

BONIFACIO SAGARINO, PLAINTIFF-APPELLANT, VS. INOCENTES PELAYO, DEFENDANT-APPELLEE.*G.R. No. L-27927. June 20, 1977*

Ponente: FERNANDEZ, J.

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This is an appeal by Bonifacio Sagarino to the Court of Appeals from a resolution of dismissal in CAR Case No. 601-Cebu '65 issued by the Court of Agrarian Relations, 13th Regional District, Branch I, Cebu City, dated April 5, 1966. Having found that " . . . the question involved therein, being purely legal, and is within the exclusive appellate jurisdiction of the Supreme Court in accordance with Section 17 (6) of the Judiciary Act"[1] the Court of Appeals in a resolution promulgated on July 31, 1967, certified the case to this Court.[2]

Inocentes Pelayo is the owner of a parcel of land located at Guadalupe, Bogo, Cebu known as Lot No. 2568 of the Bogo Cadastre embraced in Transfer Certificate of Title No. 9307. Bonifacio Sagarino and Bibiana Cortes have been tenants of Pelayo on said land since 1959. In September 1963, Inocentes Pelayo instituted in the Court of Agrarian Relations, 13th Regional District, Branch I, Cebu City CAR Case No. 492 against Bonifacio Sagarino and Bibiana Cortes for ejectment and damages allegedly because Sagarino and Cortes had refused to recognize Pelayo as their landholder since April 1963. Bonifacio Sagarino and Bibiana Cortes filed an answer with a counterclaim.

The Court of Agrarian Relations set CAR Case No. 492 Cebu 63 for pre-trial. Notices of the pre-trial were sent to the counsel of the parties by said court. After several postponements the Court of Agrarian, Relations, by an order dated January 6, 1965, finally set the case for pre-trial conference and hearing on March 2, 1965 at 9:00 o'clock in the morning in the sala of the Municipal Court of Bogo, Cebu.

The order of January 6, 1965, was sent to the lawyers of the parties, namely, Atty. Jesus M. Almirante for plaintiff Inocentes Pelayo and Atty. Gabriel J. Cañete for defendant Bonifacio Sagarino. No notices of pre-trial conference were sent to the parties personally.

For failure of defendant Bonifacio Sagarino and his counsel, Atty. Gabriel J. Cañete, to be present at the pre-trial conference held on March 2, 1965, relative to CAR Case No. 492-Cebu '63, the court declared him in default upon motion of Inocentes Pelayo's counsel. Thereafter, on the same day, plaintiff therein, Inocentes Pelayo, was allowed to present his evidence ex parte.

The aforementioned ejectment case, CAR Case No. 492-Cebu '63, was decided by the trial court on March 26, 1965 in favor of plaintiff Inocentes Pelayo, ordering the ejectment of the defendant tenant Bonifacio Sagarino. A copy of the decision was served upon counsel for Bonifacio Sagarino. The decision having become final and executory, a writ of execution, dated July 10, 1965, was issued to enforce the judgment.

Claiming that he has no more remedy left to obtain relief from the judgment, Bonifacio Sagarino filed CAR Case No. 601- Cebu '65 against Inocentes Pelayo for the annulment of the proceedings had in CAR Case No. 492-Cebu

'63. The ground relied upon for this action is that the Court of Agrarian Relations had no authority to declare him in default for his failure and that of his counsel to appear in the pre--trial conference on March 2, 1965, as he was not personally served with notice thereof. There having been no valid pre--trial, he claims that all proceedings in said case are null and void.

As a defendant in CAR Case No. 601-Cebu '65, Inocentes Pelayo moved to dismiss the action on the ground that the filing of an independent action, CAR Case No. 601-Cebu '65, is not the proper remedy available to Bonifacio Sagarino as he should have filed a motion to lift the order of default and in case of denial, to petition for relief under Rule 38 of the Rules of Court or perfect an appeal from the decision in CAR Case No. 492-Cebu '63. The motion to dismiss having been denied, Inocentes Pelayo answered the complaint.

On March 1, 1966, the parties in CAR Case No. 601-Cebu '65 filed an agreed statement of facts and submitted said case for decision without introducing evidence.

