

ANUNCIACION NARABAL DE NILO, GIL NILO, FELICISIMO NILO, FILEMON NILO, ET AL., PETITIONERS, VS. HON. HONORIO ROMERO, JUDGE OF THE COURT OF FIRST INSTANCE OF DAVAO, BR. III AND TH...*G.R. No. L-15195. March 29, 1961*

Ponente: PAREDES, J.

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On September 7, 1955, Fausto Nilo, filed with the CFI of Davao, Civil Case No. 1708, against the City of Davao, represented by the City Engineer, to recover payment for the use as road way, of a part of his land by the defendant City. On October 7, 1955, the City of Davao, thru its Special Counsel, answering the complaint, interposed the affirmative defense of prescription of action, pursuant to Sec. 43, No. 3, of Act No. 190, limiting the filing of the action to four (4) years. On the same date, plaintiff filed a motion to declare defendant in default and to strike its answer, alleging that the period to file answer expired on October 3, 1955, whereas the same was actually filed on October 7, 1955. On October 20, 1955, and over the opposition of the defendant, the lower court entered an Order; pertinent portions of which are hereunder quoted:

"* * *. It is admitted in the opposition of the defendant to plaintiff's motion to have the defendant declared in default and to strike its answer, that there was negligence on the part of the City Engineer's Office in not immediately forwarding the papers to the City Fiscal's Office. While the negligence is admitted, there are no valid and meritorious grounds alleged in said opposition which would justify the Court to disregard the motion of the plaintiffs. The City Engineer's Office should have forwarded all the papers in this Case to the City Fiscal of Davao for the preparation of the necessary pleadings and defense.

In view of the foregoing, this Court, finding out that the motion of the plaintiff to declare defendant in default and to strike its answer is well taken, declares defendant in default and orders its answer stricken off the records."

The motion for reconsideration filed by the defendant, thru Leo D. Medialdea, its Special Counsel, on March 7, 1956, of the above order, attaching thereto affidavits and opposed by the plaintiff, was denied in an order dated March 19, 1956. The Order of default as well as the order denying the motion for reconsideration of said order was not appealed by the respondent City of Davao.

Due to the death of plaintiff Fausto Nilo, a motion for substitution was filed and the petitioners, as heirs, became the plaintiffs. An amended complaint was filed on March 3, 1958 and admitted by the trial court, without objection of Special Counsel Medialdea, who was served with notice on March 3, 1958.

After reception of the evidence for the plaintiffs, the lower court, on October 28, 1958, rendered a default judgment, to wit:

"* * * Wherefore, this Court hereby rendering judgment in favor of the plaintiffs and against the defendant ordering the latter to pay the amount of P2,248.00 at the rate of P2.00 per square meter as payment of the land

of the plaintiffs taken for road-way by the defendant after which the plaintiff shall execute the necessary document of conveyance in favor of the defendant, to pay the amount of P1,500.00 as attorney's fees and the costs of the proceedings."

Under date of October 30, 1958, plaintiff presented a "Motion for Execution" and on November 11, 1958, the corresponding Writ was issued. On November 17, 1958, the defendant City of Davao, thru the City Attorney A. L. Noel, filed a "Petition for Relief from Judgment", alleging for the first time, that the trial court acquired no jurisdiction over the defendant City of Davao, because it was not the City Engineer, but the City Mayor, who is under the law (Charter of the City of Davao), the right official to represent the City, and who should have been, served with summons (Comm. Act No. 51) ; that after defendant was declared in default, the plaintiffs filed an Amended Complaint, without serving copy thereof to the defendant; and that the Republic of the Philippines should have been included as a party, the subject matter of the' complaint being a national highway.

The petition was opposed by plaintiffs, claiming that the court validly acquired jurisdiction over the defendant. City of Davao, the City Engineer being an alter ego of the City Mayor and that Special Counsel Medialdea of the defendant entered his appearance, filed defendant's' Answer and presented an opposition to the motion to declare defendant in default and strike out answer. Regarding the issue on the amended complaint, plaintiffs pointed out that the Motion for Admission of the Amended Complaint and the Amended Complaint itself were served on the defendant thru the same Special Counsel Medialdea, who appeared at the hearing for the admission of said amended complaint. The Amended Complaint did not introduce substantial changes, on the cause of action; it inserted merely, in their proper places, the names and qualifications of the heirs of the deceased plaintiff.

