

MARIA SAN MIGUEL VDA. DE ESPIRITU, PETITIONER, VS. HON. COURT OF FIRST INSTANCE OF CAVITE, ANASTACIA TOPACIO, JOSEFA JARDINIANO AND REGISTER OF DEEDS FOR THE PROVINCE OF CAVITE,...

G.R. No. L-30486. October 31, 1972

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for certiorari and mandamus; certiorari to set aside, for being null and void, the order of respondent court of July 27, 1967 in its Civil Case No. N-233, Maria San Miguel Vda. de Espiritu vs. Anastacia Topacio, et al., dismissing on the ground of prescription plaintiff's (herein petitioner's) action to compel defendants (herein private respondents) to execute the proper deed of conveyance of two parcels of land to said plaintiff, and the subsequent order for the return of the corresponding titles over said lands to defendants, as well as those combinedly dismissing plaintiff's appeal from said orders, for having been filed out of time.

Petitioner's complaint in the court below which was filed on October 20, 1964 alleged that sometime in 1948, defendants had verbally sold to her the two parcels of land in question for Three Thousand (P3,000.00) Pesos and, in consequence, delivery thereof together with the corresponding transfer certificates of title was made to her, but no deed of sale was executed at the time because private respondents promised they would do so as soon as the titles which were then in the name of their predecessor-in-interest were transferred to their names, and that despite demands made "time and again" by her for the execution of such deed, said respondents, "without justifiable cause therefor adamantly failed and refused — to comply with (such) just and valid demand." In their answer, defendants denied that the transaction was a sale and alleged that it was merely a contract of antichresis whereby petitioner had loaned to them P1,500.00, for which she demanded the delivery of the lands in question and the titles thereto as security, with the right to collect or receive the income therefrom pending the payment of the loan. And by way of affirmative defenses, respondents interposed (1) unenforceability by action of the alleged sale, under the statute of frauds, and (2) prescription of petitioner's action, the same having allegedly accrued in 1948. Subsequently, respondents reiterated their said affirmative defense of prescription in a formal motion to dismiss and as no opposition thereto was filed by petitioner, on July 31, 1967, respondent court issued the impugned order of dismissal reading as follows:

"Submitted for resolution is a motion to dismiss filed by counsel for the defendants to which no opposition has been filed despite the fact that the plaintiff was furnished with a copy thereof. Finding the said motion to dismiss to be well-taken for the reasons stated therein, this Court grants the same and the complaint, dated October 16, 1964, is hereby dismissed with costs against the plaintiff.

SO ORDERED."

The other details leading to the issuance of this order and what took place thereafter up to the disapproval of the appeal of petitioner are recounted by the trial judge in his order of April 1, 1969 thus:

"At this stage of the proceedings, the issues squarely presented to the Court relate to the approval of plaintiff's: (1) motion for reconsideration, dated November 9, 1968, and (2) record on appeal.

"Plaintiff seeks for a reconsideration of the Court's order, dated July 31, 1967, which dismissed this case, on the basis of defendants' motion to dismiss, dated January 30, 1967. Plaintiff contends that 'an action to compel compliance to a promise to execute the necessary public document of sale of real estate does not prescribe.' In their opposition, defendants lay stress on the fact that the order (dated July 31, 1967) had already become final and executory when plaintiff filed her motion for reconsideration (dated November 9, 1968). But the plaintiff argues, in her reply to the opposition (dated December 20, 1968), that the order of the Court was never served on or received by either the plaintiff or her attorneys. An examination, therefore, of the record is necessary. It appears that on January 13, 1967, in open Court, the counsel for the defendants was given 15 days within which to file a motion to dismiss on any of the grounds alleged in the affirmative defenses contained in the answer, and the attorneys for the plaintiff were given an equal number of days from receipt of a copy thereof within which to file an opposition. The hearing set for that date was reset to February 28, 1967.

"On January 31, 1967, counsel for the defendants filed the motion to dismiss, and furnished on the same date the two lawyers of the plaintiff. At the hearing on February 28, 1967, none of the lawyers for the plaintiff appeared, although the plaintiff herself verbally informed the Court that because her lawyers were suddenly called to an emergency she prayed that the hearing on the motion to dismiss be reset to another date. No objection having been interposed by counsel for the defendants, the hearing was reset to March 15, 1967, in open Court where counsel for the defendants and the plaintiff were notified. A copy of the Order was sent by ordinary mail to Atty. Arturo T. de Guia, one of the lawyers for the plaintiff, on March 2, 1967. At the hearing on March 15, 1967, one of the lawyers of the plaintiff was given 5 days within which to submit an opposition to the motion to dismiss, and to furnish counsel for the defendants with a copy thereof. As more than 4 months have elapsed and no such opposition has been filed, counsel for the defendants filed on July 26, 1967 an urgent motion to resolve the motion to dismiss. The attorneys for the plaintiff were furnished with a copy of the urgent motion on July 25.

