

FLORA CORSINO, MONICO NICOLAS, MANUEL AGUSTIN, JOVENCIO AGRAAN, AMANTE PALMONES AND JULIO HILARIO, PETITIONERS, VS. ANDRES NICOLAS AND HON. ARNOLD A. SAVELLA, PRESIDING JUDGE OF...

G.R. No. L-38367. November 24, 1978

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

Petition for certiorari, mandamus and prohibition, to annul and set aside the order of the respondent Judge, dated October 3, 1973, declaring herein petitioners, defendants in Civil Case No. 445-S of the Court of First Instance of Cagayan, in default; as well as the decision rendered in said case on October 24, 1973, and the Writ of Execution dated January 21, 1974. The petitioners further pray that their Answer previously filed with the respondent Judge be admitted; and for the issuance of a temporary restraining order to restrain the respondents from enforcing the orders complained of.

The record shows that on July 3, 1973, the herein private respondent, Andres Nicolas filed a complaint for quieting of title and recovery of possession of a parcel of land situated in Barrio Capanikian, Allacapan, Cagayan, against the herein petitioners Flora Corsino, Monico Nicolas, Manuel Agustin, Jovencio Agraan, and Julio Hilario with the Court of First Instance of Cagayan where the complaint was docketed as Civil Case No. 445-S. The substance of the complaint is that one Alfredo Nicolas, during his lifetime, was the registered owner of a parcel of land situated at Allacapan, Cagayan; that the said Alfredo Nicolas died in-testate, leaving no heir except the plaintiff, Andres Nicolas, his only brother; and that sometime in 1965, the defendants, claiming to be the owners of the land, by means of force, violence, strategy and stealth, entered and usurped the land and refused to vacate the same despite repeated demands.[1]

The corresponding summonses were served upon the defendants on July 31, 1973, except for defendant Flora Corsino, who could not be located in her known address at Tallungan, Cagayan,[2] and Monico Nicolas.[3]

On August 16, 1973, the defendants, including Flora Corsino and Monico Nicolas, filed an ex-parte motion for extension of time to file answer,[4] but, before the said motion could be acted upon by the court, or on August 20, 1973, the defendants filed their Answer to the complaint, alleging that the late Alfredo Nicolas was also the registered owner of another parcel of land with an area of 3.2170 hectares situated in the same municipality; that, contrary to the pretension of the plaintiff that he is the sole heir, the late Alfredo Nicolas was survived by his spouse and son, herein defendants Flora Corsino and Monico Nicolas, respectively; and that upon the death of the said Alfredo Nicolas on April 12, 1955, the plaintiff took possession of the said parcels of land to the damage and prejudice of the defendants.[5]

On that same day, August 20, 1973, the plaintiff filed an ex-parte motion to declare the defendants in default upon the ground that the reglementary period for the filing an answer had already expired without any answer having been filed within said period.[6] On September 26, 1973, the plaintiff filed an urgent motion to strike out the

defendants' answer and to declare them in default for the reason that the said answer was filed out of time.[7]

On October 3, 1973, the respondent Judge ordered the answer of the defendants stricken from the record, thus:

"Acting on the motion filed by plaintiff's counsel to strike out the defendants' answer and to declare them in default, the Court finds the petition to be meritorious and well taken and hereby grants the same. As prayed for, the defendants' answer is ordered stricken from the record having been filed out of time and defendants are declared in default.

"The Deputy Clerk of Court is hereby appointed as Commissioner to receive evidence from the plaintiff and to report his findings within four (4) days from termination."[8]

Without acting on the defendants' motion for the reconsideration of the aforequoted order, the respondent Judge rendered a decision on the case on October 24, 1973 on the basis of the evidence adduced by the plaintiff.[9] The dispositive portion of said decision reads, as follows:

"WHEREFORE, the Court hereby:

"1) declares that plaintiff the lawful and absolute owner of the land in suit;

"2) orders the defendants to restore to plaintiff the peaceful possession and ownership over the land in suit;

"3) orders the defendants to pay damages in the amount of P3,000.00; and

"4) orders the defendants to pay attorney's fees in the amount of P500.00 and to pay the costs."

Then, after the defendants' motion for reconsideration of decision,[10] and "Petition for Relief of Judgment"[11] were denied,[12] the respondent Judge ordered the issuance of a Writ of Execution,[13] based upon the plaintiff's motion for execution.[14]

Whereupon, the defendants filed the instant recourse. As prayed for, a temporary restraining order was issued on March 25, 1974, restraining the respondent Judge from further proceeding with Civil Case No. 445-S of the Court of First Instance of Cagayan.[15]

From the circumstances of record, there cannot be any doubt that the respondent Judge committed a serious error in declaring the defendants Flora Corsino and Monico Nicolas in default and in ordering their Answer expunged from the records upon the ground that the said Answer was filed out of time. The record shows that said defendants were not served with summons. Thus, in the return of service of summons to defendant Flora Corsino, the warrant officer stated:

"For several days, I have served the foregoing Summons & Complaint but Flora Corcina cannot be located at

Tallungan, Aparri, Cagayan. Barrio Captain Pedro Annatu also gave the information that the name of Flora Corcina is not known within his jurisdiction."[16]

This fact was recognized by the respondent Judge in his decision,[17] wherein he stated the following:

"The corresponding summons were served upon all the defendants on July 31, 1973, except on defendant, Flora Corsino, who could not be located in her known address at Tallunga, Aparri, Cagayan."

In the return of service of summons to Monico Nicolas, the warrant officer stated:

"Respectfully return to the Clerk of Court Sanchez Mira, Cagayan, the herein SUMMONS duly served and signed."[18]

The return, however, contained the thumbmark of Andres Nicolas and not that of the defendant Monico Nicolas. Obviously, summons was served upon the plaintiff Andres Nicolas and not upon the defendant Monico Nicolas.

