

DOÑA NENA MARQUEZ AND VICENTE NOZA, PETITIONERS, VS. HON. TOMAS P. PANGANIBAN, AS ASSOCIATE JUDGE OF THE COURT OF AGRARIAN RELATIONS, AURELIO CERRODO AND JULIA VINAS, RESPONDENTS.

G.R. No. L-15842. October 31, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

On May 4, 1959, Hon. Jose R. Cabatuando, vacation Judge in the Fifth and Sixth Regional Districts of the Court of Agrarian Relations, rendered a decision in CAR Case No. 108-Quezon '57, entitled "Aurelio Cerrodo, et al. vs. Nena Marquez, et al., setting forth the following facts:

"DECISION

"This is a petition for delivery of shares, reinstatement, damages, attorney's fees, and expenses of litigation. Respondents' main defense is that petitioners have never been tenants on the landholding in question.

"It appears from the evidence that petitioner-spouses Aurelio Cerrodo and Julia Vinas were instituted as tenants by respondent Nena Marquez in two parcels of coconut land with an aggregate area of 4% hectares, more or less, situated at Ibabang Talim, Lucena, Quezon, sometime in November, 1955- Acting as the landholder's overseer was respondent Vicente Noza. The agreed crop sharing was 60-40 in favor of the respondent-landholder. As tenants, petitioners cleaned the land, gathered the nuts and piled and husked the same. Petitioners made harvests at intervals of 45 days- Notwithstanding the 60-40 sharing arrangement between respondent-landholder and the petitioners, 7% of the latter's share had always been deducted every harvest and paid to respondent Vicente Noza as compensation for his services as overseer, and the average amount usually received by petitioner-spouses as their share every harvest was P70.00. From November, 1956 to July, 1957, within which period five harvests were made, respondent Vicente Noza on his own account withheld one half of petitioners' share of the harvest. Sometime in August, 1957, when petitioners demanded from respondent Vicente Noza the return to them of the withheld shares and of the 7% being deducted as the latter's compensation as overseer, respondent Vicente Noza got mad and ordered them to leave the coconut land.

"Soon after their ejectment, petitioner-spouses hired the services of counsel and the latter filed the instant case on September 30, 1957. For counsel's services, petitioners agreed to pay P500.00. To discourage petitioners from further prosecuting this case, respondents filed a criminal case before the Justice of the Peace Court of Lucena, Quezon, against petitioner Aurelio Cerrodo, charging him with qualified theft of coconut fruits which he allegedly took from the landholding involved in this case, and it was on the occasion of the first hearing of this case, when petitioners were about to present their evidence, that petitioner Aurelio Cerrodo was arrested on the strength of the warrant of arrest issued in said criminal case. Petitioner Aurelio Cerrodo was then hustled to jail, and the trial had to be postponed because of this incident. To add to petitioners' misfortune, on the night of the very same day petitioner Aurelio Cerrodo was arrested and lodged in jail, their house erected on the land-holding was mysteriously burned to the ground.

"The facts here related unfold a story of naked-abuse and persecution. Petitioner-spouses, perhaps because of the necessity of making a bare living, agreed to work as tenants of respondent Doña Nena Marquez' land on the 40-60 sharing ratio in favor of the latter, although in the numerous cases brought to the attention of this Court, the usual or customary sharing arrangements between, landholders and tenants in coconut lands in Quezon Province is 50-50. But even the 40-60 sharing arrangement between the petitioner-spouses and the respondent-landholder was only on the surface. Petitioners had to give a cut of 6% of their share to respondent Vicente Noza, allegedly as compensation for the latter's services as overseer. This is altogether immoral and iniquitous, because the tenants are made to pay for the services of an employee of the landholder whose main concern is to look after and protect the latter's interests. As if this iniquity were not enough, the self-same overseer withheld, for five harvests, one half of the share corresponding to the long-suffering tenants, and when the latter finally mustered enough courage to seek an end to the abuse, they were unceremoniously told to vacate the landholding. The subsequent prosecution of petitioner Aurelio Cerrodo for the alleged crime of qualified theft before the Justice of the Peace Court of Lucena, Quezon, after the instant case has already been filed, and his dramatic arrest and incarceration on the very day this case was scheduled to be tried, followed the pattern. And the mysterious burning of petitioners' humble abode while petitioner Aurelio Cerrodo was languishing in jail, completed the story.

"We shall now apply the law to the facts."

After considering the applicable law, the court rendered judgment in favor, of Aurelio Cerrodo and Julia Vinas (herein respondents) ordering Nena Marquez and Vicente Noza (herein petitioners) to pay sums of money, and to reinstate them as tenants in petitioner's 4-1/2 hectare landholding.

In accordance with Section 9 of Republic Act No. 1267, as amended, the Chief of Police of Lucena was directed to serve the notice and copy of said decision upon petitioners' counsel, Atty. Edgardo V. Guevarra, whose address, as appearing: from the records of the case, was Lucena, Quezon. The return of service of the Office of the Chief of Police of Lucena, showed that said notice and copy of the decision were duly served upon said petitioners' counsel on May 12, 1959.

On June 3, 1959, petitioners filed by registered mail, a motion for reconsideration of said decision, alleging as grounds therefor that the decision has no basis in law and in fact, and that the court has no jurisdiction to entertain the case. To this motion, respondents Gerrodo and Vinas filed an opposition. On the same date, June 15, 1959, they filed an ex parte motion for the issuance of a writ of execution of the decision.

On July 3, 1959, respondent Judge (Hon. Tomas P. Panganiban), who had already resumed his post as presiding judge of the Fifth Regional District after his summer vacation, issued an order denying said motion for reconsideration on the ground that it was filed beyond the 15-day reglementary period for filing the same^[1] and, consequently, the decision had already become final and executory.

