

ANDRES RIOS, PETITIONER, VS. ANACLETO ROS, IN SUBSTITUTION FOR THE DECEASED SATURNINO ROS, AND HERMOGENES CALUAG, JUDGE OF FIRST INSTANCE OF ALBAY, RESPONDENTS.*G.R. No. L-1283. September 16, 1947*

Ponente: FERIA, J.

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This is a petition for certiorari against the respondent Judge of the Court of First Instance of Albay on the ground that said Judge acted with grave abuse of discretion (1) in denying, in its order of November 4, 1946, the petitioner's motion for relief based on the ground of excusable neglect under Rule 38, Rules of Court, and (2) in denying, in its order dated November 27, 1946, the motion of the petitioner to have the court's judgment dated November 18, 1944, rendered in two cases G. R. Nos. 117 and 6222 of the Court of First Instance of Albay set aside, for the reason that said judgment, in so far as case 117 is concerned, is a nullity because there was no evidence whatsoever presented in that case on which to base a judgment.

As to the first cause of action certiorari does not lie, because the order denying the motion for relief is final in character in that it put an end to the ordinary proceeding of the case in court, and therefore appealable (section 2, Rule 41; *Monteverde vs. Jaranilla*, 60 Phil., 297), and there is no showing that petitioner's failure to avail himself of the remedy of appeal which he might have pursued was not due to his fault or negligence.

Besides, the order of November 4, 1946, is in conformity with the law, for it is not correct that the attorney for the petitioner, Simplicio B. Peña, became aware of the rendition of the judgment dated November 18, 1944, only from September 12, 1946, when he was notified of the reconstitution of the case. He became aware of that judgment from May 5, 1945, when copy of the said judgment was presented as evidence in the case instituted by the same plaintiff and against the same defendant for the same cause, which was dismissed on the ground of res adjudicata; and therefore more than seventeen months had elapsed from that date to October 26, 1946, when the motion for relief was filed by the petitioner. The Court of First Instance of Albay presided by Hon. Hermogenes Caluag, in its order of November 4, 1946, denying the motion for relief filed by the petitioner, held among others the following:

"After the liberation, on April 1945, the courts of justice were reorganized in the Province of Albay and Andres Rios through his attorney Simplicio B. Peña filed a complaint on April 20, 1945 against Saturnino Ros and Anacleto Ros for recovery of ownership and possession of the very same land which was the subject of the decision in the above-entitled cases. Said case was docketed as civil case No. 1. A motion to dismiss this case was filed by the attorney of Anacleto Ros and Saturnino Ros on the ground that the question raised in this case No. 1 has been already decided by the Court on November 18, 1944 in the above-entitled cases, invoking the principle of res judicata. This motion was heard on May 5, 1945 before the judge presiding then this Court with the appearance of Atty. Simplicio B. Peña for the plaintiff Andres Rios (defendant in these cases) and Atty. Moises C. Kallos for the defendants. During the hearing of the motion to dismiss case No. 1, among the exhibits presented by the defendants was the decision rendered in the above-entitled cases dated November 18,

1944, which was marked and identified as Exh. 3, and the Court acting upon said motion to dismiss issued an order on May 21st, 1945 dismissing the complaint filed in civil case No. 1." (Italics our.)

With respect to the second cause of action for certiorari, as the petitioner filed with the court presided by the respondent judge a motion to set aside the so-called joint judgment of November 18, 1944, the said court had power or jurisdiction to grant or deny the petition, and therefore did not exceed its jurisdiction nor acted with grave abuse of discretion in denying it. If the respondent judge erred in not declaring the said judgment void ab initio, appeal was the proper remedy to have the error corrected by the appellate court. We can not correct in this proceeding any error which the respondent judge may have committed in denying the above mentioned motion of the petitioner.

Besides, the respondent judge, not only did not act with grave abuse of discretion, but acted in conformity with the law in denying the petitioner's motion to have said judgment of November 18, 1944, set aside. From the pleading and their annexes filed with this Court it clearly appears that the petitioner's contention that said judgment of November 4, 1944, is null and void ab initio is untenable.