"The Court, finding the motion to dismiss to be well-taken for the reasons stated therein, issued the Order of July 31, 1967 dismissing the complaint with costs against the plaintiff. Copies of this order were sent to both counsel for the parties by ordinary mail on July 31, 1967. Almost 6 months thereafter, that is, on January 16, 1968, counsel for the defendants filed a 'Motion for Return of Transfer Certificates of Title,' furnishing on the same date counsel for the plaintiff with a copy thereof and setting the same for the consideration and approval of the Court on January 23, 1968. It should be noted that in paragraph 1 of this motion counsel for the defendants expressly stated, "That on July 31, 1967 this Honorable Court, acting on defendants' Motion to Dismiss on the ground that the cause of action of the plaintiff has already prescribed, issued an Order dismissing plaintiff's Complaint"; hence, although a copy of the Order dated July 31, 1967 was not sent to plaintiff's counsel by registered mail, but by ordinary mail because the Court was without money to defray the expenses of registered mail, plaintiff's counsel cannot validly claim that they were unaware of said Order. Moreover, in paragraph 3 of defendants' "Opposition to Motion for Reconsideration" filed on May 30, 1968 is expressly alleged the "dismissal of the Complaint for the reasons stated in the Motion to dismiss filed by the herein defendants." Copies of this opposition were sent to the two lawyers of the plaintiff, and not one of them ever denied the veracity of such allegation. Finally, in defendants' "Memorandum in Support of Opposition to Motion for Re-consideration," dated August 2, 1968, the Order of this Court, dated July 31, 1967, is quoted verbatim. Although the two lawyers of the plaintiff were each furnished with a copy of this memorandum (see registry receipt attached to page 9 of the memorandum and registry return receipt attached to rejoinder to reply, dated January 3, 1969), none of them ever denied having received a copy of said quoted order. It should be noted that although copies of the Orders of this Court (dated October 14, 1965, November 29, 1965, September 26, 1966, October 17, 1966, December 12, 1966) were sent by ordinary mail to counsel for the plaintiff, they were actually received as shown by the fact that said counsel appeared in court on the date set in said Orders. In view of the foregoing, this Court is persuaded to share, as it hereby sustains, the view of the defendants that

the Order of this Court, dated July 31, 1967, has already become final and executory. Hence, plaintiff's motion for reconsideration, dated November 9, 1968, is denied.

"Anent plaintiff's record on appeal, the record shows that a copy of the Order, dated January 23, 1968, was sent by registered mail to Atty. Arsenio Cabrera of the plaintiff on February 8, 1968. Said Order granted defendants' motion to dismiss and ordered the plaintiff to return to the defendants Transfer Certificates of Title No. 18517 and 18518 of the Registry of Deeds for the Province of Cavite within ten (10) days from receipt of a copy of the order. Plaintiff's counsel neither moved for a reconsideration of, nor manifested an intention to appeal from, said Order. It was only on May 6, 1968, almost four (4) months after the issuance of the Order, that a motion for reconsideration signed by the plaintiff herself, not by her counsel, was filed with the Court. It is obvious that the motion was filed out of time — the order of the Court has become final and executory. Even on the basis of the allegation in said motion that the Order was "received on March 27, 1968," the Order has already become final and executory before the motion was filed on May 6, 1968. Consequently, the notice of appeal filed on October 30, 1968 and the record on appeal filed on November 12, 1968 were both filed beyond the reglementary period and, hence, are hereby both denied.

SO ORDERED."