On December 16, 1958, the lower court entered an Order, the dispositive portion of which is hereunder reproduced:

"In the foregoing, this Court believes that it has not acquired-jurisdiction over the defendant, the City of Davao, for the same was not duly served with summons but the City Engineer, who is not the legal representative of the City, and, therefore, hereby orders that the judgment rendered in this case dated October 28, 1958 be set aside and a new trial be held upon the amendments of the complaint with the City Mayor as the representative of the defendant, the City of Davao, and not the City Engineer. The plaintiffs are hereby directed to serve a copy of the amended complaint on the defendant who must answer the same within the reglementary period, and that the Sheriff, or any person acting in his behalf, is hereby prohibited from executing the judgment above stated."

The motion for reconsideration of the above order having been denied, the plaintiff filed the present petition for certiorari, claiming that the respondent judge in promulgating the said order, acted with grave abuse of discretion and in excess of his jurisdiction and that there is no appeal or plain and adequate remedy in the ordinary course of law.

Jurisdiction over the parties may be acquired by voluntary appearance in court, or by submitting pleadings in the court which has jurisdiction over the subject matter. There is no dispute regarding the fact that summons was served upon defendant City, thru the representative named in said complaint; that for some negligence on the part of its employees, the Answer of the City to the complaint was filed out of time; that the City of Davao, as represented by the City Engineer, was duly assisted by the City Attorney, thru Special Counsel Medialdea; that the City Attorney did his best to defend the rights of the City, as shown by the efforts he exerted to lift the default order by a motion for reconsideration. The appearance of the City Attorney for and in behalf of the City of Davao constituted a voluntary appearance, sufficient in law to confer upon the court jurisdiction over it. If defendant City believed that it was wrongly represented, its City Attorney should have filed, a motion to dismiss, based on such ground. Unfortunately, however, he did not. The doctrine of estoppel now operates against respondent City of

Davao. The erroneous designation of the representative, when the defendant itself is named, is, to our belief, not sufficient to set aside the proceedings had in the case. Taking into account the actuations of the defendant City of Davao, assisted by its Special Counsel and/or City Attorney, and the judicial pronouncements on the subject, we see no reason why the technical error in procedure obtaining in the present case, can be a sufficient ground to invalidate the default proceedings.

No serious argument can be offered to rebut the fact that the default judgment had already become final and executory. Respondent judge himself has issued the corresponding writ of execution. Once a decision has become final and executory, the court loses jurisdiction over the case and the parties, except to correct clerical errors and/or to enforce it. Of course, the rules (Rule 38) provide the remedies that a party may pursue, like a Motion for Relief from Judgment. However, before such motion can be properly acted upon, certain requirements are provided for which respondent City of Davao failed to comply with. From October 20, 1955, when defendant was declared in default or from March 19, 1956, when the Motion for Reconsideration of the Order declaring the defendant in default was denied, until November 17, 1958, when the petition for relief from judgment was filed, the periods provided for in Rule 38 have long elapsed (I Moran, Comments on the Rules of Court, 1957 Ed., Rule 38, sec. 3, p. 526). From the date of the Order of default (October 20, 1955) to the date of judgment by default (October 28, 1958), more than three (3) years had supervened, without the respondent City of Davao having filed opportunely any pleading to protect itself, thereby rendering itself guilty of laches. It is alleged in the petition for relief from judgment that the property, subject of the complaint, being a national highway, the Republic of the Philippines should have been included as a party defendants. This did not pass beyond a mere allegation. In its answer, the defendant set up only one defense and that is prescription of action. And the trial court found that the defendant City occupied the property and the presumption is that it used said road for its inhabitants.

In view of the foregoing facts, we find that the respondent judge acted without jurisdiction and with grave abuse of discretion in promulgating his Order of December 18, 1958 setting aside his decision of October 28, 1958 and his Order of February 13, 1959, denying the Motion for Reconsideration of the said Order. Said Orders should be, as they are hereby, set aside and declared null and void. The judgment of October 28, 1958 is ordered revived and its execution is decreed. Without costs. So ordered.

Bengzon, Acting C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, and Dizon, JJ., concur.

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