

CELESTINA B. RAMOS, ET AL., PETITIONERS VS. LAUREANO POTENCIANO, ET AL., RESPONDENTS.

G.R. No. L-19436. November 29, 1963

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On May 6, 1969, spouses Laureano Potenciano and Esperanza Potenciano, together with the Land Tenure Administration, filed before the Court of First Instance of Manila a complaint seeking to eject Celestina B. Ramos, et al. from a parcel of land with an area of 93.75 square meters situated in Santa Mesa, Manila, which was allegedly occupied by them through force, strategy and stealth (Civil Case No. 32748).

On June 18, 1960, the court rendered judgment ordering defendants to vacate the land in question and to return its possession to plaintiffs, with costs. Copy of the decision was served on the defendants on June 28, 1960. On July 25, 1960, defendants filed a motion for new trial.

On September 10, 1960, the court a quo allowed defendants to file an amended answer it having been discovered that the Land Tenure Administration has not been served with a copy of their answer, holding at the same time in abeyance its action on the motion for new trial. In the meantime, "Attys. Endaya, Cabasal & Holgado", entered their appearance as counsel for defendants in substitution of their attorneys of record Deogracias G. Trinidad and Prospero A. Crescini, giving due notice thereof to the plaintiffs.

On October 4, 1961, plaintiffs filed a motion for execution on the ground that the decision rendered on June 18, 1960 has already become final and executory. This motion was opposed by defendants on the ground that the decision has not yet become final. On October 24, 1961, the court a quo issued an order denying the motion for new trial, as well as the motion for execution, for lack of merit, copy of which was served on Attys. Deogracias G. Trinidad and Prospero A. Crescini on the basis that they are still defendants, attorneys of record.

On November 22, 1961, plaintiffs filed a second motion for execution reiterating that the decision rendered on June 18, 1960 has already become final and executory. In the meantime, Atty. S. P. Villareal entered his appearance as the new counsel of defendants giving notice thereof to plaintiffs, and on December 1, 1961, registered his opposition to the second motion for execution contending that the decision has not yet become final.

On December 8, 1961, the court a quo issued an order granting the second motion for execution. Defendants filed a motion to have the order set aside, but on January 23, 1962, respondent court denied the motion for lack of merit, reiterating its order of execution. Hence, defendants filed the present petition for certiorari imputing to the court a quo grave abuse of discretion in issuing prematurely the writ of execution of its decision dated June 18, 1960.

This Court gave due course to the petition and issued the writ of injunction prayed for upon the filing of a bond in the amount of P500.00.

The main theme of petitioners in claiming that the court a quo acted with grave abuse of discretion in issuing its

order of December 8, 1961 directing the issuance of a writ of execution of its decision of June 18, 1960 is the fact that they were never served legally with the copy of the order of the court dated October 24, 1961 denying their motion for new trial so that when respondents filed their second motion for execution on November 22, 1961 said decision has not yet become final and executory insofar as petitioners are concerned.

This claim, however, has no merit it appearing that copy of the order denying the motion for new trial was served on Atty. Prospero A. Crescini on October 31, 1961 and another copy on Atty. Deogracias G. Trinidad on November 4, 1961 who were then both attorneys of record of petitioners. It is true that on March 1, 1961 "Attys. Endaya, Casabal & Holgado" entered their appearance as new counsel of petitioners in substitution of Attys. Trinidad and Crescini, but the substitution was not made in accordance with what our rules provide. Thus, while it appears that the substitution was made with the consent of their client, they never notified thereof the attorneys to be substituted. In fact, these attorneys never withdrew their appearance. It is also true that on November 28, 1961 Atty. S. P. Villareal likewise entered his appearance as new counsel for petitioners in substitution of "Attys. Endaya, Cabasal & Holgado", but the substitution was not also made in accordance with our rules for the consent of the attorneys that were substituted has not been obtained. In this connection, we wish to invite attention to the rule that should be followed on matters of substitution of attorneys as laid down by this Court:

"No substitution of attorneys will be allowed in this court unless there be filed: (1) A written application for such substitution; (2) the written consent of the client; (3) the written consent of the attorney substituted; and, (4) in case such written consent can not be secured, there must be filed with the application proof of service of notice of such motion upon the attorney to be substituted, in the manner prescribed by the rules.

* * * Unless the foregoing formalities are complied with, substitution will not be permitted, and the attorney who properly appeared last in the cause, before such application, will be regarded as the attorney of record and will be held responsible for the proper conduct of the cases." (United States vs. Borromeo, 20 Phil., 189)

As may be seen, in order that there may be substitution of attorneys in a given case, there must be (1) a written application for substitution; (2) a written consent of the client; and (3) a written consent of the attorney to be substituted. And in case the consent of the attorney to be substituted cannot be obtained, there must at least be proof that notice of the motion for substitution has been served upon him in the manner prescribed by our rules. Unless this procedure is followed, the attorney who appears to be on record before the filing of the application for substitution should be regarded as the attorney entitled to be notified of all notices and pleadings. This procedure was not followed by petitioners, nor by their new counsel.

Moreover, it appears that the address given by Attys. Deogracias G. Trinidad and Prospero A. Crescini is the same as that given by "Attys. Endaya, Cabasal & Holgado", that is, 3964 Sta. Mesa Blvd., Manila, and no plausible reason is seen why the notices served on Attys. Trinidad and Crescini were not forwarded to the substituting attorneys if the substitution has really been with the knowledge and consent of the former. The rule is that the client is answerable for the shortcomings of his attorney.

With regard to the error imputed to the court *a quo* in denying petitioners' motion to suspend the ejectment case to await the result of the administrative case pending before the Office of the President involving the ownership of the land in question, aside from the fact that the two cases involve different subject matter, it appears that the administrative case has already been decided by that office in favor of respondents on the ground of lack of merit.

Wherefore, petition is denied. The writ of injunction issued is hereby dissolved. No costs.

Bengzon, C. J., Padilla, Labrador, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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