On July 17, 1959, petitioners' counsel filed a petition- which is actually a second motion for reconsideration of the decision dated May 4 alleging that while according to the records of the case, he received a copy of the decision on May 12, 1959, he actually received it only on May 29, 1959; that although one Felicitas Pabellano, received it for him, he never authorized her to do so in his behalf; that said Pabellano is the Clerk of Atty. Alfredo Raya, with whose office he was not in any way connected; that since November, 1958 he had been connected with the Ayala Company of Manila, and has resided in said city ever since; that he got married on May 16, 1959, and it was only on May 29, 1959 that he received copy of the decision from said Pabellano, when he visited his parents at Lucena; and that his failure to file said motion for reconsideration within the reglementary period was due to mistake, the decision having been served through an office with which he was not in any way connected. Attached to said petition were the affidavits of Felicitas Pabellano explaining among other things, why she received and retained the copy of the decision, and of Atty. Alfredo Baya, to the effect that petitioners' counsel had never been

associated with his law office at Lucena. On July 21, 1959, respondents Cerrodo and Vinas filed an opposition to said petition.

On July 28, 1959, the court issued an order denying said petition (motion for reconsideration), as well as petitioners' urgent ex-parte petition to hold in abeyance the issuance of the writ of execution prayed for by respondents Cerrodo and Vinas.

On August 26, 1959, petitioners filed with this Court the present petition for certiorari, with a prayer for preliminary injunction to enjoin respondents, their agents, and/or representatives from executing, pending determination of the case on the merits, the order of execution already issued by the court below. In due time, we issued the preliminary injunction prayed for by petitioners.

Petitioners claim that respondent Judge acted with grave abuse of discretion in denying their motion for reconsideration dated June 3, 1959, and in granting respondents-tenants' ex-parte motion for execution of June 16, 1959.

The claim has no merit. Counsel for petitioner admits that since November, 1958, or 6 months prior to the rendition of the decision in this case, he had been residing in Manila. In spite of this change of address, he failed to notify the court a quo, wherein he had a pending case, of said fact. Neither did he inform respondent or their counsel about it. He, likewise, failed to adopt a system whereby he could be sure of receiving promptly notices from the court, during his absence from Lucena, Quezon, his former address appearing in the records of the case. An attorney owes it to himself and to his clients to invariably adopt a system whereby he can be sure of receiving promptly all judicial notices during his absence from his address of record (*Enriquez, et al. vs. Bautista, et al.*, 79 Phil., 220; *Martinez, et al. vs. Martinez, et al.*, 90 Phil., 697). The failure of counsel to notify the court of his change of address and to insure that he could receive judicial notices and processes promptly, is to our mind, plain dereliction of duty to himself, to client, and to the court.

There was reason to serve the notice and copy of the decision in question at Atty. Alfredo Raya's office, because it appears that on one occasion, counsel for petitioner had used an envelope with a printed letterhead of Raya's Law Office on it, in one of his correspondence to respondents' counsel, indicating that he and Raya are associates or partners in the legal practice at Lucena, or at least, have a common law office. In Civil Case No. 6039 of the Court of First Instance of Lucena (*Argosino, et al. vs. Chionglo*), counsel for petitioners and Raya appeared as counsel. Furthermore, it appears that there used to be a signboard at Raya's law office at Lucena wherein the names of his associates, including that of petitioners' counsel, appears. It is not without reason, therefore, that Raya and Guevarra (petitioners' counsel) are generally known in Lucena as partners. Lastly, Felicitas Pabellano, a person of sufficient discretion and a clerk of Atty. Raya, received the notice and copy of the decision in question for and in behalf of Atty. Edgardo V. Guevarra. Under the circumstances, and in view of the absence of Guevarra in Lucena and of notice of the change of his address, the Chief of Police was justified in serving the notice and copy of the decision in the manner he did.

There is another reason why the petition must be denied. The records disclose that in his first motion for reconsideration dated June 3, 1959 of the decision of the lower court (dated May 4, 1959), counsel for petitioners never raised as one of the grounds for the grant thereof the fact that he received the notice and copy of the said decision only on May 29, 1959, for the reason that it was not duly served on him at his residence, but on Felicitas Pabellano, clerk of Atty. Alfredo Raya, with whose law office he was not, allegedly, in any way connected. He raised the point only in his second motion for reconsideration on July 17, 1959." The rule is well-settled that a second motion for reconsideration which is based on a ground already existing at the time of the filing of the first motion for reconsideration, does not suspend the running of the period of appeal (See Sec. 1, Rule 17, Rules of the

CAR). Hence, the denial of his first motion for reconsideration on July 3, 1959, did not suspend the 15-day period within which to file his second motion for reconsideration. He filed his first motion on June 3, 1959 (after 5 days elapsed from the time he allegedly received notice and copy of the decision on May 29). Ordinarily, he had until July 13 (10 days from July 3, date of order of denial) within which to perfect his appeal. Instead of doing so, he filed a second motion, but only on July 17, 1959, or 4 days late. Having been filed out of time, the court correctly denied the second, motion for reconsideration on July 28, 1959.

For all the foregoing, the petition for writ of certiorari is hereby denied and dismissed, and this injunction heretofore issued by this Court dissolved. With costs against the petitioners. It is so ordered.

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

Petition denied.

[1] From May 12 (date of receipt of notice of judgment) to June 3 (date of filing of motion for reconsideration) elapsed 22 days. See section 12, Rep. Act No. 1267, as amended.

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