On April 5, 1966, the court a quo dismissed CAR Case No. 601-Cebu '65 because plaintiff Bonifacio Sagarino did not avail of the remedies under Rule 38 of the Revised Rules of Court for relief from the judgment. The court also said that even if the complaint in CAR Case No. 601-Cebu '65 were treated as a petition for relief from the judgment in CAR Case No. 492-Cebu '63, the same did not comply with the requisites of Rule 38 as regards verification of the petition, affidavit of merit and allegation of good and substantial cause of action or defense,

Plaintiff Bonifacio Sagarino forthwith filed a motion for reconsideration and in a resolution of August 8, 1966, the court a quo denied the same. Hence, the present appeal, docketed as CA-G.R. No. 38200-R, of the Court of Appeals seeking to set aside the resolution of the lower court dated August 8, 1966 denying the motion for reconsideration filed by plaintiff in CAR Case No. 601-Cebu '65; to set aside the resolution of the same court dated April 5, 1966 dismissing CAR Case No. 601-Cebu '65; and to declare that the said court has no power and authority to declare the defendant in CAR Case No. 492-Cebu '63 in default and to declare all proceedings in this latter case null and void and without effect; to require the lower court to reopen and reinstate CAR Case No. 492-Cebu '63 and to allow the parties thereto to present their evidence; to order the plaintiffs in CAR Case No. 492-Cebu '63 to return and deliver to defendant therein the possession of the land subject of the litigation and all improvements thereon and for defendant-appellee to pay the costs in CAR 3 Case No. 601-Cebu '65.[3]

As correctly pointed out by the Court of Appeals in its Resolution, the only issue presented for determination is whether it is required under Section 1, Rule 20 of the Rules of Court that the parties, aside from their counsel, should also be served with notice to appear at the time, date and place of the pre-trial conference.

Herein plaintiff-appellant Bonifacio Sagarino maintains that as defendant in CAR Case No. 492-Cebu '63, he and his counsel are entitled to be served notice of the pre-trial conference "because Section 1 of Rule 20 has made it expressly mandatory that such notice of pre-trial be served upon the parties and not only upon the counsels of the parties." [4]

The defendant-appellee Inocentes Pelayo contends that service of notice upon the attorneys is sufficient and binding upon the parties unless service upon the latter is ordered by the Court in accordance with Section 2, Rule 13 of the Rules of Court. He contends that Rule 20 of the Rules of Court is not applicable in the case; that there is no necessity for the court to direct the parties and their attorneys to appear before it in a pre-trial conference since parties may conduct their litigation personally or by the aid of attorneys in accordance with Section 34 of Rule 138 of the Rules of Court. Hence, according to him, notice to counsel is notice to the parties per Section 2, Rule 13 of the Rules of Court.[5]

On January 6, 1965, when the court a quo issued the order resetting for the last time the pre-trial conference of

CAR Case No. 492-Cebu '63 on March 2, 1965 resulting in the order declaring Bonifacio Sagarino in default for failure to appear for the pre-trial conference, Section 1, Rule 20, Revised Rules of Court was applicable to the Court of Agrarian Relations because Section 155 of the Land Reform Code which took effect on August 8, 1963 provides that the Courts of Agrarian Relations shall be governed by the Rules of Court.

We agree with the counsel of the plaintiff-appellant that notice of a pre-trial conference should be sent not only to the attorneys but also to the parties. The contention of the defendant-appellee is that notice to counsel is notice to the party, citing Section 2, Rule 13 of the Rules of Court. There is no question that under the cited Section and Rule, a notice to counsel is a notice to the party.

This Court, in a long line of decisions,[6] has sustained this rule. This particular section is the general rule governing the filing and serving of papers and orders of courts upon parties affected thereby. However, since there is a specific provision of the Revised Rules of Court governing service of notice specifically for pre-trial conference, Section 1, Rule 20 thereof, there is no reason for applying the general rule as the court a quo had done.

In a 1975 case,[7] this Tribunal, ruling on the matter of pre-trial, declared:

"We hold that before the party is non-suited or considered in default, it must be shown that the party and his counsel were duly served with a notice of such pre-trial conference. For this purpose, notice of the pre-trial must be served separately upon the party affected thereby and his counsel of record, stating therein the purpose, time and place of the pre-trial conference and requiring said party and his counsel to appear thereat." (Underscoring supplied.)

