

DOROTEO F. BALA, REMEDIOS B. FLORITA, MANUEL BALA, LORETO B. SAHAGUN, RODOLFO BALA, DOROTEO M. BALA, JR., AND ESPERANZA B. GUIANG, PETITIONERS, VS. MANUEL V. ROMILLO, JR., IN HI...

G.R. No. L-38807. March 17, 1978

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

Petition for certiorari to annul and set aside the decision of the respondent court dated December 15, 1967, and all succeeding orders declaring 22 parcels of land as the property of the parties in common and ordering its partition among them.

Sometime in 1939, the spouses Gregorio Bala and Antonia Factora died intestate leaving several sets of heirs and extensive landholdings in the province of Ilocos Norte. After their death, their children and heirs merely divided the produce of the land among themselves until 1960, when herein petitioner Doroteo F. Bala took possession of 22 parcels of land under a claim that the said parcels of land are his personal and exclusive property. As a result, Rafaela Bala Vda. de Aquino, Agapito Bala, and Mariano Bala filed a complaint against their brother, Doroteo F. Bala, and the heirs of their half-sister, Melchora Racela, with the Court of First Instance of Ilocos Norte, for the partition of 39 parcels of land situated at the municipalities of Solsona, Banna, and Laoag, Ilocos Norte.[1] Attached to the complaint was a list of those parcels of land sought to be divided among them.[2]

The Hon. Wenceslao M. Ortega, then presiding judge of the province, exerted his best efforts to bring about an amicable settlement of the estate, and on May 13, 1965, the parties submitted to the court a compromise agreement, whereby they adjudicated unto themselves the undisputed parcels of land, Items 23 to 39 of the list, in the manner therein set forth,[3] and judgment was entered in accordance therewith.[4] By agreement of the parties, the court appointed Atty. Constante Taylan the receiver of the disputed 22 parcels of land,[5] and trial was held to settle the claims of the parties.

After the plaintiffs therein had rested their case, counsel for the defendant, Doroteo F. Bala, moved for a continuance, and the court postponed the hearing to November 23, 1967.[6] But, when the case was called for the continuation of the trial on the scheduled date, only the plaintiffs and their counsel appeared. The court, upon motion of the plaintiffs and after finding that the defense counsel had been properly notified of the hearing on the said day, considered the case submitted for decision.[7]

On December 15, 1967, the court rendered judgment, finding the disputed parcels of land to be the common undivided property of the parties and ordered its partition within 30 days; otherwise, the court would appoint commissioners to make the partition. Having been in possession of the disputed parcels of land for a time, defendant Doroteo F. Bala was ordered to submit an accounting of the produce of the said land for the agricultural crop years 1961-1962 to 1965-1966, inclusive.[8]

On January 5, 1968, the said defendant filed a motion for the reconsideration of the decision upon the grounds that the decision was rendered without the defendant having been given an opportunity to adduce evidence in his behalf since he was not notified of the hearing on November 23, 1967, and that he had strong and convincing evidence which, if submitted and admitted by the court, would most probably alter the result.[9] The motion, however, was not accompanied by an affidavit of merits. Hence, upon motion of counsel for the defendant, and in the interest of justice, the court allowed the defendant to submit a supplemental motion for reconsideration, to include the evidence relied upon to prove his claim of exclusive ownership of the disputed parcels of land.[10]

On February 14, 1968, the court denied the motion for reconsideration and supplemental motion for reconsideration, stating:

"After the Court has carefully considered the allegations in defendant's motion for reconsideration and the document attached thereto, which are letters supposedly written by Gregorio Bala, deceased father of the parties, and weighing them against the documentary as well as testimonial evidence presented that even if defendants is granted a new trial, the result will be just the same, and the decision will be maintained.

