

MARCIANO PRINCIPE, PLAINTIFF AND APPELLEE, VS. ANTONIO ERIA, DEFENDANT AND APPELLANT. LEONCIO MANINGAS, THIRD PARTY DEFENDANT.

G.R. No. L-3788. January 22, 1952

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This is an appeal from an order of the Court of First Instance of Quezon denying appellant's petition for relief from an order declaring him in default and denying his petition for new trial.

The facts involved in the appeal are not disputed. Plaintiff-appellee Marciano Principe filed an action against Antonio Eria to collect a sum of money plus interest based on a promissory note or document signed by Eria and his son-in-law, Leoncio Maningas, supposed to embody a joint and several obligation and in which the signers undertook to pay a certain amount 'With interest and where the two stated that anyone of them may be made to pay the whole amount. On April 12, 1948, after service of summons, defendant Eria petitioned the court to have his co-signer of the promissory note, Leoncio Maningas, included as a party defendant. Upon objection of the plaintiff, the trial court on April 15, 1948, denied said petition for inclusion of Maningas as party defendant on the ground that according to the promissory note on which the complaint is based, defendant Eria may be sued alone, and that full relief to the plaintiff could be obtained without inclusion of Maningas as party-defendant. On May 27, 1948, defendant Eria filed an amended answer which was admitted by order of the court dated June 24, 1948.

On November 19, 1949, the Clerk of Court issued a notice setting the case for hearing on December 13, 1949. On December 3, 1949, defendant Eria filed a petition for leave to file a third party complaint against his co-signer of the promissory note, Leoncio Maningas, and at the same time filing said third party complaint against Maningas. On December 7, 1949, and because plaintiff Principe did not object to the petition, the trial court granted it and admitted the third party complaint, at the same time giving third party defendant Maningas the reglementary period within which to answer the same.

In spite of the admission of the third party complaint and the giving of notice to third party defendant Maningas to answer within the time prescribed by law, and before third party defendant could answer the third party complaint, on December 13, 1949, the date on which the case was originally set for trial, and in the absence of defendant Eria and his counsel, the case was tried and the plaintiff was allowed to present his evidence.

On December 16, 1949, defendant Eria's counsel, filed a pleading entitled "Manifestation" wherein he stated that on that date he learned that he (Eria) had been declared in default, and that he would petition the court, for, relief from said order, and on December 29, 1949, he filed his petition for relief and new trial accompanying the same with his affidavits of merits. The basis of his petition for relief is that he believed that with the admission of the third party complaint and the giving to third party defendant Maningas the reglementary period within which to answer, the said third party complaint automatically cancelled the original date of hearing on December 13, 1949, and so neither he nor his client Eria appeared in Court on that date. Upon objection of the plaintiff, this

petition for relief and new trial was denied by order of January 23, 1950. A petition for reconsideration of the order of denial was likewise denied by order of February 20, 1950. In his appeal, appellant Eria claims that the trial court erred in proceeding with the trial of the case on December 13, 1949, without his presence and that of his counsel, and in not granting the petition for relief.

Appellee counters with the contention that contrary to the rules of court, appellant in his petition for relief and affidavit accompanying the same, did not specifically state the defense which he would put up should he be granted a new trial. We believe, however, that the more important question involved in the present appeal is the legality and propriety of the act of the trial court in proceeding with the trial of the case before third party defendant Maningas had filed his answer. As a matter of fact, Maningas filed his answer to the third party complaint only on January 9, 1950, almost a month after the case was tried.

That defendant Eria had a right to file his third party complaint against Leoncio Maningas who signed the promissory note with him, cannot be denied. Rule 12, Section 1 of the rules of court gives him that right. Said section 1 reads as follows:

"SECTION 1. Claim against one not a party to an action.—When a defendant claims to be entitled against a person not a party to the action, hereinafter called the third-party defendant, to contribution, indemnity, subrogation or any other relief, in respect of the plaintiff's claim, he may file, with leave of court, against such person a pleading which shall state the nature of his claim and shall be called the third-party complaint."

As already stated, his third party complaint was admitted by the trial court without objection on the part of the plaintiff. Now, was the trial court authorized to try the case before the third party defendant had filed his answer? Evidently not. The reason is that the case was not yet ready for trial. Rule 31, Section 1, of the Rules of Court, provides:

"SECTION 1. When issue joined.—Upon the filing of the last pleading, the case shall be included in the trial calendar of the court."

Under said section, Chief Justice Moran makes the following comment:

"The case may be said to be ready for trial and, therefore, should be included in the trial calendar when the issue is joined. And the issue is joined when all the parties have pleaded their respective theories and the terms of the dispute are plain before the court." (Moran's Comments on the Rules of Court, Vol. I, third edition, p. 573.)

As we have already stated, on December 13, 1949, the case was not ready for trial for the simple reason that the third party defendant Maningas had not yet filed his answer. True, a trial court may under Rule 32, Section 2 of the Rules of Court, in furtherance of convenience or to avoid prejudice, order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or issues. But on December 13, 1949, when the case was tried, the issues had not yet been joined; all possible claims, cross-claims or counterclaims had not yet been filed. Consequently, the trial court could not have validly ordered a separate trial because it did not know nor was it in a position to know if the third party defendant Maningas had any claim, cross-claim or counter-claim against either the plaintiff Principe or the defendant Eria, or both. In other words, the trial was altogether premature. It is reasonable to suspect that the trial court had forgotten or completely overlooked the third party complaint against Maningas and the fact that his answer to it was still pending submission.

In view of all the foregoing, we find and hold that the trial held on December 13, 1949, when the case was not yet ready for trial was premature and unauthorized; that appellant Eria had a right to believe that the admission of his third party complaint and the granting of the reglementary period to third party defendant Maningas to answer it, automatically cancelled the hearing originally set on December 13, 1949, and, that consequently, he (Eria) should

not be penalized for not attending said hearing. The orders denying his petition for relief, and his petition for reconsideration are hereby set aside, and the case is hereby ordered returned to the trial court for a re-hearing after all the parties have been duly notified thereof. No pronouncement as to costs. So ordered.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Reyes, Jugo, and Bautista Angelo, JJ., concur.

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