

JULIA ASIS AMARGO, PETITIONER, VS. THE HON. COURT OF APPEALS, MANUEL DE JESUS AND LUZ MIRANDA DE JESUS, RESPONDENTS.

G.R. No. L-31762. September 19, 1973

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ANTONIO, J.:

Appeal from the resolution dated January 10, 1970 of the Court of Appeals in CA-G.R. No. 44212-R dismissing the petition for review, and from that Court's resolution dated February 9, 1970 denying petitioner's motion for reconsideration.

This case originated in the City Court of Manila, Branch III, where private respondents filed on October 10, 1967 a complaint for unlawful detainer against petitioner who, according to the complaint, refused to pay the increased monthly rental of P180.00 (from P 140.00) for the use and occupation of private respondents' premises at 346 Pureza St., Sampaloc, Manila. Petitioner filed an answer. After trial the City Court rendered judgment on January 15, 1968 ordering petitioner to vacate the leased premises, to pay private respondents the sum of P380.00 representing rents in arrears as of October, 1967, the sum of P180.00 as monthly rent beginning November, 1967 until petitioner vacates the premises, plus attorneys fees and the costs of suit.

Petitioner appealed to the Court of First Instance of Manila, which, after a pre-trial conference, set the case for hearing on June 20, 1969, on which date petitioner's counsel manifested the court that after private respondents shall have presented their evidence, he would submit the case for decision; whereupon, Presiding Judge Hilarion U. Jarencio dictated in open court, in the presence of both parties' lawyers, the following Order, to wit:

"Atty. Manuel Jimenez, Jr. for the defendant manifested to the Court that after the plaintiffs have presented their evidence he will submit the case for judgment. The parties agreed that the reception of the evidence be delegated to a Commissioner in the person of Atty. Romulo J. Lapuz.

"SO ORDERED."

The court accordingly delegated the reception of private respondents' evidence to Commissioner Lapuz, and such reception of evidence took place on June 23, 1969. In said proceeding, petitioner's counsel cross-examined the witnesses for private respondents, after which the latter submitted the case for decision. Petitioner's counsel informed the commissioner that he would file a motion with the court for permission to present evidence for the petitioner.

On July 12, 1969, petitioner filed a motion for reconsideration dated July 7, 1969 of the above-quoted Order of June 20, 1969 admitting in effect the recital of facts contained in said order and of the fact that during the reception of the evidence before said commissioner on June 23, 1969, petitioner thru counsel, was allowed to cross-examine the witnesses, but pleaded "for the sake of equity," that petitioner be allowed to present her

evidence. Private respondents opposed the motion on the ground, among others, that the case had been referred to the commissioner for reception of said respondents' evidence and considered submitted for decision, precisely because of the manifestation of petitioner's counsel at the hearing on June 20, 1969 that he was submitting the case for decision after the reception of private respondents' evidence. Petitioner's motion for reconsideration was denied in the Order of July 17, 1969, because petitioner did not indicate "what evidence it intends to present" and "[t]he impression of the court when the case was called for hearing on June 20, 1969 was that the defendant did not desire to present any evidence at all," and "[t]hat was why the reception of plaintiffs evidence was delegated to a commissioner." Petitioner filed a motion for reconsideration on July 26, 1969, to which private respondents filed an opposition on August 6, 1969. The Court denied petitioner's motion for reconsideration on August 12, 1969, on the grounds that petitioner "had been delaying the case," and "[t]here is no showing what evidence the defendant intends to submit."

On August 30, 1969, the Court of First Instance of Manila rendered judgment affirming in full the judgment of the City Court. Petitioner filed a motion for reconsideration of said judgment on October 10, 1969, to which private respondents filed an opposition. On October 22, 1969, the court denied petitioner's motion.

On October 29, 1969, petitioner went to the Court of Appeals on a petition for review, contending that the Order dated June 20, 1969 of the Court of First Instance of Manila re-stating her counsel's manifestation that he would submit the case for decision after presentation of private respondents' evidence to a commissioner, is not supported by stenographic notes, and that in view of the absence of stenographic notes to support the incident, "a strong indication exists to show that the statements contained in the blank form were not really the manifestation made by counsel during the hearing of said date."

In its resolution of January 10, 1970, the Court of Appeals dismissed the petition, stating:

"Petitioner's position shapes up to the form that since the Order of June 20, 1969 is not supported by stenographic notes, the same is not valid, and that the decision itself has no legal backing. Petitioner, however, makes no pretense that the decision was not based on stenographic notes of the plaintiffs' testimony and of defendant's cross-examination. Sec. 1 of Rule 36, which petitioner cites to support her stand clearly refers to judgments which must be in writing personally and directly prepared by the judge. 'Judgments' do not include the proceeding in question.

