

DAMIAN IGNACIO, PLAINTIFF AND APPELLEE, VS. PELAGIO RACHO, AND HILARIA DOLORES, DEFENDANTS AND APPELLANTS.

G.R. No. L-466. June 30, 1947

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal from an order dated December 5, 1945, which denied a petition filed by the defendants to set aside a judgment of the Court of First Instance of Pangasinan dated September 8, 1944, rendered after hearing the plaintiff's evidence alone without the presence of the defendants and of their attorney.

The grounds alleged in the petition are fraud, accident, mistake or excusable negligence.

On May 30, 1944, a complaint was filed against the defendants in the Court of First Instance of Pangasinan for the annulment of a deed of sale executed by the plaintiff on June 27, 1938 (Exhibit B), purporting to convey to the defendants a parcel of land described therein; for the return to the plaintiff of the parcel of land, the possession of which had been turned over to the defendants as security only for the payment of a loan of P1,300, with the understanding that the products thereof would be applied to the payment of the principal of the loan, and for damages and costs. Plaintiff claims and alleges that he could not sell or encumber the parcel of land to the defendants, as that is prohibited by section 118 of Commonwealth Act No. 141. Defendants, on the other hand, claim and plead in their answer that the transaction had between them and plaintiff was that of absolute sale, and that the prohibition of the Public Land Act (Commonwealth Act No. 141), invoked by the plaintiff, is applicable only to lands of the public domain granted as homestead or free patent and not to lands of the public domain sold to applicants.

The case was set for trial on September 6, 1944. On August 29, or nine days before the date set for trial, a motion for postponement was filed by one of the defendants, on the ground that his attorney could not be present at the trial as he had to attend to some business in Manila and the means of transportation to Lingayen was uncertain. There was an affidavit entitled "of merit" attached to the motion subscribed and sworn to by the same defendant. On September 5, 1944, the attorney for the defendants, learning of the date set for the trial of the case upon receipt of copies of the motion and the affidavit of merit referred to, sent a telegram to the judge presiding over the Court of First Instance of Pangasinan asking for postponement of the trial of the case "for reasons endangering his life." Notwithstanding this motion and telegram, the court proceeded to hear the case and rendered judgment as herein above stated, after denying the motion for postponement on the ground that the movant did not set the time and place for the hearing of the motion, as required by the Rules of Court.

On October 27, 1944, the clerk of court sent to the attorneys for both parties notice of the decision. Attorney for the defendants did not receive said notice until November 16, 1945. (Affidavit of the Postmaster of Manaoag, Pangasinan, Exhibit E.)

On November 14, 1945, a verified petition to set aside the said judgment was filed by the attorney for the defendants under section 2, Rule 38, which petition was amended by another filed on November 19, alleging,

among other things, that he was prevented from attending the trial of the case on the date set, because his personal safety required him to stay away; that one of the defendants moved for postponement of the trial of the case upon the grounds stated in the motion; that a telegram was sent by him (the attorney) upon learning on September 5, 1944, of the trial of the case set for the following day; that he learned of the judgment rendered against his clients when on November 10, 1945, he received a copy of the letter of plaintiff's attorney dated November 8, addressed to the clerk of court asking for execution of the judgment; that after verifying the truth of the contents of the letter, on November 14, he filed a motion to set aside the judgment; that the defendants were deprived of their day in court and of their property without due process of law; and that they have a meritorious defense, as set forth by them in their answer to the plaintiff's complaint. Acting upon the petition, the court below denied it, on the ground that, although it was filed within 60 days after the defendants had learned of the judgment rendered against them, it was, however, more than six months after entry of the judgment (section 3, Rule 38). From this order the defendants have appealed.

The defendants in this case having filed their answer in due time were not in default (section 3, Rule 7; section 1, Rule 9). As they were not in default they were entitled to be served with notice of the judgment rendered in the case. The judgment shall be entered by the clerk, if no appeal or motion for new trial be filed within the time provided for in the Rules of Court (section 2, Rule 35). A motion for new trial may be filed "within 30 days after notice of the judgment" (section 1, Rule 37). An appeal may be taken within 30 days from notice of judgment (section 3, Rule 41). The notice of judgment in this case was sent by registered mail. "Service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five days from the date of first notice of the postmaster, the service shall take effect at the expiration of such time." (Section 8, Rule 27.) The affidavit by the postmaster of Manaoag (Exhibit E) shows that, although he received a registered envelope containing the notice of judgment, he did not send notice of its receipt to the attorney for the defendants. As there was no such notice, there was no service of the notice of judgment on the defendants' attorney and the expiration of five days from first notice of the postmaster to complete the service could not take place. Hence the service of notice of the judgment was made on November 16, 1945 only, when the notice was actually delivered. It is then clear that service of the notice of judgment rendered in this case was not made on October 27, 1944. Said judgment could not be entered by the clerk of court on the last mentioned date, because the 30-day period from the service of notice thereof, within which a motion for new trial or an appeal may be filed, had not yet elapsed. On November 19, 1945, when the amended petition to set aside the judgment was filed, judgment in the case was not yet final and executory and could not have been entered by the clerk of court. And it appearing further that the defendants have a meritorious defense as set forth in their answer, it is just and fair that they should be given a day in court or afforded an opportunity to cross-examine plaintiff's witnesses, to object to his evidence, and to prove their defense. Moreover, even if the motion for postponement of the trial was defective, the court below, taking into consideration the turbulent conditions prevailing at the time when the case was set for trial, should have postponed it using its discretion granted by section 4, Rule 31. This the court below failed to take into account when it entered the order appealed from.

The order appealed from is reversed; the judgment rendered in this case is set aside; and the Court of First Instance of Pangasinan is directed to hold a trial on the merits of this case with due notice to both parties. No costs shall be taxed.

Paras, Pablo, Perfecto, Bengzon, and Tuason, JJ., concur.

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