Petitioner now alleges as grounds for her petition that:

"I. THE HON. COURT OF FIRST INSTANCE OF CAVITE LACKED, JURISDICTION AND COMMITTED GRAVE ABUSE OF DISCRETION IN DISMISSING THE COMPLAINT, WITHOUT HEARING, ON THE GROUND OF PRESCRIPTION OF CAUSE OF ACTION, ALLEGED IN THE MOTION TO DISMISS, THERE BEING NO EVIDENCE NOR ALLEGATIONS IN THE COMPLAINT TO SUPPORT SAID DISMISSAL OR PRESCRIPTION;

"II. THE HON. COURT OF FIRST INSTANCE OF CAVITE LIKewise COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OF JURISDICTION IN DENYING THE MOTION FOR RECONSIDERATION OF SAID ORDER OF DISMISSAL, AND IN ISSUING THE ORDER DATED JAN. 23, 1968 IMPLEMENTING THE ORDER OF DISMISSAL BY REQUIRING PETITIONER TO RETURN CERTIFICATES OF TITLE TO THE VENDORS;

"III. THE LOWER COURT UNLAWFULLY DENIED THE APPEAL TAKEN BY PETITIONER FROM THE ORDER TO RETURN THE TITLES;"

There are two vital points that stand out in this case: (1) that the order of dismissal of July 31, 1967 has never been served upon counsel for petitioner nor upon her, and (2) that although it seems that copy of the order of January 23, 1968 was sent by registered mail to Atty. Arsenio Cabrera, one of petitioner's counsel of record, on February 8, 1968, there is no showing as to when the same was received, whereas, there is no denying that another copy thereof was sent also by registered mail to petitioner herself and this was received by her on April 27, 1968.

The first point is crucial for the simple reason that without such service being made, it is undeniable that when petitioner's counsel filed on November 11, 1968 their motion of November 9, 1968 for the reconsideration of the dismissal order of July 31, 1967, this order had not yet become final and executory. Needless to state, under Section 3 of Rule 41, the period for appeal from any final order or judgment starts only from the date from notice thereof, which means when it is duly served.[1] Section 7 of Rule 13 very explicitly enjoins that "(F)inal orders or judgments shall be served either personally or by registered mail," and "under this provision, a final order or judgment cannot be served by ordinary mail." [2] Indeed, Rule 13 constitutes an elaborate system of specific modes of filing and serving "pleadings, appearances, motions, notices, orders and other papers" which, of course, include a decision,[3] which is exactly what the dismissal order here in question is, and it would be subversive of this rule and productive of confusion, if any mode other than those respectively fixed by it for each particular

situation therein expressly contemplated were to be sanctioned and given legal effect. Besides, Our jurisprudence is replete with cases wherein the Court refused to give its stamp of approval even to service actually and admittedly made upon a party merely because, under the rules, service must be made upon his lawyer of record, no matter if the party himself solicits the service and thereby factually learns of the judgment.[4] If service expressly admitted by a party to have been made to him has been considered ineffective only because it was not made in the manner prescribed, much more should such fate befall a defective service, proof of which does not exist, as in this case wherein there is no showing whatsoever that petitioner or her counsel did receive the ordinary mail containing the order of dismissal in dispute.

It is contended that because copy of respondents' motion of January 16, 1968 for the return of their title, which included allegations attesting to the issuance of the order of dismissal, appears to have been "furnished" counsel for petitioner on the same date, petitioner must be deemed to have been on notice of said order since then. To start with, it is not very clear that petitioner's counsel was in fact served with such copy; in the second place and worse, in the light of the rulings just mentioned prescribing strict compliance with the requirements of service, such indirect way of imparting knowledge of the order to petitioner's counsel cannot serve as a mode of service within the contemplation of said rulings. Moreover, it is to be noted that significantly, there seems to have been no appearance for petitioner when the motion was heard on the day the court granted the same, hence, there is no affirmative act of petitioner or her counsel upon which an inference of possible waiver may be safely drawn, differently from what happened in the National Lumber case decided by this Court.[5]

In this connection, it is likewise noteworthy that although His Honor's order of April 1, 1969 states that copy of the order of January 23, 1968 was sent to Counsel Cabrera of petitioner by registered mail, no mention is made of its actual receipt and the date of such receipt, although it is not disputed that a copy was actually received by petitioner by registered mail on April 27, 1968. Remarkable also is the fact that it was petitioner herself and not her counsel who signed the motion for reconsideration of May 6, 1968.

In any event, since the order of dismissal on which this order of January 23, 1968 was premised, has not yet become final and executory, said later order is of secondary importance; its finality, if legally conceivable, cannot have any detracting effect upon the final outcome of the main controversy relative to the correctness or incorrectness of the order of dismissal. Understandably, if the order of dismissal is set aside, and the action of the petitioner is sustained, nothing in the order of January 23, 1968 can defeat or even minimize the right of petitioner to the lands in dispute. It is, therefore, idle to discuss whether or not said order has become final and unappealable.

