

**BARTOLOME CLARIDAD, MAXIMO CLARIDAD (NOW DECEASED),
JUAN CLARIDAD, AQUILINA CLARIDAD, FRANCISCO CLARIDAD, AND
EUSEBIO CLARIDAD, PETITIONERS, VS. HON. ARTURO B. SANTOS, AS
JUDGE ...***G.R. No. L-29594. January 27, 1983*

Ponente: RELOVA, J.

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Petitioners seek "to render judgment declaring null and void and to set aside the orders declaring the defendants (herein petitioners) in default, dated November 26, 1963, January 6, 1964 and January 16, 1964, the decision dated February 25, 1964, the amendatory order dated March 11, 1964, the orders dated March 29, 1966, August 8, 1967, June 7, 1968 and July 15, 1968 in Civil Case No. 3885 of the respondent Court of First Instance of Tarlac (Branch II) and after which the defendants (herein petitioners) to be allowed to file an answer to the complaint in said civil case and the respondent judge be ordered to hold a retrial of the same case . . ."

On May 15, 1963, herein private respondents Blas Carpo, Vicente Carpo and Liberata Ventura filed an action for partition against the herein petitioners, namely: Bartolome, Maximo, Juan, Aquilina, Francisco, and Eusebio, all surnamed Claridad. They were duly summoned but failed to file their responsive pleadings within the reglementary period. Upon motion of the plaintiffs (herein respondents), through counsel, the defendants (herein petitioners), were declared in default (Orders dated November 26, 1963, January 6 and 16, 1964). As a consequence, plaintiffs were allowed to adduce evidence in support of their complaint.

On February 25, 1964, the lower court, through then Judge Simeon Gopengco, rendered a decision the dispositive portion of which reads:

"WHEREFORE, the Court renders decision in this case (1) declaring the plaintiffs Blas Carpo, Vicente Carpo and Liberata Ventura and the defendants Bartolome Claridad, Maximo Claridad, Juan Claridad, Aquilina Claridad, Francisco Claridad and Eusebio Claridad as the legal heirs of the late Agaton Claridad in representation of their respective parents; (2) declaring the plaintiffs as entitled to the one-half (1/2) undivided portions of the entire estate of the late Agaton Claridad; (3) declaring in order the partition of seven (7) parcels of land as Lots Nos. 5186, 5047, 4981, 5009, 5014, 5048 and 5185 described in the complaint among the plaintiffs and defendants in the properties to wit:

.....

(4) ordering the plaintiffs and the defendants to submit to this court within fifteen (15) days from receipt of this decision, an agreement of partition of the parcels of land above-mentioned, in the proportions abovestated, subject to the approval of this court; (5) ordering the defendants to deliver within ten (10) days from the final approval of the partition to the plaintiffs the possession of the shares appertaining them in accordance with the above partition; (6) ordering the defendants to render complete accounting of the products of the properties in question within ten (10) days from the final approval of the agreement of partition and to pay the plaintiffs the

value of 1/2 of said products; and (7) ordering the defendants also to pay the plaintiffs the sum of P2,000.00 as damages, attorney's fees and the costs of the suit.

"Should the parties be unable to agree on the partition above-mentioned, within thirty (30) days from the receipt of a copy of the decision, the Court will appoint three competent and disinterested persons as commissioners to make the partition, commanding them to set off to the plaintiffs and to each party in interest, such part and proportion of the properties according to the decision, subject to the approval of this court, the expenses of division to be borne equally by the parties."

On March 11, 1964, the lower court issued an amendatory order regarding the parcels of land subject of the partition. Upon receipt of the decision, the defendants (herein petitioners) filed a verified motion to lift order of default and to set aside the decision, dated February 25, 1964, and the amendatory order dated March 11, 1964. The motion was denied by Judge Arturo B. Santos, who was appointed to the court when Judge Gopengco was transferred to the Court of First Instance of Manila, on the grounds that (1) it was filed out of time; (2) it was not properly verified; (3) it was not accompanied by affidavits of merits; (4) the facts alleged in the aforesaid motion do not constitute mistake or excusable negligence; and (5) the motion does not allege facts constituting meritorious cause of action or defense.