"Moreover, the petition for review suffers from the legal defect that the plaintiffs in the ejectment case were not joined as parties respondents."

Petitioner filed a motion for reconsideration, but the same was denied on February 9, 1970. Hence, the present appeal.

In this appeal petitioner contends that the Order of June 20, 1969, which stated that petitioner's counsel had manifested that he would submit the case for decision after private respondents had presented their evidence, and that the parties had agreed to delegate to a commissioner the reception of such evidence, is null and void because there are no stenographic notes to support the said order as none were taken, and, for this reason, all the proceedings which thereafter transpired, including the rendition of judgment, are void. In this connection, petitioner claims that at the hearing on June 20, 1969, immediately after petitioner's counsel had made his verbal manifestation that reception of evidence be made before a commissioner to be appointed by the court, he and private respondents' counsel were made to sign a blank form provided by personnel of the court, but the same, as filled up, did not reflect the statement made by petitioner's counsel which later became the basis of the June 20,

1969 Order.

1. It is not clear, however, whether petitioner disputes the factual foundation of the trial court's statement contained in its order of June 20, 1969, to the effect that petitioner's counsel had manifested at the hearing held on that date that he would submit the case for decision after private respondents had presented their evidence, thereby waiving the presentation of petitioner's evidence, or assails the validity of the order of said court of June 20, 1969 on the sole ground that "no stenographic notes were taken" during the time such manifestation was made. The vagueness of petitioner's position stems from the fact that she does not clearly and categorically deny that Atty. Manuel Jimenez, Jr., her former counsel, had in fact on June 20, 1969 made such verbal manifestation to the trial court, but simply asserts that the order of June 20, 1969 had no basis because no stenographic notes of the proceedings were taken. If petitioner's former counsel had in truth and in fact made the aforesaid manifestation and thereby waived the presentation of petitioner's evidence, We fail to perceive how the purported lack of stenographic notes would have rendered the trial court's order of June 20, 1969 a nullity. We also find no relevance in petitioner's invocation of Section 1 of Rule 36 of the Revised Rules of Court.[1] The rule invoked by petitioner refers to "judgments determining the merits of cases," and petitioner does not pretend that the trial court's decision on the merits of August 30, 1969 was not based on stenographic notes of the plaintiffs' testimony and of defendant's cross-examination, or that the said judgment does not contain clearly and distinctly the facts and the law on which it is based. Certainly Section 1 of Rule 36 of the Rules does not apply to interlocutory orders, like the order of June 20, 1969, which delegated to a commissioner the reception of private respondents' evidence.[2]

2. But assuming that in this petition petitioner disputes the factual basis of the trial court's order of June 20, 1969, that petitioner's former counsel manifested at the hearing held that date that the case be considered submitted for decision "after the plaintiffs have presented their evidence," before the commissioner, there are strong reasons for disbelieving petitioner.

The order of June 20, 1969 was dictated by Judge Jarencio in open court in the presence of the parties' respective lawyers, so that if it were true that it did not faithfully reflect the intention of the parties, particularly that of petitioner's counsel, the natural reaction would have been for said counsel to immediately call the court's attention thereto and forthwith move for a reconsideration of the order. We note, too, that in the motion filed on July 7, 1969 by petitioner to reconsider the order of June 20, 1969, petitioner, while invoking equity as a ground for the re-opening of the hearing, never disputed the factual foundation of the said order. On the contrary, petitioner's aforesaid motion contains a virtual affirmation of the recital of facts contained in said order, to wit:

"1. On June 20, 1969, an Order was issued by the Honorable Court authorizing Atty. Romulo J. Lapuz to act as Commissioner to receive evidence for the plaintiffs and thereafter, as manifested by Atty. Manuel Jimenez, Jr., counsel for the defendant, to have the case submitted for resolution."

When the trial court in its order of July 17, 1969 denied the aforesaid motion of petitioner dated July 7, 1969 and reiterated therein that "on June 20, 1969, attorney for the defendant manifested in open court that after the plaintiff had presented its evidence he will submit the case for judgment," petitioner, instead of disputing clearly and categorically the factual basis of the trial court's statement in her second motion for reconsideration, merely stated that: "Atty. Manuel Jimenez, Jr., (former counsel of petitioner) has assured the undersigned counsel that while he moved to have the presentation of plaintiffs' evidence before a commissioner to be appointed by the court, he never manifested that he would submit the case without presenting any evidence for the defendant." Petitioner, however, did not submit any proof, such as the sworn statement of Atty. Jimenez, Jr., to substantiate this assertion. Such an anemic posture in the assertion of a claim is certainly no warrant for its veracity.

