

**FORTUNE ENTERPRISES, INC., PLAINTIFF AND APPELLANT, VS.
GENERAL FINANCE CORPORATION, PHILIPPINE SURETY & INSURANCE CO., INC. AND THE SHERIFF OF MANILA, DEFENDANTS
AND APPELLEES.**

G.R. No. L-10359. May 14, 1958

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

On February 3, 1954, Fortune Enterprises, Inc., instituted Civil Case No. 21852 of the Court of First Instance of Manila against Eduardo Obieta, et al. The action was one of replevin, involving a Nash car, with Motor No. A-124565. On August 5, 1954, judgment was rendered sentencing Obieta to deliver the car to the Fortune Enterprises, or else, to pay the price of the car, with interest, plus damages, attorney's fees and cost; The writ of execution subsequently issued, after the decision had become final, was returned, however, by the Sheriff of Manila with the report that he could not enforce it upon said car, for he believed that the same was the very car seized in compliance with a writ of seizure in Civil Case No. 22899 of the same court, entitled "General Finance Corporation vs. Ceclilio Brigola, et al," likewise, for replevin. Thereupon, Fortune Enterprises filed with the Sheriff a third party claim against the General Finance Corporation in said case No. 22399. Upon notice of such claim, the General Finance Corporation filed the corresponding indemnity bond, with the Philippine Surety & Insurance Co., as surety. Still later, on October 9, 1954, on motion of Fortune Enterprises, the court amended the dispositive part of its decision in case No. 21852, as follows:

"For the foregoing, the Court orders defendant Eduardo Obieta, his representative or any other person or persons holding the same car, subject to this case, to deliver the car in question to plaintiff.

"The rest of the dispositive portion of the decision shall remain unaltered."

Meanwhile, the car had, also, on motion of the Fortune Enterprises, been examined by a representative of the Manila Police Department, who expressed the opinion that although the car seized in case No. 22899 appeared to bear Motor No. 12587, its true number was A-12M-565, which had been filed. Accordingly, on October 19, 1954, the court issued in case No. 21852 an order stating that the subject-matter of the two (2) cases was one and the same car and that

"The claimant of the car in Civil Case No. 22399 may file a third-party claim with the sheriff and all other claimants of the same car may litigate among themselves to determine of whom is the preferred and rightful owner and possessor of the car in question."

On December 2, 1954, Fortune Enterprises, Inc., instituted this case, in the same court, against the General Finance Corporation, the Philippine Surety & Insurance Co., Inc. and the Sheriff of Manila, to recover the value of the car in question, plus attorney's fees and costs, upon the theory that the car seized in Civil Case No. 22899 is the same car litigated in Case No. 21852, and that owing to the indemnity bond given by the General Finance Corporation and the surety company (and, presumably, the use thereafter made by the General Finance

Corporation), said car is now in such a dilapidated condition that it could "almost be considered as a junk."

Defendant filed an answer admitting some allegations of the complaint and denying the other allegations thereof and alleging, by way of special defense, that the car seized in case Ho. 22899 is different from the one involved in case No. 21852.

In due course, the Court of First Instance of Manila rendered a decision on October 17, 1955 dismissing the case upon the ground of failure of plaintiff to introduce any evidence on the identity of said car, plaintiff having labored "under the erroneous impression that the decision in case No. 21852 is binding upon the defendants herein because of the erroneous phraseology of the amendment * * * to the original decision." On November 2, 1955, plaintiff, who had received copy of the decision on October 22, 1955, filed a "motion for reconsideration and/or to reopen trial", praying:

"* * * that the decision of this Honorable Court be set aside and reconsidered, and the prayer, in the complaint be granted in toto; or that if this Court still deems it necessary for the plaintiff to present evidence relative to the identity of the car, that it be given an opportunity to do, in order that the rights between the parties be ultimately ventilated"

upon the ground:

"1. That the order of this court in Civil Case No. 21852 (Exhibits 'D' and 'D-1') declaring that the Nash car bearing No. 125787 is the same and one Nash car bearing Motor No. A-124565, is an order against a specific thing, and therefore, conclusive upon the title of the thing; (Section 44(a) Rule 39, Rules of Court).

