

FILOMENO O. GANA, MARIA PAZ GANA, BELEN GANA, JOSE G. GANA, FILOMENA GANA, AND TELESFORO L. GANA, FOR HIMSELF AND AS GUARDIAN OF THE MINOR BENJAMIN GANA, PETITIONERS, VS. HONORA...

G.R. No. L-3106. December 29, 1955

Ponente: PADILLA, J.

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PADILLA, J.:

On 2 July 1947, the petitioners as heirs of the late Maria A. Gana brought an action in the Court of First Instance of Rizal against the respondent Maria Luisa P. Vda. de Gana for reconveyance to, them as such heirs of four parcels of land together with the buildings and improvements erected thereon (case No. 244). On 8, November 1947, the Court denied the motion to dismiss the complaint and directed the respondent to file her answer within the reglementary period. On the same date, upon motion, the Court allowed respondent's counsel to retire as attorney from the case. On 14 February 1948, upon motion of the petitioners, the respondent was declared in default for failure to file her answer within the period prescribed by the rule; and trial of the case proceeded in her absence. On 20 July 1948 the respondent learned for the first time that she had been declared in default. On 28 July 1948 the Court rendered judgment as prayed for in favor of the petitioners and against the respondent. On 31 August 1948 the respondent filed a petition dated 29 August 1948 for relief from the order declaring her in default. On 26 May 1949, the Court, presided over by Judge Jose F. Letargo, denied the petition. On 8 July 1949, the Court, presided over by Judge Gavino S. Abaya, reconsidered the order of 26 May 1949, set aside the order of default of 14 February 1948 and the judgment on the merits rendered on 28 July 1948, allowed the respondent to file her answer to the complaint within five days from receipt of the order, and (greeted the case set for trial at the earliest date available.

Claiming that the respondent Judge acted without or exceeded his jurisdiction in issuing the last order of 8 July 1949, because the petition for relief from the order of default was filed beyond the period of six months from the issuance of such order pursuant to section 3, Rule 38, the petitioners pray for a writ of certiorari with preliminary injunction. On 28 July 1949, a writ of preliminary injunction was issued by this Court.

The hearing of this case was delayed due to the agreement of the parties not to set the case for hearing until further move by either of them, for negotiation was being undertaken to settle the case amicably.[1] The petition was heard on 29 April 1955.[2]

On 14 February 1948 the respondent Gana, defendant in the action brought in the respondent court, was adjudged in default. On 31 August 1948, or six months and seventeen days after the order of default had been entered, she filed a petition for relief from such order. A petition to set aside a judgment, order, or other proceedings must be filed within 60 days after the petitioner learns of such, judgment, order or proceeding to be set aside,[3] and not more than six months after such judgment or order had been entered, or such proceeding had been taken.[4] These periods are not extendible.[5] Her petition for relief from the order of default should have been denied, because

although it was filed within sixty days after the respondent had learned of the order, as claimed by her, still it was beyond the six-month period provided for in the rule. The first period of six days is subject to the six-month period provided for in the rule, so that even if the petition for relief be filed within six days after he or she had learned of the judgment, order, or proceeding, if it is filed beyond, the period of six months after entry of such judgment, order, or proceeding, the relief provided for in Rule 38 is no longer available.

The writ prayed for is granted. The orders of 8 and 16 July 1949 entered by the respondent court are set aside and the writ of preliminary injunction heretofore issued is made final.

Paras, C. J., Bengzon, Reyes, A., Jugo, Bautista Angelo, Labrador, and Concepcion, JJ., concur.

[1] Joint Motion of 9 January 1950; Resolution of 11. January 1950.

[2] Resolution of 29 April 1955.

[3] Section 3, Rule 38.

[4] Isaac vs. Mendoza, 89 Phil., 279.

[5] Palomares vs. Jimenez, 90 Phil., 773; Rafanan vs. Rafanan, supra, p. 162; Santos vs. Manila Electric Co., G. R. No. L-7735, 29 December 1955.

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