

LAUREANO ARCILLA, PETITIONER, VS. BASILISA ARCILLA, SERAPIA ARCILLA, MARCELA ARCILLA, DIONISIA ARCILLA, ZACARIAS ARCILLA, GAVINA MOLO VDA. DE ARCILLA, CESAR M. ARCILLA, GLORIA M...

G.R. No. L-46674. September 16, 1985

Ponente: CUEVAS, J.

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CUEVAS, J.:

The instant special civil action for CERTIORARI and PROHIBITION assails the Order[1] dated May 18, 1977 issued by respondent Judge Francis J. Militante, presiding Judge of the then Court of First Instance of Cebu, Branch IX in Civil Case No. 395-T, denying Laureano Arcilla's Petition for Relief from Judgment, for having been filed beyond the period prescribed by Section 3, Rule 38 of the Rules of Court.

Petitioner was among the several defendants in Civil Case No. 395-T, an action for Annulment of Sale with Damages, filed by the herein private respondents before the then Court of First Instance of Cebu on May 28, 1973.

After the issues were joined by the filing of defendants' Answer, the case was set for pre-trial conferences. At the scheduled pre-trial on July 29, 1975, the lower court issued the following Order —[2]

"Let the continuation of the pre-trial of this case be set to October 2, 1975 at 8:30 a.m. in Cebu City.

Attys. Duaban and Monteclaros are notified in open court."

On October 2, 1975, defendants (among whom is the petitioner herein) and their counsel did not appear. Whereupon, on motion of plaintiffs' (now private respondents) counsel, defendants were declared in default[3] pursuant to Section 2, Rule 20 of the Rules of Court and the plaintiffs were allowed to present their evidence ex-parte.

On October 27, 1976, judgment[4] was rendered in favor of the plaintiffs, the dispositive portion of which reading as follows —

"(1) Declaring the Deed of Sale (Exh. 'E') allegedly executed by Segunda Vda de. Arcilla in favor of defendant Laureano Arcilla as null and void;

(2) Declaring the eight (8) children of Segunda O. Vda. de Arcilla (including defendant Laureano) as co-owners on equal shares of the one-half (1/2) portion of that parcel of land covered by Tax Declaration No. 00347 which was adjudicated to her in the Extrajudicial Partition Settlement and as co-owner in eight (8) equal shares of the parcel of land covered by Tax Declaration No. 00349 which was intended for her full usufruct;

(3) Dismissing the complaint as against defendant Nemesio Jubay.

Although the defendants had been declared in default, let a copy of this decision be furnished them through

their counsel.

SO ORDERED."

A copy of the aforesaid decision was sent to and received by defendants' counsel of record, Atty. Cosme D. Monteclaros, on November 8, 1976.

On March 25, 1977, herein petitioner, as one of the defendants in said Civil Case No. 395-T, through his new counsel, filed a Motion to Lift Order of Default and to Set Aside the Decision dated October 27, 1976,[5] which was denied by respondent Judge in his Order dated April 12, 1977.

On April 16, 1977, petitioner filed a Petition for Relief from Judgment,[6] alleging mainly —

"That on July 29, 1975, a Court Order was issued setting the pre-trial of the above-entitled case to October 2, 1975; however, on October 2, 1975, the then Hon. Presiding Judge of this Court, without previous examination of the records as to whether or not said defendants were duly notified of the setting for pre-trial on that same date (October 2nd) and upon oral motion by counsel for the plaintiffs, declared defendants in default based and in accordance with the supposed provisions of Sec. 2 of Rule 20 of the Revised Rules of Court...the declaration of default under said Sec. 2 of Rule 20 is with supposition that the defendants sought to be declared as such should be shown that they actually know of such setting, but the records of the case disclose that no notice was ever served upon said defendants;

xxx xxx xxx

That, defendants, particularly the principal defendant Laureano Arcilla, learned of the decision of October 27, 1976 only on March 24, 1977 when the herein undersigned counsel showed him a xerox copy of the same which the undersigned counsel procured a day earlier. (Mar. 23)

That the defendants therefore seek the setting aside and lifting the effects of the decision aforementioned based on mistake and/or excusable neglect for their failure to inquire from their lawyer Atty. Monteclaros or with this Court believing that they will be duly notified of any proceeding in connection with the above-entitled case either by their lawyer Atty. Monteclaros or by the Office of the Clerk of Court of this Court inasmuch as they are not the plaintiffs and are therefore in the defensive side of the case.

That an Affidavit of Merit is attached to the present petition for Relief of Judgment based on Rule 38 of the Revised Rules of Court and herein marked as Annex '1' to form an integral part hereof executed by principal defendant Laureano Arcilla and said defendants, in accordance with the obligations contained in said affidavit of merits, has a good and valid defense against the claim of plaintiffs, considering that the late Segunda O. Vda. de Arcilla voluntarily and willingly executed the document of sale sought to be annulled, the contents thereof having been fully explained to her by the notary public and it was for a valuable consideration."

