

PRIMO OLIVARES PLAINTIFF AND APPELLEE. COLEGIO DE SAN JOSE INTERVENOR AND APPELLEE VS. MACARIO LEOLA, ET AL, DEFENDANTS AND APPELLANTS.*G.R. No. L-6156. June 30, 1955*

Ponente: MONTEMAYOR, J.

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This is an appeal from an order of the Court of First Instance of Laguna, denying defendants-appellants' petition for relief under section 2, Rule 38, of the Rules of Court, on the ground that petitioners had failed to perfect their appeal within the reglementary period. The appeal involves only questions of law. For this reason, we adopt the facts as found by the trial court in its decision dated August 6, 1951, said facts and decision to serve as background in the consideration of the present appeal. Said decision is reproduced below:

"This is an action for the specific performance of personal delivery of real property agreed in a contract.

"The aforesaid agreement refers to two parcels of land specifically described in paragraph 2 of the complaint, situated in barrio San Vicente, San Pedro, Laguna, owned by the 'Colegio de San Jose,' defendant Macario Leola had a contract to purchase (Exhibit A) with the 'Colegio' on April 3, 1948. The two parcels of rice land herein referred to, had 40,000 square meters more or less, known as lots 110 and 133-B and were purchased from the 'Colegio' for P4,800 payable in ten years of equal installments of 7 per cent annual interest, subject however to the receivership in Civil Case No. 9039. Later, the said Macario Leola sold all his rights and interests in the said two parcels of rice land to Primo Olivares on April 18, 1948, for and in consideration of the sum of P1,500, as shown by the public instrument (Exhibit B). Plaintiff Primo Olivares on the other hand executed a deed of sale with mortgage (Exhibit C) in favor of the 'Colegio', as shown by the public instrument executed on July 12, 1950. When plaintiff attempted to commence possession and cultivation of the said two lots, defendants prevented him to do so, particularly Angela Leola, the daughter of the herein defendant Macario Leola, and thus depriving plaintiff of his lawfully acquired possession. Notwithstanding several demands made by the plaintiff, the said defendants refused to surrender possession. To this the 'Colegio' intervened to protect its right of ownership on the two lots.

"The defendants, thru the lone testimony of Macario Leola, tried to prove that he was cheated by the plaintiff in the execution of the deed, Exhibit B, for he was only induced to sign the same without knowing its contents. It is of importance to note, that plaintiff was extensively cross-examined by defense counsel to the execution, preparation and contents of Exhibit B, and yet, the name counsel offered the same Exhibit B as his own Exhibit 1, without any qualification, whatsoever. The court takes the view, that the defendants in thus making Exhibit B his own, has renounced his objective in the cross-examination of said instrument, that same was obtained thru deceit and trickery of plaintiff, otherwise, he would not have made Exhibit B his Exhibit 1 without any qualification. Besides even if we take his original stand, that said deed Exhibit B was signed by defendant Macario Leola without the knowledge of its contents, that alone would not be sufficient to overcome the probative value of a public instrument. The evidence of record militates in favor of the plaintiff and against the defendants by preponderance of evidence. The pretension of defendants, that they were the owners of the two parcels is strongly offset by the documents (Exhibit A, A-1 and A-2) he signed in favor of the 'Colegio'.

"Coming now to the damages sought by the plaintiff, he failed and did not offer any evidence on this score. Hence, the Court cannot grant any in its decision.

"In view of the foregoing considerations, this Court renders decision in favor of the plaintiff and against the defendants, by declaring the execution of the contract Exhibit B valid and binding as between the parties and the defendants are ordered to deliver to the plaintiff the two parcels of rice land described in paragraph 2 of the complaint; for the said defendants to abstain from disturbing plaintiff of his rightful possession and ownership of the parcels in questions, to which he is lawfully entitled to possess and enjoy. Plaintiff, however, is not entitled to any damage for he has not proven any, with costs against the defendants."

