

ROBERTO LUPISAN, PETITIONER, VS. FRANCISCO ALFONSO, JUDGE OF FIRST INSTANCE OF CAVITE, AND SISENANDO ARGUIETA, RESPONDENTS.

G.R. No. L-1321. July 31, 1947

Ponente: FERIA, J.

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FERIA, J.:

The Justice of the Peace of Tanza, Cavite, rendered judgment for the plaintiff (now petitioner) ordering the defendant (now one of the respondents) to vacate the land in question and pay the plaintiff P450 as damages, with costs.

The defendant was notified of the decision on December 28, 1945, and on the same date he filed a motion for new trial, based on the first and third grounds for a motion for a new trial in the Court of First Instance provided for in section 1, Rule 37, which motion was denied by the justice of the peace, and the defendant was notified of the order of denial on January 13, 1946.

On January 20 of the same year, defendant filed a motion entitled "Motion for Reconsideration of the Decision," based on the ground that the court has no jurisdiction to take cognizance of and decide these cases, because they involved titles and interest in real property, that the decision is contrary to law, and that the court erred in not taking judicial notice of the selling price of a cavan of palay which is P2,350. The motion was denied by the justice of the peace and defendant notified of the order denying his motion on February 5, 1946, and on February 6, defendant perfected the appeal without objection on the part of the plaintiff.

On June 4, 1946, the clerk of the Court of First Instance notified the parties of the receipt of the record, and on June 14 the defendant filed with the Court of First Instance of Cavite a motion asking "that their appeals on the question of law that the justice of the peace court has no jurisdiction over aforesaid cases be set for hearing at any early date convenient to this Honorable Court."

A motion dated July 16, 1946, to declare the defendant in default was filed ex-parte by the plaintiff, and the justice of the peace in its order July 19, 1946, granted the motion and declared the defendant in default. On July 29, 1946, the respondent filed a motion for reconsideration of the order declaring him in default. On August 10, 1946, the plaintiff filed a motion to dismiss the appeal of the respondent on the ground that the same has been perfected out of time. And in an order dated August 24, the respondent judge granted the motion to set aside the order of default and gave the defendant 10 days within which to answer the complaint, and denied the motion of the plaintiff to dismiss the defendant's appeal.

According to the petition filed with this Court—

"That this is a joint petition for certiorari and mandamus, each of which has the following purpose.

"(a) The issuance of the writ of Mandamus is being sought to compel the respondent Judge to dismiss the appeal interposed by respondent Sisenando Arguieta (hereinafter referred to as the respondent) from the

judgment of the Justice of the Peace Court of Tanza, Cavite, dated December 21, 1945 to the Court of First Instance of Cavite, said appeal being docketed in the latter court as civil case No. 4232, on the ground that said appeal was presented beyond the time prescribed by the Rules of Court;

"(b) The purpose of the proceedings for Certiprari is to have this Honorable Court review and set aside the order of the respondent Judge dated August 24, 1946, in virtue of which said respondent reconsidered and set aside his previous order of July 19, 1946, declaring the respondent in default for having failed to answer on time, on the ground that said order of August 24, 1946 has been issued in excess of the jurisdiction of the lower court and with grave abuse of discretion."

As to the petition for mandamus to compel the respondent judge to dismiss the appeal interposed by the respondent Sisenando Arguieta from the judgment of the justice of the peace, the petitioner alleges "that the respondent judge, in denying his motion to dismiss the appeal and in refusing to reconsider his said order of denial, has acted with grave abuse of discretion and contrary to the clear provision of the Rules of Court on this point."

Under section 3, Rule 67, mandamus would lie against a court or judge if he unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from his office, or unlawfully excludes another from the use and enjoyment of a right or office to which he is entitled. In the present case, the petitioner has not been excluded by the respondent judge from the use or enjoyment of a right or office to which he is entitled; nor has the respondent judge neglected to perform an act which the law specifically enjoins as a duty resulting from his office. It is not a duty of the respondent judge enjoined specifically by law to grant the plaintiff's motion to dismiss the defendant's appeal. A judge may be compelled by mandamus to act and pass upon a question submitted to the court for decision, but he cannot be enjoined to decide in favor of or against one of the parties. The judge or court has to decide a question according to his own judgment or his understanding of the law and if his decision is not correct or contrary to law, appeal is the remedy.

Therefore, petitioner's petition for mandamus is denied.

With respect to the petition for certiorari, the respondent judge has not acted with grave abuse of discretion in setting aside his order of default, and in denying the petitioner's motion for reconsideration of said order. The motion to set aside the order declaring respondent Arguieta in default, need not be verified or accompanied by "answer to show the defense that the defendant intended to interpose, nor by affidavit of merit," because the ground on which the motion to set aside the default is based, is that the time within which the defendant had to file his answer was interrupted by the filing of the motion which attacked the jurisdiction of the justice of the peace to try originally the case appealed to the Court of First Instance, and which "while not given the heading of demurrer or motion to dismiss" should be considered as such motion to dismiss under the liberal interpretation to be given to pleadings as enjoined by the provisions of the Rules of Court" (Annex H-1 to the petition). And the respondent judge, not only did not commit grave abuse of discretion, but acted in accordance with law in considering said motion attacking the court's jurisdiction as a motion to dismiss, and in setting aside the order of default, because the filing of said motion within the period of 15 days from the receipt of the notice from the clerk that the record of the case was received from the justice of the peace, "interrupted the time to plead" (section 4, Rule 8).

Therefore, petition for certiorari is also denied. So ordered.

Moran, C.J., Paras, Pablo, Perfecto, Hilado, Bengzon, Hontiveros, Padilla, and Tuason, JJ., concur.

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