On May 18, 1977, respondent Judge issued his now assailed Order denying petitioner's Petition for Relief, the pertinent portion reading as follows —

"The plaintiff in her opposition, contends that the petition for relief from judgment is already filed out of time because the judgment of this Court was received by counsel for the defendants on November 8, 1976, hence, the defendants had only up to January 8, 1977 to file a petition for relief from judgment. Sec. 3 of Rule 38 of the Rules of Court clearly states that "A petition provided for in either of the preceding section of this rule must be verified, filed within sixty (60) days after the petitioner learns of the judgment, order, or other proceeding to be set aside, and not more than six (6) months after such judgment or order was entered or said proceeding was taken". It is claimed by the defendants that they learned only of the judgment on March 24, 1977. This contention of the defendants cannot be given weight because notice to counsel is notice to the client and since the defendants' former counsel Atty. Cosme D. Monteclaros received the judgment on November 8, 1976, then the date to be reckoned with is the date when the defendants' counsel received the judgment which

is November 8, 1976.

This Court is in sympathy with the pathetic plight of the defendants if it is really true that the order declaring them in default was not through a fault of their own but since they slept on their rights for quite a time such as would bar the present petition, this Court is not in a position to extend the period within which to file the present petition for relief from judgment.

In view of the foregoing, the petition for relief from judgment is hereby denied for having been filed beyond the reglementary period."

Attributing grave abuse of discretion on the part of respondent Judge in issuing the aforesaid Order, petitioner now comes to Us through the instant petition praying that the said challenged order be set aside and declared null and void.

The only issue then to be resolved in this case is whether or not the lower court acted with grave abuse of discretion and/or without jurisdiction in denying the Petition for Relief from judgment for having been filed out of time.

The pertinent provisions of Rule 38 of the Revised Rules of Court on "Relief from Judgments, Orders or Other Proceedings" state —

"Sec. 2. Petition to Court of First Instance for relief from judgment or other proceeding thereof. — When a judgment or order is entered, or any other proceeding is taken, against a party in a Court of First Instance through fraud, accident, mistake or excusable negligence, he may file a petition in such court and in the same cause praying that the judgment, order or proceeding be set aside.

Sec. 3. Time for filing petition, contents and verification. — A petition provided for in either of the preceding sections of this rule must be verified filed within sixty (60) days after the petitioner learns of the judgment, order or other proceeding to be set aside, and not more than six (6) months after such judgment or order was entered or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be."

In the case of *Turqueza vs. Hernando*, L-51626, April 30, 1980, 97 SCRA 483, this Court held that —

"The Court has said time and again that the doctrine of finality of judgments is grounded on fundamental considerations of public policy and sound practice that at the risk of occasional error, the judgments of courts must become final at some definite date fixed by law. The law gives an exception or "last chance" of a timely petition for relief from judgment within the reglementary period (within 60 days from knowledge and 6 months from entry of judgment) under Rule 38 supra, but such grace period must be taken as "absolutely fixed, inextendible, never interrupted and cannot be subjected to any condition or contingency. Because the period fixed is itself devised to meet a condition or contingency (fraud, accident, mistake or excusable neglect), the equitable remedy is an act of grace, as it were, designed to give the aggrieved party another and last chance, and failure to avail of such last chance within the grace period fixed by the statute or the Rules of Court is fatal."

The rule, therefore, is that in order for a petition for relief filed under Rule 38 to be entertained by the court, the petitioner must satisfactorily show that he has faithfully and strictly complied with the provisions of said Rule 38. Consequently, in assailing the lower court's dismissal of his petition for relief for having been filed out of time, it is incumbent upon herein petitioner to show that the said petition was filed within the reglementary period specified in Section 3, Rule 38. He has failed to do so, instead he argues on the merits of his petition for relief, without first showing that the same was filed on time in the court below. On this ground alone, the instant case

should be dismissed.

Moreover, We agree with the respondent Judge that the petition for relief was filed late. We note that the decision sought to be set aside was rendered on October 27, 1976. Petitioner, through counsel, received a copy of the said decision on November 8, 1976, and he filed his petition for relief from judgment only on April 18, 1977. Clearly, the same was filed beyond the period allowed by Section 3 of Rule 38. As in previous cases, this Court holds and so rules that the instant petition filed after the lapse of the reglementary period cannot be entertained.[7]

Arguing on the merits of his petition for relief, petitioner's, main contention is that the order of default was illegally and improperly issued because he was not notified of the pre-trial on October 2, 1975, consequently, all subsequent proceedings including the judgment by default were all null and void.

At first blush, petitioner's aforesaid contention appears very tenable, for indeed it is settled that a declaration of default, in the absence of a notice of pre-trial constitutes denial of due process.[8] But a deeper examination of the pleadings and the record of the case would show that petitioner was present during the pre-trial conference on July 29, 1975 when the lower court reset the pre-trial to October 2, 1975. On the said date, however, although notified, both petitioner and his counsel did not appear, hence, the declaration of default pursuant to Sec. 2, of Rule 20 of the Rules of Court.

