

MAURICIO GORDULAN, PLAINTIFF AND APPELLEE, VS. CESAREO GORDULAN, DEFENDANT AND APPELLANT.

G.R. No. L-17722. October 09, 1961

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This appeal, which was certified to this Court by the Court of Appeals because only issues of law are raised, questions an order of the Court of First Instance of Nueva Ecija denying defendant's petition for relief from a final judgment by default.

It is uncontested that in Civil Case No. 2488 of the court below, a suit for the recovery of land, the defendant therein, Cesareo Gordulan, although duly summoned, failed to file his answer in due time. Upon motion of the plaintiff, the defendant was declared in default. After reception of evidence for the plaintiff, the lower court rendered judgment against defendant (now appellant). Availing himself of the provisions of Rule 38 of the Rules of Court, the defendant Cesareo Gordulan sought to set the judgment aside, claiming that he had good and valid defenses against plaintiff's complaint and that it was excusable negligence on his part that his counsel failed to file an answer.

His petition having been denied, the defendant interposed this appeal.

The questioned order should not be disturbed. Sections 2 and 3 of Rule 38 of the Rules of Court are explicit, and require not only a sworn statement of the facts constituting petitioner's good and substantial defense, but likewise a showing that the failure to file an answer was by reason of fraud, accident, mistake or excusable negligence. While appellant's petition for relief contains a recital of facts, duly sworn to by him, that the lot in dispute is owned in common by the plaintiff and the defendant in equal shares, nothing is, however, offered to show that there was fraud, mistake, accident or excusable negligence in the failure of the lawyer to timely join issues with the plaintiff.

The trial judge, Honorable Felix V. Makasiar, has correctly pointed out in the appealed order:

"Considering that the negligence of Atty. Antero Toraas, as counsel for the defendant, in failing to file his answer to the complaint within the reglamentary period is not excusable and, therefore, not a ground for relief; that Atty. Antero Tomas has not even submitted any affidavit with respect to his alleged negligence; that the defendant had the duty to inquire from Atty. Tomas as to what he did with the complaint or whether he filed his answer thereto or the status of the case before the order of default on May 27, 1957, or before the plaintiff presented his evidence on July 18, 1957 and could have presented a motion to set aside the order of default prior to July 18, 1957 (See Taguinod, et al. vs. Mangantilao, 98 Phil., 1000; Robles, et al. vs. San Jose 99 Phil., 658; 52 Off. Gaz. 6183; Vivero vs. Santos et al., 68 Phil., 500; 52 Off. Gaz. 1924); that the defendant could have easily inquired from the records as to the status of the case inasmuch as his residence in Muñoz is only less than one hour by bus from Cabanatuan City; and that his duty to make such an inquiry is underscored by his claim that his harvest of palay of 1h cayans from the land for the agricultural year 1956-57 was attached by the plaintiff's mortgagee, the petition for relief is hereby denied."

Rule 38 is a special remedy and the requirements therein set forth are considered as conditions sine qua non to the proper allowance of relief.

Neither is it arguable that defendant should not be held to suffer for his counsel's shortcomings, for a client is bound by the acts, even by the mistakes and negligence, of his counsel in the realm of procedural technique. Of course, the door is open for him to seek redress against the paring lawyer for the wrong suffered (Isaac vs. Mendoza, 89 Phil., 279).

Wherefore, the order appealed from is affirmed, with costs against appellant.

Bengzon, C. J., Padilla, Labrador, Concepcion. Paredes, and De Leon, JJ., concur.

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