Finally, when the trial court in its decision of August 30, 1969, again adverted to the fact that petitioner's counsel had manifested to the court during the hearing of June 20, 1969 that "he has no evidence to present and that after the plaintiffs had presented their evidence, he will submit the case to the court for judgment," petitioner, instead of challenging the factual basis of such statement in her "Motion for Reconsideration" of October 10, 1969,[3] confined her arguments to the fact that since petitioner "had been judicially consigning the amount of P180.00 regularly after she has been ordered by the lower court," which indicates her "willingness to pay the rate as desired by plaintiffs,"¹ the trial court should reconsider "its decision dated August 30, 1969, by allowing defendant to continue her stay on the premises by paying the sum of P180.00 a month or P230.00 which is the increased rental —whichever amount is deemed reasonable for the occupation of the premises." In other words, petitioner not only conceded the right of the private respondents to collect the increased rentals but also failed to press her previous claim that her former counsel did not make the manifestation on June 20, 1969 adverted to in the decision. It is also significant to note that before the court a quo petitioner never impugned the order of the court of June 20, 1969, because of the alleged absence of stenographic notes of the proceedings. It is evident from the foregoing that petitioner did not raise in issue before said court the issue which she has raised before the appellate court and which is now the subject of this petition for certiorari, namely, whether or not the order of the trial court of June 20, 1969, and all the proceedings taken by said court thereafter, are all null and void because no stenographic notes were taken of the proceedings on June 20, 1969. Well settled is the rule that questions which were not raised in the lower court cannot be raised for the first time on appeal, except questions on jurisdiction over the subject matter.

Be that as it may, as between petitioner's assertion that according to her former counsel he did not waive the presentation of evidence for said party, and the trial court's positive statement that the former counsel of petitioner had on June 20, 1969 manifested that "he has no evidence to present and that after the plaintiffs had presented their evidence he will submit the case to the court for judgment," We must accept the veracity of the latter. As heretofore stated, this statement made in the trial court's order of June 20, 1969 and in the judgment of August 30, 1969, must prevail over petitioner's assertion, undoubtedly hearsay in character, because of the presumption accorded by law to the actions of the judicial tribunal.

This Court has held in the *Banco Espanol-Filipino* case that: "There is no principle of law better settled than that after jurisdiction has once been acquired, every act of a court of general jurisdiction shall be presumed to have been rightly done. This rule is applied to every judgment or decree rendered in the various stages of the proceedings from their initiation to their completion. "[4] Unless the contrary appears or is shown, it will be presumed that the proceedings of a judicial tribunal are regular and valid, and that judicial acts and duties have been, and will be, duly and regularly performed.[5]

Earlier, this principle was elucidated in *United States vs. Labial, et al.*,[6] where this Court, citing with approval *Elliott's Appellate Procedure* in Section 710 thereof, said:

"x x x "The rule that all reasonable presumptions and intendments will be made in favor of the rulings of the trial court is one of the best settled and most frequently applied rules in appellate procedure. The rule rests on a firm foundation. It is supported by the elementary principle that official acts are presumed to be rightfully performed. But when it is brought to mind that a court acts impartially, upon full information and with calm deliberation, the foundation of the rule stated will at once be perceived to be broader and stronger than that which underlies the rule supporting the acts of ministerial or executive officers."

"The doctrine, supported by many citations of authority, is thus stated in the *Encyclopedia of Pleading and*

Practice, Volume 2, page 420: "The general assumption obtains in all legal proceedings that judicial tribunals and officials act according to law. On appeal accordingly from the decision of an inferior judicial tribunal an appellate court will presume in review that it has complied with all the requirements of law, and that its determination rested on facts sufficient to sustain them. The burden rests upon the appellants to rebut this presumption of regularity." (*Italics supplied.*)

This presumption, rooted as it is on sound reasons of public policy and the requirements of an orderly administration of justice, can only be overcome by strong and convincing proof to the contrary.[7]

In the circumstances of the case at bar, We must, therefore, presume that the recitals contained in the order of the court a quo of June 20, 1969 are true and in accord with the facts.[8]

4. Petitioner also assails as erroneous the holding of respondent Court of Appeals that "[t]he petition for review suffers from the legal defect that the plaintiffs in the ejectment case were not joined as parties respondents." Respondent Court of Appeals made that statement because, after the Court of First Instance of Manila had rendered judgment adverse to petitioner and denied her motion for reconsideration, petitioner filed a petition for review with the Court of Appeals against "The Honorable Court of First Instance of Manila, Branch XXIII," as respondent, without impleading therein the plaintiffs in the ejectment case, namely, herein private respondents Manuel de Jesus and Luz Miranda de Jesus.