The case filed before the lower court is for annulment of a deed of sale allegedly executed by Segunda O. Vda. de Arcilla in favor of one of his sons, herein petitioner Laureano Arcilla. It was originally filed and instituted by the said Segunda O. Vda. de Arcilla but she died even before the pre-trial of the case and was therefore substituted by her other children. The other defendant in the case Nemesio Jubay was the Notary Public who allegedly notarized the document. From the evidence presented by the plaintiffs, the lower court found —

"A careful perusal of the Deed of Sale (Exh. "E") sought to be annulled bear and bare that the same was written in English and that Segunda O. Vda. de Arcilla is an illiterate who do not know how to write having affixed her thumbmark on the said document which fact is corroborated by the testimony of Marcela Arcilla.

While it is true that the natural presumption is that one always acts with due care and signs with full knowledge of all the contents of a document for which he can not repudiate the transaction (Abaya vs. Standard Vaccume Oil Co. L-9511, August 30, 1957; Javier vs. Javier, 7 Phil. 261; Tan Tua vs. Jy Liao Sontua, 56 Phil. 20) this presumption referred to cannot apply in the case at bar when one of the parties is unable to read and write the contract in a language not understood by one of the parties (Art. 1332, New Civil Code). In both cases, the person enforcing the contract must show the terms thereof have been fully explained to the party (Ayala vs. Balderama Lumber Manufacturing Co., Inc. (CA) 490 O.G. 980).

Furthermore, the record is replete of proof that the care and custody of the deceased Segunda O. Vda. de Arcilla was burdened on the defendant Laureano Arcilla and this fact, coupled with the age, infirmity and intelligence of the former, advantage may have favored the situation of the latter which lead to the consummation of the questioned document (Exh. "E") by virtue of which the latter has the burden of proof to dislodge such misapprehension. With respect to Atty. Nemesio Jubay, he should be reminded of the protective mandate of Art. 1332 of the New Civil Code for those illiterates and those documents drawn in English or Spanish."

Examining the petition for relief filed by petitioner, while the same appears verified and accompanied by an affidavit of merit, the allegations of fact made therein do not prove either fraud, accident, mistake, or excusable negligence, nor show a valid defense in favor of the party seeking relief. The general allegation made therein to the effect that "petitioner has a good and valid defense considering that the late Segunda O. Vda. de Arcilla voluntarily and willingly executed the document of Sale", is not sufficient compliance with the rules. Since the Deed of Sale sought to be annulled was written in English and it is admitted that Segunda O. Vda. de Arcilla is an

illiterate and do not know how to read and write, it would have been an easy matter for petitioner to have secured the affidavit of Nemesio Jubay, the Notary Public who allegedly notarized the document as well as the witnesses to the execution and signing thereof to show that the contents of the document was fully explained to said Segunda O. Vda. de Arcilla and that she voluntarily signed the same. This way, petitioner could convince the Court that in his legal fight, he had a leg on which to stand. It thus results that reversal of the order complained of, as well as the judgment rendered thereon would be an idle ceremony. It would not advance or for that matter serve the ends of justice. It would only result in another waste of time; effort and expense. Paraphrasing what this Court has stated in *Paner vs. Yatco*[9] it would be pointless to re-open this case, "for like a mirage it would merely raise false hopes and in the end avail her (him) nothing."

For the reasons stated above, the Order of the lower court dated May 8, 1977 denying herein petitioner's Petition for Relief should be affirmed.

WHEREFORE, the instant special civil action is hereby DISMISSED. Costs against petitioner.

SO ORDERED.

Aquino, (Chairman), Concepcion, Jr., Abad Santos, Escolin, Alampay, and Patajo, JJ., concur.

[1] Annex "I", Petition, pp. 40-42, Rollo.

[2] Annex "A", Petition, p. 9, Rollo.

[3] Annex "B", Petition, p. 10, Rollo.

[4] Annex "C", Petition, pp. 11-20, Rollo.

[5] Annex "F", Petition, pp. 24-27, Rollo.

[6] Annex "F", Petition, pp. 28-32, Rollo.

[7] See *Villeza vs. Almedo*, 1 SCRA 761, 762; *Quijano vs. Tameta*, 1 SCRA 997, 998; *Prospero vs. Robles, et al.*, 8 SCRA 189, 192; *J.M. Tucson & Co. vs. Aguila*, 9 SCRA 537; *Duran vs. Angco*, 20 SCRA 1127, 1129; *Radiowealth Trading Corp. vs. Abastillas*, 33 SCRA 93, 98; *Turqueza vs. Hernando*, 97 SCRA 483, 489.

[8] *Samson vs. Court of Appeals*, 105 SCRA 78.

[9] 87 Phil. 271, 277.

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