It is evident that the allegation in the petition, signed by the petitioner's attorney (who is not the one who represented him in the court below) and not verified in accordance with section 6, Rule 15, to the effect that the cases G. R. Nos. 6222 and 117, were not jointly tried and no evidence whatsoever was presented in the case No. 117, and the affidavit of Luis L. Verches dated April 30, 1947, who deposed that, according to his recollection, if his memory is correct, the court denied the oral motion of Atty. Simplicio B. Peña to have both cases tried jointly, can not prevail over the judgment of the court that tried both cases and rendered the judgment of November 18, 1944, which in its pertinent part says:

"On June 28, 1944, the parties agreed: that these two cases be heard jointly and that they be decided upon the evidence adduced on January 31, 1989 before the late Judge Lesaca by Saturnino Ros as plaintiff in civil case No. 6222 and the partial stipulation of facts submitted by said parties on May 15, 1944 and such other evidence which they may present. Andres Rios then commenced the presentation of his evidence and thereafter the hearing was postponed twice by agreement of the parties and finally set for October 12, 1944. But when these cases were again called for the continuation of the hearing on that date (October 12, 1944) neither said Andres Rios nor his counsel appeared although they were duly notified thereof since August 21, 1944 and the Court acceded to the motion of Saturnino Ros that these cases be considered as submitted for decision upon the evidence and stipulation of facts already presented.

"It appears from the evidence adduced by Saturnino Ros that the land in question originally belonged to his grandmother Dominga Barba and formed part of a bigger piece of land which was declared in the name of the latter under Tax No. 334 (see back of Exh. F), and for which she had been paying taxes, at least, since 1901 (Exh. 1-7). * * *"

Furthermore the petitioner himself alleges in paragraph (e) II of his petition the following:

"(e) Thereafter the continuation of the hearing of the ejectment case (No. 6222) was postponed twice by agreement of the parties and finally set for October 12, 1944 and it was decided that on that date trial of civil case No. 117 (R-10) would also begin. It does not appear from the records, as considered reconstituted, if the Trial Court motu proprio changed the date of the hearing to October 13, 1944, but the fact is that in said reconstituted records the notice of hearing specifies October 13, 1944 as the date when both cases would be heard by the Court of First Instance of Albay in Legaspi. Copy of said notice of hearing is hereto attached as Annex E and made an integral part hereof;"

The date "October 13" appearing in annex E above referred to, is what erroneously appears in the copy of the notice furnished to the petitioner, and the latter, assuming that it is correct, contends that "the cases were called

for trial on October 12, 1944, when according to the records as reconstituted the notice of hearing (Annex E) fixed it for October 13, 1944. If so, then the judgment was rendered without any valid trial." But the discrepancy was due to an error in copying the date October 13 stated in annex D attached to the petition from the date October 12 appearing in the original record; and the error was corrected in the copy of the notice which bears the date October 12, subsequently furnished by the clerk of court to the attorney for the respondents and submitted by the latter as Annex 2 to his answer.

Petition is therefore denied with costs against the petitioner. So ordered.

Moran, C.J., Paras, Pablo, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

CONCURRING

HILADO, J.:

I concur in the denial of the petition on the sole ground that appeal, and not certiorari, was the proper remedy available to the instant petitioner.

DISSENTING

PERFECTO, J.:

Petitioner seeks the annulment of two orders of respondent court: one issued on November 4, 1946, declaring final and executory a decision rendered by the Court of First Instance of Albay on November 18, 1944, and ordering that a writ for the execution of the decision be issued; and another, dated November 27, 1946, in which respondent judge denied the petition so that the decision of November 18, 1944, be set aside, the same as the order of August 24, 1946, declaring reconstituted the cases in which the decision was rendered and the order of November 4, 1946, declaring the decision of November 18, 1944, final and executory.

From our point of view the question here is simple. There should not be any dispute that the decision rendered on November 18, 1944, by the Court of First Instance of Albay is a nullity. It was rendered by a court of justice established or organized and functioning under the authority of the Japanese imperial government. Upon the reasons stated in our opinions in the case of *Co Kim Cham vs. Valdes Tan Keh and Dizon* (75 Phil., 113), decisions rendered under the Japanese regime by tribunals created, organized, and functioning under the authority of the Japanese imperial government are null and void and should not be given any effect. Consequently, it is our opinion that the petition must be granted in the sense that the decision of November 18, 1944, be declared null and void and set aside.

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