

CARMELITA ACOSTA-OFALIA AND FLAVIANA SIPIN VDA. DE ACOSTA, PETITIONERS, VS. HON. CARLOS L. SUNDIAM, JOVITA ACOSTA-MADRIGAL AND CLEMENTE MADRIGAL, RESPONDENTS.

G.R. No. L-42648. September 30, 1978

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

This is a petition for certiorari with a prayer for the issuance of a writ of preliminary injunction, to annul and set aside the proceedings and the decision rendered in Civil Case No. 98598 of the Court of First Instance of Manila (Branch XXVIII).

The record shows that on July 17, 1975, private respondents, the spouses Jovita Acosta and Clemente Madrigal filed with the Court of First Instance of Manila, Branch XXVIII, a complaint[1] against the petitioners Carmelita Acosta Ofalia and Flaviana Sipin Vda. de Acosta, and the Manila Banking and Loan Association, for the annulment of sale and title with damages.

In due time, the defendant Manila Banking and Loan Association filed its answer.[2] On the other hand, the petitioner Carmelita Acosta Ofalia, who was the attorney-in-fact of petitioner Flaviana Sipin Vda. de Acosta, who was then abroad, filed a motion to dismiss[3] on the ground that the complaint states no cause of action and that the suit is between members of the same family and no earnest efforts towards a compromise have been made.

On September 15, 1975, respondent Judge issued an order denying the motion to dismiss,[4] copy of which was received by Atty. Laureano B. Acosta, counsel for the petitioners, on September 24, 1975.[5] Thereafter, on September 29, 1975, upon motion of private respondent, the respondent Judge declared the petitioners in default and allowed the private respondents to present their evidence in support of the complaint ex-parte,[6] which order of default was received by petitioner Carmelita Acosta Ofalia on October 7, 1975.[7]

On December 5, 1975, respondent Judge rendered his decision,[8] copy of which was received by the petitioner Carmelita Acosta Ofalia on December 11, 1975. [9]

On December 15, 1975, she filed a petition to reconsider[10] the aforesaid decision. Acting upon the petition, the respondent Judge issued an order, dated January 23, 1976, ordering the petitioner's petition "stricken off" from the record for being pro forma, which order was received by petitioner Carmelita Acosta Ofalia on January 26, 1976.[11]

On January 28, 1976, petitioner Carmelita Acosta Ofalia received a Sheriff's Notice,[12] to which was attached a Writ of Execution.[13]

Hence, on February 3, 1976, the petitioners filed the instant petition.

On February 6, 1976, this Court issued a temporary restraining order, enjoining the respondents from enforcing the decision, issued in Civil Case No. 98598, of the respondent court.[14] It appears, however, that the decision

had already been executed on February 3, 1976.[15]

The petition is meritorious.

However, We set aside the respondent Judge's decision not on the grounds alleged by the petitioners[16] but on the ground that they were prematurely declared in default.

Section 4, Rule 16 of the Revised Rules of Court, provides that:

"If the motion to dismiss is denied or if determination thereon is deferred, the movant shall file his answer within the period prescribed by Rule 11, computed from the time he received notice of the denial or deferment, unless the court provides a different period." [17]

In other words, the period for filing a responsive pleading commences to run all over again from the time the defendant receives notice of the denial of his motion to dismiss.[18]

In the case at bar, the petitioners received the notice of the denial of their motion to dismiss on September 24, 1975. Hence, they had fifteen (15) days from said date or up to October 9, 1975, within which to file their answer. The petitioners were declared in default on September 29, 1975, i.e. ten (10) days before the expiration of the time for filing their answer. Obviously, the order of default made on September 29, 1975, was premature and is, therefore, null and void as well as the reception of private respondents' evidence ex-parte, the decision rendered there on, and the writ of execution, having been predicated on a void order of default.[19]

Manifestly, respondent Judge acted with grave abuse of discretion when he declared the petitioners in default.

WHEREFORE, the order of default, judgment by default, and the writ of execution are hereby annulled and set aside, and the case is remanded to the lower court for further proceedings.

SO ORDERED.

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

Aquino, J., see concurring opinion.

[1] Annex "A", p. 4, Rollo.

[2] p. 11, Rollo.

[3] Annex "B", p. 8, Rollo.

[4] p. 69, Rollo.

[5] Annex "1", p. 37, Rollo; p. 69, Rollo.

[6] pp. 11-12, 69, rollo.

[7] Annex "2", p. 38, rollo; p. 69, rollo.

[8] Annex "C", p. 11, rollo.

[9] pp. 2, 60, rollo.

[10] Annex "D", p. 20, rollo.

[11] p. 69, rollo.

[12] Annex "E", p. 23, rollo.

[13] Annex "E-1", p. 24, rollo.

[14] pp. 28-29, rollo.

[15] Annex "8" & "9", pp. 47-48, rollo.

[16] pp. 61-65, rollo.

[17] Section 1 of Rule 11 provides: "Within fifteen (15) days after service of summons the defendant shall file his answer and serve a copy thereof upon the plaintiff, unless a different period is fixed by the court."

[18] Omico Mining & Industrial Corporation vs. Vallejos, etc., et al., L-38974, March 25, 1975, 63 SCRA 287, citing Matute vs. Court of Appeals, 26 SCRA 768, 769; Epang vs. De Leyco, 51 O.G., 2367.

[19] Viacrucis vs. Entenzo, L-18452, June 30, 1962, 5 SCRA 560; Matute vs. Court of Appeals, supra; Omico Mining and Industrial Corporation vs. Vallejos, etc., et al., supra.

CONCURRING OPINION

AQUINO, J.:

I concur because the trial court, in declaring the defendants in default, relied on section 4, Rule 8 of the 1940 Rules of Court which provides that a motion to dismiss interrupts the time to plead. Section 4 was superseded by section 4, Rule 16 of the present Rules of Court which provides that, in case of the denial of a motion to dismiss, the movant is entitled to the fifteen-day reglementary period within which to file his answer.

Moreover, it is doubtful whether the trial court acquired jurisdiction over petitioner Flaviana Sipin Vda. de Acosta who was abroad and who was summoned through her daughter, Carmelita Acosta-Ofalia.

The only flaw in petitioners' position is that they did not bother to have their answer admitted when they moved to set aside the judgment by default and they did not execute an affidavit of merits allege that they have valid defenses to the complaint of Jovita Acosta-Madrigal, the daughter of Flaviana and the older sister of Carmelita.

Considering that Mrs. Madrigal in her complaint charged her mother with having falsified a deed of sale, the ends of justice would be better served by holding a trial on the merits or by holding a pre-trial where the avenues for the amicable settlement of the case between mother and daughter may be explored.

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