

ELISEO A. MATURAN, PETITIONER, VS. HONORABLE GIBSON A. ARAULA, PRESIDING JUDGE, COURT OF FIRST INSTANCE OF SOUTHERN LEYTE, BRANCH II, SAN JUAN, SOUTHERN LEYTE; AND MATILDE MONTE...

G.R. No. L-57392. January 30, 1982

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This petition for certiorari and mandamus seeks to set aside the order dated May 26, 1981 of respondent Judge dismissing petitioner's appeal.

In 1974, herein petitioner as plaintiff filed Civil Case No. R-142 before the Court of First Instance of Southern Leyte presided by respondent Judge against only one defendant, herein private respondent Matilde Montederos Vda. de Chung for the recovery of two parcels of coconut land challenging as fictitious and a forgery the alleged deed of sale covering said parcels in favor of said private respondent. The other private respondents herein are the stepchildren of the original defendant Matilde in said civil case, who were admitted as intervenors.

It appears that Civil Case No. R-142 of the Court of First Instance of Southern Leyte, was deemed submitted for decision on June 30, 1980.

On November 3, 1980, counsel for herein petitioner, as plaintiff in the aforesaid case, received a copy of the decision dated September 29, 1980 which was actually sent only on October 24, 1980 by registered mail to herein petitioner.

On November 11, 1980, herein petitioner as the losing party, filed a duly verified motion for reconsideration (Annex "B").

At the bottom of said motion for reconsideration was the notice addressed only to the clerk of court, requesting the latter to "cause the foregoing motion to be heard by the Court on December 8, 1980 without further oral arguments and the presence of plaintiff and counsel." A copy of the said motion for reconsideration was sent by registered mail to Atty. Joaquin G. Chung Jr., as counsel for the defendant and intervenors as indicated below the aforesaid notice to the clerk of court (Annex "B").

The defendant and intervenors thru counsel filed an opposition dated January 14, 1981 to the said motion for reconsideration on the ground that said motion is fatally defective as it was not a notice to the defendant, private respondent herein, and that a motion was merely pro forma and therefore did not interrupt the running of the period for appeal.

In an order dated January 15, 1981, respondent Judge denied the motion for reconsideration for lack of merit as the grounds raised in the said motion are "the same grounds raised in the memorandum for the plaintiff x x x" (Annex "D").

On January 28, 1981, herein petitioner received a copy of the said order dated January 15, 1981 denying his motion for reconsideration. On February 2, 1981, herein petitioner filed his notice of appeal and the appeal bond.

On February 9, 1981, herein petitioner filed a motion for extension of forty-five (45) days within which to file his record on appeal, notice of which was furnished Atty. Joaquin G. Chung Jr., as counsel for the defendant and intervenors, advising him that the said motion for extension will be presented for reconsideration by the Court on February 27, 1981 at 9 o'clock in the morning without further oral argument and without the presence of plaintiff and counsel, as shown at the bottom of said motion (Annex "E").

Herein private respondents, as defendant and intervenors in Civil Case No. R-142, filed a motion to dismiss appeal dated March 2, 1981, setting the said motion for hearing for March 16, 1981 with due notice to counsel for herein petitioner (Annex "F").

Herein petitioner filed his opposition dated March 16, 1981 to said motion to dismiss appeal, contending that his motion for reconsideration substantially complied with the requirement of notice thereof to the herein respondents and that the said motion for reconsideration was not pro forma (Annex "G").

In an order dated May 26, 1981, respondent Judge dismissed the appeal, sustaining the grounds invoked by herein respondent and intervenors.

Hence, this petition.

As enjoined by the Rules of Court and the controlling jurisprudence, a liberal construction of the rules and the pleadings is the controlling principle to effect substantial justice.

The rule requiring notice to herein private respondents as defendant and intervenors in the lower court with respect to the hearing of the motion filed by herein petitioner for the reconsideration of the decision of respondent Judge, has been substantially complied with. While the notice was addressed only to the clerk of court, a copy of the said motion for reconsideration was furnished counsel of herein private respondents, which fact is not denied by private respondent. As a matter of fact, private respondents filed their opposition to the said motion for reconsideration dated January 14, 1981 after the hearing of the said motion was deferred and re-set twice from December 8, 1980, which was the first date set for its hearing as specified in the notice. Hence, private respondents were not denied their day in court with respect to the said motion for reconsideration. The fact that the respondent Judge issued his order on January 15, 1981 denying the motion for reconsideration for lack of merit as it merely repeated the same grounds raised in the memorandum of herein petitioner as plaintiff in the court below, one day after the opposition to the motion for reconsideration was filed on January 14, 1981 by herein private respondents, demonstrates that the said opposition of herein respondents was considered by the respondent Judge.

Moreover, the respondent Judge, in an order dated February 27, 1981, granted herein petitioner as plaintiff "an additional forty-five (45) days from the reglementary period of 30 days within which to file his Record on Appeal," stating expressly therein that the motion of the plaintiff for such extension of 45 days was without objection on the part of herein private respondents (p. 7, rec.).

The motion for reconsideration of herein petitioner, while substantially based on the same grounds he invoked in his memorandum after the case was submitted for decision, is not pro forma as it points out specifically the findings or conclusions in the judgment which he claims are not supported by the evidence or which are contrary to law (*City of Cebu vs. Mendoza*, L-26321, Feb. 25, 1975, 62 SCRA 440, 446), aside from stating additional specific reasons for the said grounds.

Then again, the motion for reconsideration of herein petitioner challenged the correctness of the decision which considers the findings and conclusion of the handwriting expert presented by him as unworthy of belief, especially because his findings as such expert have not been refuted by another handwriting expert. This circumstance also characterizes the motion for reconsideration of herein petitioner as not pro forma, following the doctrine in the case of *Ylanan vs. Mercado* (50 O.G. 1982; 94 Phil. 769, 771) that where the motion for reconsideration was based on a claim that the finding of the trial court as to the authenticity of the disputed signature was not justified by the evidence submitted, which is the testimony of the expert witness denying such authenticity, it was held that the motion points out sufficiently why the finding of the court is not justified by the evidence, and is not a pro forma motion, hence it suspends the period for perfecting an appeal.

Furthermore, the motion for reconsideration is not pro forma when it points out why the decision is contrary to law or the evidence (*Phil. Advertising Counselors, Inc. vs. Revilla*, L-31869, Aug. 8, 1973, 52 SCRA 246, 254; *Villarica vs. Court of Appeals*, L-28363, May 15, 1974, 24 SCRA 28).

The rule was all the more liberalized in *Elnar vs. Santos, et al.* (L-13113, Aug. 13, 1959, 106 Phil. 28, 33), where a motion for reconsideration pointed out specifically the findings of the trial court that were not supported by evidence without making express reference to such evidence, but also pointed out the conclusions which were contrary to law, reserving the right to submit written or oral argument, We held that the motion was a substantial compliance with the rule.

And such a motion is not pro forma if it explains in detail the relevant facts for seeking the revocation of the judgment, as in the instant case (*Carbonell vs. Padilla*, 75 Phil. 95, 101; see Vol. 2, *Moran*, Comments on the Rules of Court, 1979 ed., pp. 216-218).

WHEREFORE, PETITION IS HEREBY GRANTED AND THE ORDER OF RESPONDENT JUDGE DATED MAY 26, 1981 IS HEREBY REVERSED AND SET ASIDE. NO COSTS.

THIS DECISION IS IMMEDIATELY EXECUTORY.

SO ORDERED.

Teehankee, (Chairman), Fernandez, Guerrero, Melencio-Herrera, and Plana, JJ., concur.

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