It is argued by petitioner that her failure to implead the plaintiffs is excusable because the Revised Rules of Court provides that "these rules shall be liberally construed in order to promote their object and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding,"[9] and that, moreover, what was being sought to be nullified in the Court of Appeals was an order of the court and not that of a private party.

As the parties in whose favor reliefs were granted by the Court of First Instance of Manila in its decision, there is no question that private respondents were indispensable parties. They had such an interest in the controversy that a final decree would necessarily affect their rights. Consequently, the court could not proceed without their presence. True it is that it was an order of the court which was being assailed in the petition for review, but that circumstance did not dispense with the need for private respondents' inclusion in the proceedings. This requirement is explicit from the express provision of Section 5, Rule 65 of the Revised Rules of Court. In various cases We held that where the party interested in sustaining the order complained of has not been included as a co-respondent in the proceeding contrary to Section 5, Rule 65 of the Rules, the petition for writ of certiorari is defective.[10] And it must have been with this realization that in the present petition for review by certiorari filed with this Court, petitioner has now included the plaintiffs in the ejectment case as party respondents. We find no error, therefore, in this holding of respondent Court of Appeals.

PREMISES CONSIDERED, the resolutions of the Court of Appeals appealed from are affirmed, with costs against petitioner.

Makalintal, Acting C.J., Zaldivar, Ruiz Castro, Teehankee, Makasiar, and Esguerra, JJ., concur.

Fernando and Barredo, JJ., took no part.

[1] "SECTION 1. Rendition of Judgments. All judgments determining the merits of cases shall be in writing personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk of court."

[2] In Estrada, et al. vs. Sto. Domingo, et al., We said:

"* * * To be sure, Section 12, Article VIII, Constitution, and Section 1, Rule 36, Rules of Court which require express findings of fact in a decision, both have no application to the questioned order. Here involved is not a decision on the merits but a mere order upon motion to reconsider. The judge could simply dish out a routine capsule-form order 'Denied for lack of merit' or 'Motion for reconsideration denied.' And yet, that kind of order would serve to immunize the judge against an unlawful neglect-of-duty charge, x x x." (L-30570, July 29, 1969, 28 SCRA 890, 906-907.)

[3] Annex FF to Petition for Review - CA-G.R. No. 44212.

[4] Banco Español-Filipino vs. Palanca, 37 Phil. 921, 943.

[5] Quiem vs. Serina, No. L-22610, June 30, 1966, 17 SCRA 567; People vs. Nang Kay, No. L-3565, April 20, 1951, 88 Phil. 515; Nicolas vs. Castillo, No. L-8129, July 25, 1955; Alvaran vs. Pingol, No. L-9201, May 31, 1957; People vs. Cortez, 21 SCRA 1228; 31-A C.J.S. Sec. 145.

[6] 27 Phil. 82, 85.

[7] People vs. Gonzales, 50 Phil. 9, 16; People vs. Cervera, L-26395, Nov. 21, 1969; People vs. Nang Kay, *ibid.*, p. 517; People vs. La Caste, 37 SCRA 767, 773.

[8] "Where the record is silent as to what was done, it will be presumed in favor of the judgment that what ought to have been done was not only done but rightly done." (In re Weicher's Estate, 250 Pac. 397, 398, citing Crouch vs. H.L. Miller & Co., 169 Cal. 341, 344, 146 P. 880, 881. Certiorari denied in Weichers vs. Weichers, 273 U.S. 762, 763 L. ed. 879.)

"Recitals in judgments and decrees are presumed true and in accordance with the facts." (Benton vs. Benton, 99 So. 300, 211 Ala. 43; Miera vs. Sammons, 248 P. 1096, 31 N.M. 599; Melchers vs. Bertolido, 192 N.Y.S. 781, 118 Misc. 196; S.Kachenko vs. Sweetman, 43 N.W. 2d. 683, 77 N.D. 502; Borowicz vs. Hamann, 207 N.W. 426, 189 Wis. 212.)

[9] Section 2, Rule 1, Revised Rules of Court.

[10] Republic vs. Hon. Roberto Zurbano, et al., 105 Phil. 409.

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