

HONORIO LOPEZ AND CATALINA ZABALA, PLAINTIFFS-APPELLEES, VS. PHILIPPINE NATIONAL BANK AND THE PROVINCIAL SHERIFF OF LEYTE, DEFENDANTS-APPELLANTS.

G.R. No. L-34223. December 10, 1982

Ponente: RELOVA, J.

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RELOVA, J.:

This is an appeal by the defendants from a decision dated August 10, 1960 of the Court of First Instance of Leyte in Civil Case No. 2255, the dispositive portion of which reads:

"PREMISES CONSIDERED, the decision in Civil Case No. 125 before the Municipal Court of Tacloban City, entitled Philippine National Bank versus Jorge B. Delgado, Guillermo C. Varona and spouses Honorio Lopez and Catalina Zabala is declared null and void and of no effect in so far as the herein plaintiffs are concerned, without special pronouncement as to costs."

This case originated in the Municipal Court of Tacloban City when defendant Philippine National Bank filed an action for recovery of a sum of money against Jorge B. Delgado, Guillermo C. Varona and plaintiffs Honorio Lopez and Catalina Zabala and the same was docketed as Civil Case No. 125.

Sometime in July 1952, a decision was rendered in said Civil Case No. 125 of the Municipal Court of Tacloban City, sentencing herein plaintiffs-appellees to jointly and severally "pay the plaintiff (Philippine National Bank) the amount of P476.40 with interest of 10% per annum on P422.99 from July 27, 1953, until fully paid, costs and attorney's fees due included."

On October 8, 1952, herein plaintiffs Honorio Lopez and Catalina Zabala, then defendants in said Civil Case No. 125 of the Municipal Court, filed a motion to set aside the said decision and the writ of execution issued on September 18, 1952, on the ground that they have not been properly summoned of the complaint.

On November 1, 1952, the Municipal Court of Tacloban City issued an order as follows:

"x x x WHEREFORE, this Court hereby sets aside its decision with respect to Honorio Lopez and Catalina Zabala and consequently orders the stay of its execution.

"Let defendants, Honorio Lopez and Catalina Zabala, be summoned according to ordinary proceedings."

On September 2, 1954, after about two (2) years, the Philippine National Bank, plaintiff in said Civil Case No. 125, filed a motion to set the case for hearing. The court granted the motion and scheduled the trial on February 17, 1956. The hearing on said date was postponed, upon motion of defendants' counsel, Atty. Julio Siayngco, and the case was reset for March 7, 1956. The scheduled hearing was postponed again for October 23, 1956, upon motion of Atty. Siayngco, although at the back of the notice there appeared the information that Honorio Lopez and Catalina Zabala were not contacted as "according to information of Atty. Julio Siayngco said persons are now in Manila."

On October 23, 1956, Atty. Siayngco filed another motion for postponement. This was granted by the municipal court, saying: "Let the hearing of this case be set on a date agreed to by both parties." This case was set again for hearing on December 3, 1956 but at the back of the notice there appeared the following:

"Remark: The case is not yet in a condition to be heard for the defendants are not yet summoned. Please address to Dangal 32, River Side, Sub-division, Manila, whatever notification may be issued. Said St., is according to information the residence of the defendants.

"Tacloban City, December 2, 1956.

"(SGD.) JULIO SIAYNGCO."

On December 10, 1956, after trial, the Municipal Judge rendered a decision, the dispositive part of which reads:

"WHEREFORE, the defendants are hereby sentenced to pay the plaintiff jointly and severally the amount of P639.52 plus P64.00 for attorney's fees and to pay the costs."

At the back of the decision there appeared the annotation by the Chief of Police, as follows:

"With respect to Atty. Julio Siayngco, same refused to sign and to receive the copy of this Decision alleging that he never appears for the defendants during the hearing of this case."

As a consequence, on August 14, 1957, Honorio Lopez and Catalina Zabala filed an action against the Philippine National Bank and the Provincial Sheriff of Leyte for "Anulacion de Sentencia Con Interdicto Prohibitorio Preliminar" docketed as Civil Case No. 2255 of the Court of First Instance of Leyte. At the hearing therein, the parties did not present evidence but simply submitted the case for decision with the records of Civil Case No. 125, marked as Exhibit "X", for the use of the parties in preparing their respective memoranda.

As stated above, the Court of First Instance rendered a decision declaring null and void the decision of the Municipal Court of Tacloban City in Civil Case No. 125 insofar as herein plaintiffs are concerned. From this judgment, the Philippine National Bank interposed an appeal before the Court of Appeals, alleging that:

"1. THE COURT A QUO ERRED IN DECLARING THAT THE APPELLEES, DEFENDANTS IN CIVIL CASE NO. 125 OF THE JUSTICE OF THE PEACE COURT OF TACLOBAN, LEYTE, WERE NOT PROPERLY SUMMONED AND HENCE THE INFERIOR COURT DID NOT ACQUIRE JURISDICTION OVER THEIR PERSONS.

"2. THE COURT A QUO ERRED IN DECLARING NULL AND VOID THE DECISION IN CIVIL CASE NO. 125 ENTITLED PNB VS. JORGE B. DELGADO, ET AL WITH RESPECT TO THE APPELLEES."

The appellate court, in a decision, dated July 26, 1971 certified the case to this Court, saying:

"Without going into the merits of the case before us, we find that the sole issue to be resolved - whether or not Honorio Lopez and Catalina Zabala were properly summoned (the second issue being a mere corollary thereto) - involves purely a question of law of which the Supreme Court has the exclusive appellate jurisdiction under Section 17, Republic Act No. 296 as amended by Republic Act No. 2613. And, the fact that the parties are silent on this point is of no consequence and importance, considering that jurisdiction can neither be conferred nor waived by parties."

We find no merit in this appeal. It is a fact that upon motion of plaintiffs-spouses Honorio Lopez and Catalina Zabala, then defendants in Civil Case No. 125, the first decision rendered by the Municipal Court of Tacloban City in 1952 was set aside in its order dated November 1, 1952, directing that said defendants "be summoned according to ordinary proceedings." Plaintiff bank, however, after two (2) years, and forgetting the order that defendants be summoned, moved for the hearing of the case in view of "the voluntary appearance of said

defendants, Honorio Lopez and Catalina Zabala, through Atty. Julio Siayngco, when they filed their motion to set aside the decision." After several postponements, the case was heard again in the absence of the defendants and another decision was rendered, practically reviving the first decision condemning them, to pay the Philippine National Bank.

On the issue as to whether or not spouses Honorio Lopez and Catalina Zabala were duly summoned, We hold that said spouses were not duly summoned in the first, as well as for and in the second hearing, following which the questioned decision was rendered. When the Philippine National Bank moved for the hearing of the case on September 2, 1954, defendants Lopez and Zabala have not yet been summoned. In fact, Atty. Siayngco, in moving for the postponement of the hearing, invited the court's attention to that fact. His manifestations were in the nature of objections to the jurisdiction of the court over the persons of the defendants who have not yet been duly summoned. Thus, insofar as said spouses are concerned, the second decision of the inferior court in Civil Case No. 125 is null and void.

ACCORDINGLY, the decision, dated August 10, 1960, in Civil Case No. 2255 of the Court of First Instance of Leyte is hereby AFFIRMED. Without costs.

SO ORDERED.

Teehankee, Acting C.J., Melencio-Herrera, Plana, Vasquez, and Gutierrez, Jr., JJ., concur.

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