows two or more persons who transact business under a common name to be sued under such common name even if their names are not comprised therein. And commenting on this provision, Chief Justice Moran has the following to say:

"The above provision does not change the rule of substantive law to the effect that when an association has acquired a juridical personality of its own, it may sue or be sued as such. It is when such association has no separate juridical personality, or the plaintiff has no means of acquiring knowledge thereof, that the above provision applies, for, in such a case, plaintiff must seek relief from the members of the association. But often times it is hard, if not impossible, to determine who those members are, particularly when they try to conceal their connection so as to frustrate the action, and the social agreement, on the other hand, is not known. To overcome this difficulty, the above provision authorizes the action against the associates by the common name under which they have been transacting business, and, as will be seen later, the association in its answer is

bound to disclose the name of its members, and thus a judgment may be rendered affecting the members individually, as may be seen in Rule 35, section 8." (Comments on the Rules of Court, 1952 ed., Vol. 1, pp. 96-97.)

Marcela Dionisio cannot therefore complain that she was not personally served with the summons or notice of the claim of Rosario Jimenez because of the fact that she has assumed a business name and held herself out as the owner of the business under that name, nor can she avoid the responsibility that may attach to her business by claiming that the only one notified of the action taken is her manager or associate in the business. Neither can she claim that in the present case she has not been given her day in court, or the action was taken against her without due process of law, because, in contemplation of law, service upon her manager is service upon her. In fact, her manager and daughter, Esperanza Antonio de Carranglan, took upon herself the duty to defend her and protect her interest, as in fact she appeared in the case personally and by counsel and presented evidence in defense of her interest. It is evident that her claim has no legal basis.

Petition is denied, without pronouncement as to costs.

Pards, C. J., Pablo, Bengon, Padilla, Montemayor, Reyes, A., Jugo, Labrador, Concepcion and Reyes, J. B. L., JJ., concur.

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