

**AURELIO DE LOS REYES AND ROGELIO DE LOS REYES,
PETITIONERS, VS. COURT OF APPEALS, WONG CHU KING AND LA
CAMPANA FABRICA DE TABACOS, INC., RESPONDENTS.**

G.R. No. L-27263. March 17, 1975

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals in its CA-G.R. No. 38225 dated February 8, 1967, sustaining the Order of Judge Guillermo E. Torres of the Court of First Instance of Rizal, Branch VIII, in Civil Cases Nos. 9306 and 9307, dated August 23, 1966, in so far as it directs the plaintiffs, now petitioners, who had served notice to take the deposition upon oral examination for purposes of discovery of defendant Wong Chu King, one of the respondents here, to submit instead written interrogatories to the trial judge for him to have basis for determining the date when the deposition sought for should be held.

The factual background of this case is as follows:

On June 4, 1966, petitioners Rogelio de los Reyes and Aurelio de los Reyes filed two separate complaints against the herein private respondents with the Court of First Instance of Rizal, docketed as Civil Cases Nos. 9306 and 9307.

Private respondents filed their respective Answers with counterclaims to the complaints, and petitioners filed their respective Replies and answers to counterclaims. Thereafter, or on July 30, 1966, and before the trial court set a date for the hearing of the above-mentioned civil cases, petitioners served notice upon the counsel of respondent Wong Chu King that they would take the deposition of defendant-respondent Wong Chu King, a resident of Makati, Rizal, upon oral examination, pursuant to the provision of Section 1, Rule 24 of the revised Rules of Court, on August 8, 1966 at 9:30 a.m., at the Office of the Municipal Secretary of Makati, Rizal, the oral examination to continue from day to day until completed.

On August 1, 1966, petitioners caused the issuance by the trial court, through its Deputy Clerk of Court, of a subpoena to defendant-respondent Wong Chu King and a subpoena duces tecum to the President of respondent La Campana Fabrica de Tabacos, Inc., or his duly authorized representative, commanding them to appear on said date, time, place before the Notary Public mentioned in the Notice To Take Deposition Upon Oral Examination, dated July 30, 1966.

On August 4, 1966, private respondents' counsel sent a telegram to the counsel of the petitioners requesting postponement of the taking of the deposition until August 24, or 26, or 31, 1966, which was refused and denied in a telegram received from petitioners' counsel by the private respondents the following day, August 5, 1966. Thereupon, private respondents' counsel again sent a telegram to petitioners' counsel reiterating their request for the postponement of the August 8, 1966, deposition taking.

On August 8, 1966, the date set for the taking of the deposition, at around 10:00 a.m. while counsel for the

petitioners was waiting for the prospective deponent in the Office of the Notary Public before whom the deposition would be taken, he (counsel for petitioners) received from one of the lawyers for the private respondents an Ex Parte Urgent Motion asking the trial court to relieve the defendants-respondents from attending the taking of the deposition scheduled on the same date and for the court to provide safeguards for the immediate return of all documents produced or examined right after any day's proceeding.

On August 9, 1966, petitioners filed a motion citing defendants-respondents for contempt for their failure to appear during the scheduled taking of deposition and an Opposition to the ex-parte urgent motion.

On August 10, 1966, the trial Judge set for hearing on August 13, 1966, at 8:30 a.m., the Ex Parte Urgent Motion of August 8, 1966, and the Opposition filed thereto.

On August 11, 1966, while the ex-parte urgent motion and the motion for contempt were still pending resolution by the trial court, private respondents filed their Motion To Set Civil Cases Nos. 9306 and 9307 for trial, there being already a joinder of issues in those cases.

On August 13, 1966, petitioners filed their opposition to the motion to set and prayed for the issuance of a judgment by default against the defendants-respondents.

On August 17, 1966, private respondents filed their Reply To Opposition To Motion To Set And Opposition To Motion To Declare Defendants In Default.

In his order dated August 23, 1966, the trial Judge denied the motion to declare the defendants-respondents in default and in contempt of court and at the same time directed the plaintiffs-petitioners to submit instead written interrogatories before the Court would determine the date when the deposition could be held and taken. The order reads as follows:

"Pending resolution before this Court are plaintiff's motion to declare defendant in default, and petition to declare defendant in contempt, and defendant's motion to relieve him from attending the taking of the deposition on August 8, 1966.

"It appearing from the record that defendant Wong Chu King thru counsel filed a motion to postpone the taking of the deposition dated August 4, 1966, the Court feels that the absence of the defendant at the scheduled taking of the deposition on August 8, 1966, did not constitute a deliberate and willful act of disobeying the order of this Court. In view thereof, and in the interest of justice, the Motion to Declare defendants in default and the petition to declare defendants in contempt are hereby denied.

"With respect to the request of the defendant Wong Chu King that he be relieved from attending the taking of the deposition not on August 8, 1966, the Court is of the opinion and so holds that it cannot deprive the plaintiff from exercising a right where the Rules of Court grant him, especially where, as in the case at bar, the petition to take deposition of defendant was filed before any petition to set the case for hearing was initiated.