Copy of the above decision was sent by the trial court to Atty. Maximiano San Diego, counsel of record for defendants-appellants, which copy he received on or about August 18, 1951; but he failed to notify his clients thereof. In this connection, it should be stated that on July 12, 1951, Atty. Eusebio V. Navarro filed his appearance as counsel for the defendants with a notice reading as follows:

"The Clerk, Court of First Instance of Laguna. Please enter appearance of the undersigned as attorney for the defendants,"

The hearing of the case was continued with Atty. Navarro handling the case for the defendants-appellants. It is a fact, however, that Atty. Maximiano San Diego remained as counsel for the said defendants-appellants according to the records of the case. In filing his appearance for the said parties, Atty. Navarro did not state that his appearance was in place or in substitution of Atty. San Diego. The defendants-appellants did not inform the trial court that they had terminated the services of Atty. San Diego; neither has said attorney filed a withdrawal of his appearance as counsel for them.

According to defendants-appellants, it was only on December 7, 1951, after they had dispatched a messenger to Biiiang, Laguna that they learned of the rendition of the decision. On December 10, 1951, they filed a motion for new trial which motion was later amended so as to be a petition for relief from judgment under Rule 38 of the Rules of Court. On March 28, 1952, the trial court denied said petition for relief on the ground that it was filed out of time. Failing to secure a reconsideration of said order of denial, they appealed directly to this Court claiming that the lower court erred in denying the petition for relief.

Assuming that the case for defendants-appellants came under the provisions of Rule 38, of the Rules of Court, we have section 3 of said Rule to the effect that the petition contemplated in either sections 1 or 2 of the Rule must be filed within 60 days after the party learns of the judgment, order, or other proceedings sought to be set aside and must be accompanied with affidavits showing among other things facts constituting the petitioner's good and substantial cause of action or defense which if proved may have his petition granted. The question to be decided in this appeal is whether or not the notification of the decision made on Atty. San Diego was a valid notification. Because if it is, then the petition for relief which was filed in December, 1951, was filed more than 60 days after the notification of the decision to Atty. San Diego in August of the same year.

Was there a valid substitution of counsel in the sense that the filing of Atty. Navarro's appearance on July 12, 1951, served as his substitution for Atty. San Diego? In the case of *U. S. vs. Borromeo*, 20 Phil., 189, this Tribunal said:

"No substitution of attorneys will be allowed unless the following requisites concur:

- There must always be filed a written application for substitution.
- There must always be filed the written consent of the client to the substitution.
- There must be filed the written consent of the attorney substituted if such consent can be obtained.

- In case such written consent cannot be procured there must be filed with the application for substitution proof of the service of notice of such motion in the manner required by the rules of the attorney to be substituted.

"Unless these formalities are complied with no substitution will be permitted and the attorney who appeared last in the cause before such application for substitution will be regarded as the attorney of record and will be held responsible for the conduct of the cause."

The above cited case was cited with favor in the, case of *Ulanday vs. Manila Railroad Co.*, 45 Phil., 542. And in the case of *Aznar vs. Honorable Norris*, 3 Phil., 636, it was held that the fact that a second attorney enters an appearance on behalf of a litigant does not authorize a presumption that the authority of the first attorney had been withdrawn. The conclusion therefore is that attorney San Diego was and continued to be the counsel of record for defendants-appellants.

As we have already said, the record fails to show and defendants-appellants failed to prove that they had dispensed with the services of Atty. San Diego; that he had withdrawn his appearance for them; that Atty. Navarro had assumed exclusive control over the case of the herein defendants-appellants; that he had substituted himself in the place of Atty. San Diego, and that the latter had been notified of said substitution. Consequently, Atty. San Diego continued to be counsel, or at least one of the counsels for defendants-appellants and so notification to him of the decision on August 18, 1951, was a notification to said defendants and so the petition for relief filed in December 1951, was filed more than 60 days after the petitioners had been notified of the decision. This, aside from the fact that the petition for relief was not accompanied with affidavits showing the facts constituting petitioners' good and substantial defense which they may prove if their petition be granted. Consequently, the trial court committed no error in denying said petition for relief. Said order of denial is hereby affirmed, with costs against appellants.

Bengzon, Acting C. J., Padilla, Reyes, A., Jugo, Bautista Angelo, Concepcion, and Reyes, J. B. L., JJ., concur.

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