Flora Corsino and Monico Nicolas, however, voluntarily appeared before the trial court on August 16, 1973, when they filed an ex-parte motion for extension of time to file answer. Such voluntary appearance is equivalent to service of summons.[19] Since the said defendants, Flora Corsino and Monico Nicolas, filed their answer to the complaint on August 20, 1973, after the lapse of only four (4) days from the service of summons, the reglementary period for the filing of an answer had not yet expired when their answer was filed. The respondent Judge, therefore, abused his discretion, amounting to lack of jurisdiction, in declaring said defendants, Flora Corsino and Monico Nicolas, in default and in ordering their answer stricken from the record on the ground that the same was filed out of time.

Flora Corsino is claiming successional rights over the disputed parcels of land as the surviving spouse of the deceased Alfredo Nicolas, while the defendant Monico Nicolas claims to be the only son of the said decedent. If proven, their rights to inherit ab intestato from Alfredo Nicolas are superior to that of the plaintiff Andres Nicolas, who is only the brother of the deceased Alfredo Nicolas. The presence of the defendants Flora Corsino and Monico Nicolas are consequently indispensable in order that they may protect their interests. They are entitled to be heard.

We also find abuse of discretion in declaring the defendants Manuel Agustin, Jovencio Agraan, and Julio Hilario in default.[20] While the respondent Judge may have a reason for so doing, since summonses and copies of the complaint were served upon the said defendants on July 31, 1973 and the reglementary period expired without their filing a responsive pleading, he applied the rules of procedure strictly, in view of the motion for extension of time to file an answer, filed by the said defendants on August 16, 1973, only one (1) day after the reglementary period had lapsed, and the answer the said defendants filed on August 20, 1973, which are indicative of their good faith. The respondent Judge failed to take serious consideration the time-honored admonition of this Court that "the rules shall be liberally construed in order to promote their object and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding."[21] Since no substantial right of the plaintiff therein could have been affected and the reasons advanced by the said defendants for their failure to file an answer on time are creditable and reasonable, the respondent Judge should not have been unduly strict in applying the rules of procedure. In a recent decision,[22] the Court reiterated its disapproval of default judgments and cautioned the courts to be more circumspect before declaring a defendant in default. The Court said:

"Default is not a mechanical gadget for the acceleration of judicial litigations. The laudable intention of respondent judge to terminate the subject case promptly is no excuse for cutting corners that the rules have fixed to insure that the constitutional requirement of due process is observed and safeguarded. The expeditious dispatch of court matters does not have to be gained by causing unnecessary inconvenience to any of the parties. As We said in *Lim Tanhu et al. vs. Ramolete et al.*, 66 SCRA 425, "the plain injunction of Section 2 of Rule 1 is that 'the rules shall be liberally construed in order to promote their object and assist the parties' obtaining not only 'speedy' but more imperatively, 'just -- and inexpensive determination of every action and proceeding.'" (pp. 441-442) Whether or not to declare a defendant in default requires mature consideration of all attendant circumstances, a sound discretion and a great deal of circumspection. A court is not supposed to grab the first opportunity, no matter how insubstantially grounded, to knock the defendant out of court. "A judgment by default may amount to a positive and considerable injustice to the defendant; and the possibility of serious consequences necessitates a careful and liberal examination of the grounds upon which the defendant may seek to set it aside." (*Coombs vs. Santos*, 24 Phil. 446, 449-450.) We reiterated this view in *Pineda vs. Court of Appeals*, 67 SCRA 228, thus: "... We maintain fealty to the principle that courts should be liberal in setting aside orders of default, for default judgment is frowned upon, and unless it clearly appears that the reopening of the case is intended for delay, it is best that trial courts give both parties every chance to fight their case fairly and in the open, without resort to technicality." (at pp. 234-235) x x x."

WHEREFORE, the petition is granted and the order dated October 3, 1973; the decision rendered on October 24, 1973; and the Writ of Execution dated January 21, 1974, all issued in Civil Case No. 445-S of the Court of First Instance of Cagayan, entitled: "Andres Nicolas, plaintiff, versus Flora Corsino, et al., defendants," are hereby annulled and set aside. The temporary restraining order heretofore issued is made permanent. Costs against the respondent Andres Nicolas.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, Aquino, and Santos, JJ., concur.

[1] Rollo, p. 10.

[2] See Return of Service of Summons, reverse side of p. 93, Rollo, See also Decision, p. 27, rollo.

[3] See Return of Service of Summons, reverse side of p. 96, rollo, wherein is indicated that summons was served upon Andres Nicolas, the plaintiff, and not upon the defendant Monico Nicolas.

[4] Rollo, p. 13.

[5] Id., p. 15.

[6] Id., p. 18.

[7] Id., p. 19.

[8] Id., p. 20.

[9] Id., p. 27.

[10] Id., p. 31.

[11] Id., p. 35.

[12] Id., pp. 34, 42.

[13] Id., p. 45.

[14] Id., p. 43.

[15] Id., p. 48.

[16] See reverse side of Summons, rollo, p. 93.

[17] Rollo, p. 27.

[18] See reverse side of Summons, rollo, p. 96.

[19] Sec. 23, Rule 14, Revised Rules of Court.

[20] The petitioner Amante Palmones had not been impleaded as party defendant in the court below. Consequently, he could not have been declared in default.

[21] Sec. 2, Rule 1, Revised Rules of Court.

[22] Fuentes vs. Macandog, L-45445, June 16, 1978.

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