"In this connection, the Court observes that in the hearing of the motions at bar, counsel for defendants manifested that they were not against the taking of the deposition but that the scheduled deposition be transferred to another date.

"WHEREFORE, as the taking of deposition is also subject to certain safeguards, the Court in the exercise of its discretion, direct plaintiff to submit written interrogatories within 10 days from receipt, before the Court will definitely determine the date when the deposition should be held.

"SO ORDERED."

On September 10, 1966, herein petitioners moved for the reconsideration of the Order of August 23, 1966, insofar

as it directs the plaintiffs (now petitioners) to submit written interrogatories before the Court would determine the date of the taking of the deposition, but the same was denied in an Order dated October 10, 1966, to wit:

"Plaintiff in his motion for reconsideration prays that this Court reconsider its order dated August 23, 1966 insofar as it denies plaintiffs motion for contempt for wilfull failure to appear at the taking of their deposition, and that said order be reconsidered insofar as it directs plaintiff to submit written interrogatories before the Court will determine the definite date when the deposition should be held and that another order be entered holding plaintiff's notice to take the deposition of defendant Wong Chu King still in force and effect. The Court resolves as it hereby denies the first two prayers for lack of sufficient merit.

"With respect to the last prayer, the Court reiterate its order requiring plaintiff to submit written interrogatories within ten days from receipt of a copy hereof.

"In the meantime, the pre-trial scheduled for October 14, 1966 is hereby transferred to November 17, 1966 at 8:30 o'clock in the morning.

"SO ORDERED."

On October 12, 1966, petitioners filed with the Court of Appeals an action for certiorari with preliminary injunction against the Order of the Court of First Instance of Rizal, Branch VIII, dated August 23, 1966, insofar as it directs the herein petitioners to submit written interrogatories before it could determine the date of the taking of the deposition of herein respondent Wong Chu King.

In a decision promulgated February 8, 1967, the Court of Appeals dismissed the petition for certiorari with preliminary injunction, the dispositive portion of which is as follows:

"WHEREFORE, this petition for certiorari with preliminary injunction is hereby dismissed, with costs against petitioners."

Hence this petition for review on certiorari.

The principal issue to resolve in the case is whether or not the trial Judge has exceeded his jurisdiction or authority when he issued the Order of August 23, 1966, directing the plaintiffs, now petitioners, who had served notice to take the deposition upon oral examination of defendant, now respondent Wong Chu King, to submit instead written interrogatories within 10 days from receipt of the order before the Court could definitely determine the date when the deposition would be held.

Petitioners maintain that under the Rules of Court, a party is authorized to take the testimony of any person, whether a party to the case or not, by deposition upon oral examination or written interrogatories after the filing of the answer without need for a leave of court. The choice of whether the deposition be taken upon oral examination or written interrogatories, the petitioners aver, depends on the party exercising such right.

Considering the benefits and advantages of an oral examination over that of written interrogatories, the petitioners chose the former. Petitioners now claim that the Court of Appeals erred in not holding that the Order of August 23, 1966 of the trial court requiring them, after they had served notice to take the deposition upon oral examination of defendant-respondent Wong Chu King, to submit instead written interrogatories before the trial court would determine the date of the taking of the deposition, subjects the taking thereof to the leave of court and, therefore, the petitioners claim, the issuance of said order was without or in excess of the court's jurisdiction.

Respondents, on the other hand, aver that although the right of a party to take the deposition of any person, whether a party or not, upon oral examination or written interrogatories exists in our jurisdiction, the said right is not unfettered or absolute. The use of this right by any party is subject to sound restriction in the discretion of the

court. The respondents maintain that the taking of deposition for purposes of discovery, being merely one of the remedies that may be availed of only as a legitimate aid to litigation, should be controlled by the court.

We cannot subscribe to the petitioners' view that the choice as to the mode of taking the testimony of a deponent, whether upon oral examination or written interrogatories, rests exclusively upon the party exercising such right. If the theory advanced by the petitioners were to be adopted, the exercise of this right is bound to be abused and utilized for harassment. It is for this reason that Sections 16 and 18, Rule 24, of the Rules of Court, were incorporated to serve as safeguards and protection from abuse. A trial Judge must possess certain measure of control over the right of parties in the taking of depositions in order to prevent abuse (*Frank & Company, Inc. vs. Clemente, et al.*, 44 Phil. 30).

Under Section 16 of the Rules of Court, the court in which the action is pending may, among others, make an order that the deposition be taken only on written interrogatories. Evidently the trial court exercises a certain degree of discretion in connection with the taking of a deposition (*Nicanor Jacinto vs. Amparo and Cojuangco*, 93 Phil. 633).

We rule, therefore, that the trial Judge in the present case neither exceeded his jurisdiction nor abused his discretion when he issued the questioned Order of August 23, 1966, directing that written interrogatories be submitted before determining the date when the deposition would be taken.

WHEREFORE, the decision appealed from is hereby affirmed.

No pronouncement as to costs.

SO ORDERED.

Makalintal, C.J., (Chairman), Castro, Teehankee, and Makasiar, JJ., concur.

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