Upon the foregoing premises, and considering that there is in fact no showing that any entry of judgment was made before November 11, 1968, a decision granting herein petition could be in order, and in consequence, We could order that petitioner's appeal be given due course. It appears, however, that looking at petitioner's position from another angle, as to its substantive merits, there is hardly any prospect of its being ultimately successful. To require the parties to return first to the lower court and then come back here, only to rediscuss the same points which after all both of them have already extensively taken up in their pleadings in this case will not serve the ends of justice. This Court has already ruled on several occasions, since as early as *De la Cruz vs. Blanco*, 73 Phil. 596 that mandamus to compel approval and certification of an appeal, even if otherwise well grounded, procedurally speaking, has to be denied where it is evident that there is no merit in the appeal itself, and "it would serve no useful purpose to reinstate" the same.[6] After all, mandamus is mainly a remedy in equity, and good conscience cannot countenance the idea of allowing a party to spend more time, effort and money, only to lose, with more or less certainty in the end, when, provided due process is not denied, an earlier determination of his claim is possible.

It is petitioner's pose that respondent judge erred in holding that her action has already prescribed, predicated her contention on the theory that since she is seeking nothing more than to compel private respondents to execute a promised deed of sale in her favor, such action is imprescriptible under Section 38 of Act 190, the Code of Civil Procedure, and per the ruling in *Castillo vs. Court of Appeals*, L-18046, March 31, 1964, 10 SCRA 549. We do not see it that way.

Unlike in the *Castillo* case, petitioner's invocation here of Section 38 of Act 190 is being refuted by respondents with the citation principally of Article 2270 of the Civil Code of the Philippines which ordains that:

"ART. 2270. The following laws and regulations are hereby repealed:

"* * * *

"(3) The provisions of the Code of Civil Procedure on prescription as far as inconsistent with this Code."

and Article 2258, which provides:

"ART. 2258. Actions and rights which came into being but were not exercised before the effectivity of this Code, shall remain in full force in conformity with the old legislation; but their exercise, duration and the procedure to enforce them shall be regulated by this Code and by the Rules of Court. If the exercise of the right or of the action was commenced under the old laws, but is pending on the date this Code takes effect, and the procedure was different from that established in this new body of laws, the parties concerned may choose which method or course to pursue. (Rule 4)."

Indeed, the whole statute of limitations embodied in Chapter III of the Code of Civil Procedure must be deemed supplanted and replaced by Chapter 3, Title V, Book III of the Civil Code, which in itself is a complete and comprehensive body of rules on prescription intended to cover all conceivable situations. We cannot see any logic in thinking otherwise, having in mind the repealing clause just quoted. If Article 1357 which reads:

"ART. 1357. If the law requires a document or other special form, as in the acts and contracts enumerated in the following article, the contracting parties may compel each other to observe that form, once the contract has been perfected. This right may be exercised simultaneously with the action upon the contract. (1279a)"

is indicative of anything relevant to the point under discussion, it is simply that said article does not contemplate that the time to commence an action to compel the execution of a formal agreement can be longer than that for the filing of the suit for specific performance of the perfected contract itself. In other words, differently from the Code of Civil Procedure, the Civil Code does not consider the action by the vendee of real property to compel execution of a deed of conveyance as imprescriptible. In fact, under Article 1143, only the following rights "are not extinguished by prescription: (1) to demand a right of way, regulated in Article 649 and (2) to bring an action to abate a public or private nuisance," which are actions involving public policy. Nor is there any other provision of the Civil Code or any unrepealed law or jurisprudential ruling of this Court, under which petitioner's claim of imprescriptibility can be sustained. We believe that the specific enumeration in the Civil Code of imprescriptible actions excludes any other ones.

In a broad sense, at least, the nature of petitioner's action may be said to be one founded on an oral contract, which, to be sure, cannot be considered as among those rendered unenforceable by the statute of frauds, for the simple reason that it has already been, from petitioner's own point of view, almost fully consummated by the delivery of the lands and the corresponding titles to her. Consequently, respondents are right in maintaining that the applicable provision here is Article 1145 which reads thus:

"ART. 1145. The following actions must be commenced within six years:

(1) Upon an oral contract;

(2) Upon a quasi-contract."

Assuming otherwise, the only other possibility is that petitioner's case comes under Article 1149 providing:

"ART. 1149. All other actions whose periods are not fixed in this Code or in other laws must be brought within five years from the time the right of action accrues."