"2. That the decision of this court in Civil case No. 21852 (Exhibits 'A' and 'A-L') binds any person or entity who actually possessed the car therein litigated."

This motion was denied on November 11, 1955} and copy of the order to this effect was served upon plaintiff on November 19, 1955. On December 3, 1955, plaintiff filed a "motion for new trial" upon the ground of:

"* * mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which plaintiff has been impaired in its rights (Section 1 (a), Rule 37, Rules of Court)."

By an order dated December 13, 1955, the court denied this motion for the reason that it was a "second motion for new trial", the filing of which had not interrupted the running of the period to appeal, and that the decision had, therefore, become final on December 7, 1955. Thereafter, plaintiff filed its record on appeal, which was approved by the lower court. The appellant now maintains that:

"The lower court erred in holding that the motion for new trial filed by appellant on December 3, 1955, is a second motion for new trial and, therefore, did not interrupt the running Of the period within which appellant can perfect its appeal."

At the outset, it is obvious that if the decision had already become final, the record on appeal should not have been approved. In any event, the ruling of the lower court complained of is substantially correct.

It is urged that plaintiff's motion, dated November 2, 1955, was one for "reconsideration", not a motion for new trial. The motion itself was, however, entitled, "Motion for Reconsideration and/or to Reopen Trial". Besides, the reasons relied upon were equivalent to an assertion that the decision was contrary to law, which is a ground for new trial (Rule 37, section 1 [c], Rules of Court). Again, it was prayed in said motion that the decision be "set aside". In this connection, former Chief Justice Moran has the following to say:

"In this connection, the question arises as to whether or not a motion for reconsideration may be considered a motion for new trial. In one case,, it was held that a motion for reconsideration, founded on a mistake of fact,

cannot be considered as a motion for new trial, for it does not ask that the judgment rendered be set aside and new trial granted. In another case, however, a motion for reconsideration founded also on mistake of fact, was considered as a motion for new trial, because it was therein asked that the judgment be set aside. As may thus be seen, the two motions are of the same nature, although they have different prayers. But, as once held, 'a prayer in a motion, like a prayer in a complaint, is not conclusive as to the character of the motion.' It seems clear that a motion for reconsideration is a motion for new trial, for it can have no basis other than the grounds for new trial." (Comments on the Rules of Court by Moran, 1957 Ed., Vol. I, pp. 521-13; underscoring ours.)

Upon the other hand, plaintiff's motion of December 3, 1955, was based upon an alleged mistake or excusable negligence, in that plaintiff erroneously relied upon the letter of the decision in case No. 21852, as amended on October 9, 1954, as binding upon any person holding the car in question, including the parties in Case No. 22899, and, hence, the defendants in this case. Inasmuch as mistake and excusable negligence are specified in Rule 37, section 1, as grounds for a motion for new trial, it results that the motion of December 3, 1955, was the second motion for new trial filed by plaintiff. Moreover, the ground thereof existed when the first motion was filed on November 2, 1955. Accordingly, it did not interrupt the running of the period to appeal (Rule 37, section 4, Rules of Court; *Sawit vs. Rodas*, 73 Phil., 310; *Rili et al. vs. Chunaco et al*, 48 Off. Gaz., 614; *Mallari vs. Panahon*, 52 Off. Gaz., 219; *Rafanan vs. Rafanan*, 52 Off. Gaz., 223).

Recapitulating, from October 22, 1955, when plaintiff received notice of the decision, to November 2, 1955, when it filed its "Motion for Reconsideration and/or to Reopen Trial", ten (10) days had elapsed. The order denying this motion was served on plaintiff on November 19, 1955, so that the running of the period to appeal was resumed on November 20, 1955 and the said period expired December 9, 1955, inasmuch as the filing of the motion for new trial on December 3, 1955, did not interrupt it. As a consequence, the decision was final before the latter motion was heard on December 12, 1955.

It is thus clear that the present appeal has not been perfected within the reglementary period and should, therefore, be, as it is hereby dismissed, with costs against plaintiff-appellant. It is so ordered.

Paras, C.J. Bangzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Reyes, J.B.L., Endencia, and Felix, JJ., concur

Mr. Justice Sabino Padilla took no part.

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