"Wherefore, the motion for reconsideration and the supplemental motion are hereby denied for lack of merit."[11]

Consequently, the defendant Doroteo F. Bala appealed to the Court of Appeals claiming, among others, that the trial court erred in finding that he and his counsel were duly notified of the continuation of the trial on November 23, 1967; and in granting the motion of counsel for the plaintiffs to consider the case submitted for decision, when neither the defendant nor his counsel appeared for the continuation of the trial on the said date.[12]

On August 12, 1971, the Court of Appeals dismissed the appeal for the reason that it did not appear from the face of the record on appeal that the appeal was perfected on time.[13] In due course, the appellate court returned the records of the case to the trial court for further proceedings. Upon receipt of the records, the trial court, pursuant to its decision of December 15, 1967, appointed commissioners to effect the partition, reserving to the defendant the designation of one commissioner.[14] The defendant, however, failed to nominate his commissioner so that on April 4, 1972, Carlos Manuel, the commissioner for the court, recommended the appointment of one Lorenzo C. Ranjo, a capable and impartial and disinterested person, as commissioner to represent the defendant Doroteo F. Bala.[15]

In due time, the commissioners submitted their report. But, when the case was called for the approval of said report, none of the parties appeared. However, a telegram was received by the court, purportedly sent by the defendant Doroteo F. Bala, making of record his objections to the approval of the commissioners' report for the reasons that he was not notified thereof and that he was not represented in the proceedings taken by the commissioners inasmuch as his counsel did not inform him of said proceedings. Accordingly, the respondent court reset the hearing for the approval of the commissioners' report. The clerk of the court was specifically directed to notify all the parties personally, as well as their respective counsel of record.[16]

On November 17, 1972, the court approved the commissioners' report there being no written opposition to the same,[17] and on February 3, 1973, a writ of execution was issued.[18]

On February 28, 1973, the defendant Doroteo F. Bala filed a motion to quash the writ of execution upon the ground that the order of November 17, 1972, approving the commissioner's report, is null and void for want of jurisdiction of the court rendering the same since he was not accorded an opportunity to be heard and the court

had refused to allow him to present his evidence in support of his opposition.[19]

The court denied the motion to quash the writ of execution on March 30, 1973.[20] A motion for the reconsideration of this order was filed on April 18, 1973, but the petitioner herein did not show what action the court took thereon. Again, the defendant Doroteo Bala claimed that the order was null and void because the court had no jurisdiction since he had been deprived of his day in court.[21]

On July 23, 1973, the plaintiffs therein filed a motion to order the defendant Doroteo F. Bala to render an accounting of the produce of the disputed parcels of land, as provided for in the decision,[22] which motion the court granted on August 7, 1973.[23]

On August 15, 1973, the defendant filed an opposition to the motion to order him to render an accounting. Again, the said defendant said that the decision was null and void since he was deprived of his day in court. He further stated that the appointment of commissioners was without his knowledge and consent.[24]

On October 13, 1973, the plaintiffs filed a motion to declare the defendant Doroteo F. Bala in contempt of court for failure to render an accounting of the produce of the disputed parcels of land, as ordered,[25] and on January 15, 1974, the court ordered him to appear in court on February 6, 1974 and to show cause why he should not be punished for contempt of court.[26] Doroteo F. Bala did not appear in court, as ordered, notwithstanding his receipt of the copy of the order on February 5, 1974. But, since the plaintiffs were amenable to giving the said defendant another chance to appear and defend himself, the court re-set the hearing of the incident.[27]

On June 20, 1974, Doroteo F. Bala, Remedios B. Florita, Manuel Bala, Loreto B. Sahagun, Rodolfo Bala, Doroteo M. Bala, Jr., and Esperanza B. Guiang,[28] filed the instant petition to annul and set aside the decision of the court dated December 15, 1967, and all succeeding orders, declaring the lots in question to be the undivided property held in common by the parties and ordering the partition thereof, for the reasons that the herein petitioner, Doroteo F. Bala, was not duly notified of the continuation of the trial of the case on November 23, 1967; that the case was never validly submitted to the court for decision because neither the petitioner, Doroteo F. Bala, nor his counsel appeared for the continuation of the trial on November 23, 1967; and that the disputed parcels of land are not the property owned in common by the petitioners and the private respondents.