Again, interpreting more cogently Section 1, Rule 20 of the Rules of Court, this Court, speaking through Mr. Justice Teehankee, said:[8]

"Notice of pre-trial must be served separately upon the party and his counsel This requirement is based on Rule 20, Section 1 which makes pre-trial mandatory and provides that 'after the last pleading has been filed, the court shall direct the parties and their attorneys to appear before it' for a pre-trial conference and on Section 2 which further provides that (A) party who fails to appear at a pre-trial conference may be non-suited or considered in default considering, however, the adverse effects of a party's failure to appear at the pre-trial conference, before the party is non-suited or considered in default, it must be shown that the party and his counsel were duly served with notice of such pre-trial conference." (Underscoring supplied.)

A case in point is *Aducayen vs. Flores*,[9] where the Municipal Court held a pre-trial conference and declared the defendants in default because they failed to appear in said pre-trial. Briefly the facts are: Respondent Municipal Judge, in a complaint filed before him for the collection of a sum of money, believing that he could set a pre-trial conference, did schedule one at a certain date and time after defendants had filed their answer. The defendants, *Aducayen* being one of two and the petitioner for review on certiorari with this Court, were not served notice of the pre-trial conference resulting in their non-appearance thereat. Only counsel of the two defendants appeared, having been served with notice of the same.

Subsequently, *Aducayen* received a copy of the decision of the Municipal Judge which mentioned therein that evidence was adduced solely by the plaintiff in view of the "default of defendant *Pedro Aducayen*, who failed to appear at the scheduled pre-trial conference." And, " . . . finding the cause of action set forth therein to have been sufficiently established, judgment in favor of plaintiff and against defendant is hereby rendered as follows: x x x x x."

Said the learned Mr. Justice Fernando on this judgment, speaking for this Tribunal:

"Where the facts disclosed a clear denial of procedural due process, in that the municipal judge defaulted the

defend-ant, even though he duly filed an answer to the complaint and was not notified of the date of pre-trial, and then a judgment was rendered against him on plaintiff's evidence heard ex-parte, such a judgment is void and in this sense 'it may be said to be a lawless thing, which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head,' (Quoting Justice Street in *Banco-Espanol-Filipino vs. Palanca*, 37 Phil. 921 (1918).)"

There having been no valid pre-trial conference for failure to serve notice upon the party defendant in CAR Case No. 492-Cebu '63 as prescribed by Section 1, Rule 20 of the Rules of Court, the order declaring the defendant in default and the reception of evidence presented by the opposite party, ex parte, the judgment rendered and the writ of execution and the order issued to Bonifacio Sagarino to show cause why he should not be held in contempt, must be held, as We hereby hold, as invalid, null and void.

WHEREFORE, the resolution of the trial court dated August 8, 1966 denying the motion for reconsideration filed by plaintiff-appellant in CAR Case No. 601-Cebu '65 as well as the resolution of the same court of April 5, 1966 dismissing CAR Case No. 601-Cebu '65 and all proceedings had relative to CAR Case No. 492-Cebu '63, including those related to the pre--trial conference on the case, are hereby set aside and the court a quo is ordered to reopen and reinstate CAR Case No. 492-Cebu '63 and to allow the parties thereto to present their evidence after a prior pre-trial conference where the parties and their counsel are to be served notice thereof separately and finally, plaintiff in CAR Case No. 492-Cebu '63 is hereby ordered to deliver to the defendant therein, Bonifacio Sagarino, possession of the land subject of the litigation and all improvements thereon.

No costs.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Aquino, JJ., concur.
Concepcion, Jr., J., on leave.

[1] Resolution, 5th Division, Court of Appeals, dated July 31, 1967, p. 5; Rollo, p. 113.

[2] Letter of endorsement of the Clerk of Court, Jose A. Aguilung, Court of Appeals, to the Clerk of Court, Supreme Court, re: CA-G.R. No. 38300-R, dated August 9, 1967, Rollo, p. 119.

[3] Brief of Plaintiff-Appellant, pp. 15-16; Rollo, p.18.

[4] Ibid., p. 14.

[5] Brief for Defendant-Appellee, pp. 3-4; Rollo, p. 77.

[6] *Potenciano vs. Gruenberg*, G.R. No. L-16956, January 30, 1962, 4 SCRA 503; *Perez vs. Araneta*, L-11788, May 16, 1958 cited in *Desiata vs. Executive Secretary, et al.*, L-21894, Feb. 28, 1967, 19 SCRA 487.

[7] *Lim vs. Animas*, L-39094, April 18, 1975, 63 SCRA 408.

[8] *Taroma vs. Sayo*, L-37296, Oct. 30, 1975, 67 SCRA 508.

[9] *Aducayen vs. Flores*, L-30370, May 25, 1973 51 SCRA 78.

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