

SEVERINO SAMSON, PETITIONER AND APPELLANT, VS. DIONISIO DINGLASA, RESPONDENT AND APPELLEE.

G.R. No. L-15326. October 25, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

From the decision of the Court of First Instance of Basilan City, dismissing his petition for relief under Rule 38 of the Rules of Court, petitioner Severino Samson interposed this appeal.

On February 3, 1951, respondent Dionisio Dinglasa filed with the above-mentioned court, a complaint (Civil Case No. 273) against petitioner Severino Samson seeking judgment for the redemption of a parcel of land originally obtained by him by homestead patent and, subsequently, sold to Samson on December 13, 1947. After answer by respondent and subsequent due trial, the court, on November 15, 1956, rendered a decision, the dispositive part of which reads:

"In view of the foregoing, judgment is entered:

"(1) Ordering the defendant herein (herein petitioner) to execute the corresponding deed of resale of the property in question, to the plaintiff (herein respondent) immediately after the decision herein has become final, without the necessity of returning the consideration of P2,000.00 which was compensated by the income of the property for the period of (5) years and eight (8) months enjoyed by the defendant which should have been enjoyed by the plaintiff if the defendant had complied with the law;

"(2) Ordering the defendant to reimburse plaintiff balance of P1,300.00; and

"(3) Ordering the defendant to pay the attorney's fees in the sum of P500.00 and to pay the costs of this proceedings.

"So ordered."

Copy of this decision was served on petitioner on November 21, 1956. On December 8, 1956, he filed a motion for reconsideration, but the same was denied by the court in its order of February 28, 1957, copy of which was received by petitioner on March 16, 1957. On April 2, 1957, petitioner filed a notice of appeal and appeal bond and on April 5, 1957 his record on appeal. On June 12, 1957, respondent filed a motion to dismiss said appeal, which was granted by the court, on December 3, 1957, in an order which states:

"This is a motion for dismissal of appeal filed by the plaintiff (herein respondent) in the above entitled case, dated June 12, 1957.

"It appears of record that counsel for the defendant received a copy of the decision in this case on November 21, 1956 as evidenced by the return card of Registry Receipt No. 4253; that on December 10, 1956, defendant filed a motion for reconsideration which was resolved by the court on February 28, 1957, copy of which order was served on the defendant on March 16, 1957; and that on April 4, 1957, defendant filed his appeal therein.

"Granting that the motion for reconsideration was mailed by the defendant on December 8, 1956, and the appeal was sent to the maif on April 2, 1957, still the number of days counted from the time of the receipt of the decision by the defendant until the appeal was presented is thrity-three (33) days, which is more than the time allowed by law for the appeal.

"Wherefore, the appeal is hereby ordered dismissed.

"So ordered."

From said order of dismissal, petitioner, on December 14, 1957, filed with this Court a petition for certiorari (docketed as G. R. No. L-13263). We dismissed said petition for lack of merit, by resolution of January 17, 1958. Petitioner filed a motion for reconsideration thereof, but we denied the same on February 10, 1958.

On June 25, 1958, petitioner filed with the lower court the present petition for relief from judgment under Rule 38 of the Rules of Court, praying, inter alia, that the decision of November 15, 1956 be set aside, and that a writ of preliminary injunction be issued, to inhibit the Sheriff from enforcing said decision. Preliminary injunction was granted ex-parte to petitioner on June 30, 1958.

On July 8, 1958, respondent filed a motion for dissolution of said preliminary injunction. On July 10, 1958, he filed a motion to dismiss said petition for relief, on the ground that it was filed beyond the reglementary period provided in Section 3, Rule 38 of the Rules of Court. On December 29, 1958, the court dismissed the petition for relief, in an order reading thus:

"This is a case for injunction. The plaintiff has been granted injunction ex-parte and filed a bond of P600.00 in this case. It appears that plaintiff-petitioner seeks relief from a judgment of this Court on the Civil Case No. 273 and the relief sought for could be had either (1) on the 60-day period after the petitioner learns of the judgment, or (2) within six months but not more than that period after the proceeding was taken. (Sec. 3, Rule 38 of the Rules of Court.)

"The petitioner seeks relief from an order dated September 12, 1956, page 2 of petitioner's pleading, or from the judgment of November 15, 1956.

"As the petitioner seeks relief from the order of September 12, 1956 (Section 3, Rule 38 of the Rules of Court), this is already beyond the 60-day period; on the other hand, the relief sought to be availed of is beyond the 6-month period after the proceedings were taken, for the petition was filed in June (25), 1958;

"The petitioner has interposed as a reason for his inability to know the judgment because of lack of letter-carriers in the place. This allegation is flimsy. And it appearing that the injunction granted ex-parte lacks merit as the decision in the Civil Case No. 273 is already final;

"Wherefore, the petition is hereby denied, and the injunction granted to the petitioner is hereby ordered cancelled.

Hence, this appeal.

The only issue^[1] to be resolved in this case is whether the lower court correctly dismissed the petition for relief from judgment (of November 15, 1956) filed by petitioner on June 25, 1958.

"Sec. 3. When petition filed; contents omd verification. - A petition provided for in either of the preceding sections of this ruie must be verified, filed within sixty days after the petitioner learns of the judgment, order, or other proceeding to be set aside, and not more than six months after such judgment or order was entered, or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense¹, as the case may be, which he may prove if his petition be granted."

Under this provision of the Rules of Court, two prescriptive periods are to be taken into account. The first is 60 days after the petitioner learns of the judgment, order or proceeding complained of. The second is 6 months after such judgment, order or proceeding has taken place. The second period is a limitation to the first. The petition must be filed within 60 days after knowledge is acquired of the proceeding, provided it is not beyond 6 months after the proceeding has actually occurred. (1 Moran, Comments on the, Rules of Court [1952 Ed.] 778-779.)

It is not disputed, in the instant case, that the decision was rendered by the lower court on November 15, 1956. A copy of said decision was received by petitioner on November 21, 1956. Petitioner, however, filed the petition for relief in question only on June 25, 1958, which was 1 year, 7 months, and 4 days after he learned of said decision (on November 21, 1956), much beyond the reglementary period provided in the above-quoted Section 3, Rule 38 for filing the same. And, if the period be counted from March 30, 1957, the date when said decision became final, no appeal having been perfected within the reglementary period pursuant to Section 3, Rule 41 of the Rules of Court, a period of 1 year, 2 months, and 25 days had elapsed at the time of the filing of the petition for relief in question on June 25, 1958, which is likewise beyond the 6-month period. In fine, whether the period be computed from the time petitioner learned of the decision, or from the time it became final, the petition for relief in question was filed beyond the two reglementary periods aforementioned. Consequently, the lower court's dismissal of said petition was correct.

Wherefore, finding no error in the order appealed from, the same is hereby affirmed, with costs against the petitioner. So ordered.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Reyes, J.B.L., Gutierrez David, and Paredes, JJ., concur.

Order affirmed.

[1] Petitioner has assigned 5 errors allegedly committed by the lower court. We will resolve only Error No. 5 (the issue above-stated), as Errors Nos. 1 to 4 have been the subject of G.R. No. L-13263 (petition for certiorari) and, therefore, res judicata.

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