The petition is without merit. The matter of affording relief from the failure of the party or his counsel to appear at the trial is largely discretionary with the judge and his action may not be interfered with unless abuse is patent on the record. In the instant case, the petitioner claims that he failed to appear at the trial of the case because his counsel did not receive a copy of the order setting the case for hearing on November 23, 1967 which had been returned and thereafter attached to the expediente. No reason, however, was advanced why counsel did not receive a copy of the order, although the order was sent to him by registered mail at his address of record and two notices were sent by the postmaster, the first on November 16, 1967, and the second on November 21, 1967.[29] There is, thus, no valid ground either for a motion for new trial under Rule 37 of the Rules of Court or to pray for relief from judgments, orders or proceedings under Rule 38 in which cases the only grounds for the remedy are fraud, accident, mistake or excusable negligence, or newly discovered evidence or the award of excessive damages and the existence of good and substantial causes of action or defense as the case may be.

Besides, Section 8, Rule 13 of the Revised Rules of Court provides, among others, that "Service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five (5) days from the date of the first notice of the postmaster, service shall take effect at the expiration of such time." Since the order, setting the case for hearing on November 23, 1967, was sent to counsel for the petitioner Doroteo F. Bala at his address of record, by registered mail, and that the postmaster had sent him notices to claim the registered letter, service upon the counsel for the petitioner of said order is considered complete.

Furthermore, the petitioner Doroteo F. Bala appealed to the Court of Appeals after the denial of his motion for reconsideration and supplemental motion for reconsideration, assigning as error, the findings of the trial court that he was notified of the hearing of November 23, 1967 and in considering the case as submitted for decision. After the appeal was dismissed by the Court of Appeals, no attempt was made to elevate the question of lack of notice to this Court. It is only after the lapse of almost seven (7) years from the issuance of the questioned order of November 23, 1967, and after the petitioner Doroteo F. Bala had been cited to appear in court to answer contempt proceedings, that he has brought the matter to the attention of the Court. He is now precluded from further questioning the validity of the judgment sought to be annulled and set aside; otherwise there will be no end to litigations.

WHEREFORE, the petition should be, as it is hereby, dismissed. Costs against the petitioners.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, Aquino, and Santos, JJ., concur.

[1] Rollo, p. 22.

[2] Id., p. 25.

[3] Id., p. 35.

[4] Id., p. 37.

[5] Id., p. 39.

[6] Record on Appeal, p. 39.

[7] The order reads, as follows:

"When the case was called for continuation of the trial, plaintiffs and their counsel Atty. Ruiz appeared but defendant and their counsel Atty. Balguma did not.

"The record shows that a copy of the notice of hearing was sent to Atty. Balguma by registered mail on November 10, 1967 and received. Plaintiffs had already presented their evidence and rested.

"Atty. Ruiz for plaintiffs moved that the case be ordered submitted for decision.

"Finding the motion well-founded, the case is hereby ordered submitted for decision.

[8] Rollo, p. 42.

[9] Id., p. 50.

[10] Id., p. 52.

[11] Id., p. 66.

[12] See Brief for the Appellant, First and Second Assigned Errors.

[13] Rollo, p. 71.

[14] Id., p. 81.

[15] Id., p. 82.

[16] Id., p. 83.

[17] Id., p. 84.

[18] Id., p. 85.

[19] Id., p. 87.

[20] Id., p. 89.

[21] Id., p. 91.

[22] Id., p. 94.

[23] Id., p. 99.

[24] Id., p. 100.

[25] Id., p. 101.

[26] Id., p. 102.

[27] Id., p. 108.

[28] It appears that Doroteo F. Bala had sold the disputed parcels of land to the latter named petitioners on July 16, 1971 (See Rollo, p. 135).

[29] Rollo, p. 196.

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