

GERTRUDES MATA, ET AL., PLAINTIFFS AND APPELLEES, VS. RITA LEGARDA, INC., DEFENDANT AND APPELLANT.

G. R. No. L-18941. January 31, 1963

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal from two orders issued by the Court of First Instance of Manila, the Hon. Higinio B. Macadaeg, presiding, one dated April 30, 1958 denied defendant's motion for reconsideration, and another order dated February 18, 1958 which reinstated the decision of said court rendered on August 14, 1957 .

Plaintiffs Gertrudes Mata and Conrado Mata brought this action in the Court of First Instance of Manila against Rita Legarda, Inc., to compel the latter to execute a deed of absolute sale in their favor of Lot No. 29, Block No. RP-20, and Lot No. 11, Block PE-4, both forming one residential lot 150 square meters, and to deliver to them a certificate of title covering the lots, and in the alternative to condemn defendant to pay to them the sum of P4,293.91 with legal interest, and to pay the costs.

Defendant's answer admitted some of the allegations of the complaint and denied others. It alleged that it has yet no title to one of the lots and "that should the time come when the vendee (defendant) have fully paid for the price of the whole lot, and it shall in the meantime transfer only the title for lot 29, of Block RP-20 and that as to the other, Lot 11 of Block PE-4, the defendant shall forthwith transfer title thereto upon the issuance of its own title for Block PE-4."

The case was set for hearing on August 8, 1957 and as the defendant failed to appear the plaintiffs were allowed to present their evidence ex parte. Wherefore judgment was rendered by default ordering the latter to execute a deed of absolute sale in favor of the plaintiffs and to deliver the certificate of title within 30 days, but that upon failure of the defendant to do so the contract shall be rescinded and defendant ordered to pay P4,293.91, plus interest at the rate of 6%, to pay plaintiffs damages and attorney's fees in the sum of P1,000, and pay the costs.

Defendant moved that the decision be reconsidered and the same be set aside. This motion was granted and the court set the case for another hearing on January 16, 1958 . But on January 14, 1958 , defendant filed an urgent motion to transfer the, hearing for any day after February 15, 1958 on the ground that its counsel was confined in a hospital preparatory to a major operation. The lower court granted the motion and set the hearing of the case anew for February 18, 1958 .

But when the case was again called for hearing as scheduled, nobody appeared for defendant, so the lower court reinstated its decision dated August 14, 1957 . Defendant filed a motion for reconsideration and for setting the decision aside, duly verified and supported by six affidavits to the effect that the notice of hearing was never received either by Atty. Mariano G. Bustos, its attorney of record, who was still sick in the hospital, or by any one in his law office and said notice was expressly and specifically received by one Jose de la Paz for and on behalf of Rita Legarda, Inc.

The motion for reconsideration dated March 21, 1958 and its accompanying affidavits of merits show that on January 24, 1958, defendant's attorney of record, Atty. Mariano G. Bustos, was still in the hospital in a serious condition, having been operated on of cancer of the intestines, as attested to by his attending physician (pp. 64-65, ROA); that on the same date, at about 5:30 p.m., the deputy sheriff of Manila served the notice of hearing to one Jose de la Paz, an employee of the defendant-appellant corporation; that said employee received said notice in the office of the defendant-appellant for and in behalf of the latter, and that the attorney of record was never notified of the scheduled hearing until after the hearing was finished.

The rule is that services of orders or notices of hearing should be made to the attorney of record himself or to his employee at his office.

"Notice of trial should be served upon attorney of record.—Appellants contend that the notice of trial should have been sent to them, and not to their attorney alone, in view of Sec. 3 of Rule 31 of the Rules of Court which provides that 'upon entry of a case in the corresponding trial calendar the clerk shall fix a date for trial and shall cause a notice thereof to be served upon the parties,' This rule is obviously inconsistent with Sec. 2 of Rule 27 because the term 'parties' used in Sec. 3 of Rule 31 is a general sense and does not exclude the application of Sec. 2 of Rule 27 to a situation where the party is represented by an attorney." (Martinez, et al. vs. Martinez, et al., 90 Phil 697, Jan, 23, 1952)

"Under the Rules of Court (Rule 27, Sec. 2), once a party appears of record by attorney, service of pleadings, notice etc. is to be made upon the attorney, not the party, * * *" (Vivero vs. Santos, 98 Phil. 500; 52 Off. Gaz. 1424, Feb. 28, 1956, L-3105.)

"Under Sec. 2 of Rule 27, requiring that service upon a party be made 'upon his attorneys or one of them, unless service upon the party himself is ordered by the court,' notice to the party himself, unless ordered by the court, and not upon the attorney who has appeared in his behalf, is not notice in law." (Perez vs. Araneta, G.R. No. L-11788, May 16, 1958; Visayan Surety & Insurance Corp. vs. Central Bank of the Philippines, 104 Phil., 562.)

Considering that the notice of the hearing was not served on the attorney as required by the Rules, the proceedings taken against him at the hearing of which he was not notified, do not bind him nor his client.

Wherefore the orders appealed from are hereby set aside and the case is remanded to the court below for further proceedings. Without costs.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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