A Motion for Reconsideration was filed but it was denied in an order, dated August 8, 1967, saying that "the Court is not convinced of the merit and good faith of the defendants. The circumstance that the defendants chose to appear in Court only after the promulgation of the decision tends to show that their non-appearance during the reception of evidence was wilful and deliberately done to prolong and delay the adjudication of the case to the prejudice and inconvenience of the plaintiffs. They intentionally lay in ambush and, when the judgment turned out to be adverse to them, they would now want to re-open the proceedings all over again. This, the Court cannot countenance, especially in cases like the present one where the delay works to favor the defendants who have the physical possession of the lands in litigation." A second Motion for Reconsideration was filed. It was denied again in an order, dated June 7, 1968.

Herein petitioners claimed that a prior case of partition was filed by the Carpos and Ventura against them in the same court, docketed as Civil Case No. 502. This case was dismissed by the trial court but, upon appeal to this Court, docketed as G.R. No. L-12960, a decision was promulgated on January 31, 1962 whereby the Carpos and Ventura were given the opportunity to bring the matter again to court, as the dismissal of the case was "without prejudice." Whereupon, the Carpos and Ventura brought this second action for partition over the same subject matter against the same defendants.

Petitioners claimed that they thought that this second case (Civil Case No. 3885) was the same as the first (Civil Case No. 502), and so, they did not "take any positive action until they received the decision." Further, they alleged, among others, in their motion to lift order "that one of the defendants reside in different distant places in Isabela, one resides in Malabon, Rizal, another although his family resides in Manila, is working in Iloilo, while the others reside in Sta. Ines, Paniqui, Tarlac and San Francisco, Anao, Tarlac. Because the defendants live very far from each other, they did not know that summons and copies of the complaint were sent to each of them. It was only when one of the defendants received a copy of the decision that he came to know that the defendants were served with summons and it was only then that he began writing to the other defendants inquiring to the matter; and that it was only after one of the defendants received a copy of the decision that they came to know that this is a new case filed against them."

The petition must fail.

Petitioners admitted in their motion to lift the order of default and motion to set aside the decision dated April 5,

1964 that "due to the honest mistake or excusable negligence which ordinary prudence would not have guarded against, or possibly through sheer ignorance of the defendants on the legal effects and consequences of the court's summons or processes which they may have received no answers were filed in the complaint; . . . that the defendants being most of them uneducated and ignorant honestly believed that the case was already terminated by virtue of the first case and for that reason did not anymore mind the case at bar when summons were served to them thinking that these papers were just part of the first case." (pp. 70-71, Rollo). And, in their memorandum, dated January 5, 1969, petitioners claim that "although they appear to have been served with summons, the service thereof was defective and incomplete and done through anomalous and fraudulent means, and, therefore, were not valid." (p. 147, Rollo). Further, in said, motion to lift the order of default, petitioners did not specifically point out who were not properly served with summons and copies of the complaint. Neither was the motion verified, filed on time, nor accompanied by an affidavit of merit; nor did it allege facts constituting meritorious defense. Thus, respondent Judge did not abuse, much less commit grave abuse of discretion, in denying the motion.

Besides, respondent Judge had the right to rely on the sheriffs' return because there is the presumption of regularity in the performance of their duties. Petitioners did not invite the attention of the court regarding alleged defect of service of summons until they filed their motion for reconsideration.

The granting or denial of the motion to set aside the order of default, or for a new trial, or for relief from judgment, is within the sound discretion of the court. The latter's ruling thereon deserves the respect of the appellate courts in the absence of manifest abuse of discretion.

Finally, petitioners are guilty of laches. Ninety-nine (99) days had elapsed since their receipt of the order denying the second motion for reconsideration on June 25, 1968 before they filed this petition for certiorari on October 2, 1968.

ACCORDINGLY, this petition for certiorari is dismissed. With costs against petitioners.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Vasquez, and Gutierrez, Jr., JJ., concur.

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