In either case, since the cause of action of petitioner accrued in 1948 and the present suit was instituted in 1964 or sixteen years later, and none of the interrupting circumstances enumerated in Article 1155 has been shown to have intervened, it is unquestionable that petitioner's action filed in the court below has already prescribed.

It may be mentioned, for the rest, that petitioner contends that the order of dismissal above-quoted, being a decision, violates the constitutional requirement, as well as of the rules, that it should state the facts and the law on which it is based. The contention is not well taken. As may be seen, the said order adopts by reference the reasons, alleged in the motion to dismiss of respondents, which, the record reveals, includes the facts and the law in support thereof. There is, therefore, substantial compliance with the fundamental law and the rules, albeit, judges are advised that mere general reference should be avoided, since anyway it is not difficult to quote textually the subject of the reference for a closer adherence to the obvious spirit and reason behind the requirements.

WHEREFORE, the petition is denied, with costs against petitioner.

Zaldivar, Antonio, and Esguerra, JJ., concur.

Concepcion, C.J., Ruiz Castro, Teehankee, and Makasiar, JJ., concur in the result.

Fernando, J., concurs and submits a brief opinion.

Makalintal, J., on official leave.

[1] *Notor vs. Daza*, 76 Phil. 850.

[2] *Moran*, Comments on the Rules of Court, Vol. I, p. 430, 1972 ed.

[3] *Notor vs. Daza*, *supra*.

[4] See *Moran*, *id.*, pp. 422-423.

[5] *National Lumber vs. Velasco*, 106 Phil. 1098.

[6] *Razalan vs. Concepcion*, 31 SCRA 611, 615; *Manila Railroad vs. Ballesteros*, 16 SCRA 641; *Paner vs. Yatco*, 87 Phil. 271.

CONCURRING OPINION

FERNANDO, J.:

The approach followed and the conclusion reached reflected in the opinion of the Court penned by Justice Barredo, characterized by his usual forthrightness and lucidity, call for concurrence. That I yield. It does seem appropriate however to say a few words regarding the manner in which the lower court judge framed his order of dismissal.

The Constitution is quite explicit. "No decision shall be rendered by any court of record without expressing therein clearly and distinctly the facts and the law on which it is based." [1] For reasons best known to it, the inferior court apparently was of the view that a reference to what was set forth in the motion to dismiss did suffice. It ought not to have been so easily satisfied. After all, the Constitution did impose a certain standard that must be met. Every effort should therefore be exerted to live up to it. There should be no occasion for sloth or even indifference. The bench should be the last to display a show of non-compliance with constitutional commands. It erodes confidence in the rule of law. If no further stricture is deserved, it is only because there was what Justice Barredo referred to as "substantial compliance." Further along the same line of thought, while the existence of a standard is necessary to repel the charge of unlawful delegation, it was held by this Court that it "does not have to be spelled out specifically. It could be implied from the policy and purpose of the act considered as a whole." [2] In the same way then that a plausible constitutional objection as to the observance of the doctrine of non-delegation of legislative power could be obviated even by reference to what was intended by the lawmaking body, the requirement as to distinctness and clarity of judicial decisions could be deemed fulfilled by an avowed intendment to incorporate what is contained in the relevant pleading. So the matter could be rationally viewed. In that sense, the conclusion reached by the Court is fully warranted.

What did give occasion for deep concern is that after all these years, the Constitution having taken effect as far back as November 15, 1935, there are still lower courts apparently unmindful of what the Constitution so categorically requires. Nor should there be any fear that thereby the discretion enjoyed by lower court judges as to the words they would employ to frame their decisions both as to the facts as well as of the law is unduly circumscribed. Reference to a recent decision of this Court, *Jose vs. Santos*, [3] would have been helpful. As was made clear: "Nor is there any rigid formula as to the language to be employed to satisfy the requirement of clarity and distinctness. The discretion of the particular judge in this respect, while not unlimited, is necessarily broad. There is no sacramental form of words which he must use upon pain of being considered as having failed to abide by what the Constitution directs. This is a realm where his individuality is not stifled, his habitual mode of giving expression to his thoughts respected. It suffices that his decision is not tainted with that degree of ambiguity that opens vistas of doubt both as to what the facts really were and the significance attached to them by the law." [4]

[1] Art. VIII, Sec. 12, Constitution.

[2] *Edu vs. Ericta*, L-32096, October 24, 1970, 35 SCRA 481.

[3] L-25510, October 30, 1970, 35 SCRA 538.

[4] *Ibid*, 543.

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