

ESPERANZA FERNANDEZ, PETITIONER, VS. HON. HERMOGENES CALUAG, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL BRANCH IV (QUEZON CITY) AND J.M. TUASON CO., INC.*G.R. No. L-16124. December 30, 1961*

Ponente: PADILLA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/d8271dc7d084/>**PADILLA, J.:**

In her petition for a writ of mandamus with preliminary injunction, Esperanza Fernandez alleges that on 13 January 1959 J. M. Tuason & Company, Inc, respondent herein, filed a complaint dated 1 December 1958 against her in the Court of First Instance of Rizal, Branch IV, Quezon City, for recovery of possession (accion publiciana) of 100 sq.m. of land situate in barrio North Tatalon, Quezon City, allegedly owned by the respondent corporation and covered by transfer certificate of title No. 1267 (37686-Rizal) of the Registry of Deeds of Quezon City, for collection of the sum of P30 monthly from the date of usurpation thereof by her, defendant therein and petitioner herein (January 1957), until restoration of possession to the respondent corporation, for costs, and for other just and equitable relief (civil No. Q-3789, Annex A); that on 16 March 1959 the Sheriff delivered to Jovita C. Arenas a copy of the summons and the complaint "at AIB Ave., between Quezon Blvd. and Fil-American St., Quezon City;" that on 4 April 1959 Jovita C. Arenas handed to the petitioner the copy of the summons and of the complaint she had received; that immediately on the same day the petitioner filed in the respondent court a motion alleging that the copy of the summons and the complaint were not served upon her at her residence at No. 1 South 22nd, corner Cebu Avenue, Quezon City, but upon Jovita C. Arenas, her lessee, whom she had not authorized to receive them for her and who not knowing the legal import and meaning thereof, did not give them to her until that date, when the petitioner went to collect from her (the lessee) the monthly rental of the premises, and praying that she be granted time up to 14 April 1959 within which to file her answer (Annex B); that on 6 April 1959 the respondent corporation filed in the respondent court a "motion to declare defendant (petitioner herein) in default" (Annex C); that on 8 April 1959 the petitioner filed her answer to the complaint (Annex D) and "a motion for the admission of third-party complaint" against Florencio Deudor (Annex E) with the "third-party complaint" attached thereto (Annex E-1); that on 11 April 1959 the respondent court entered an order declaring the petitioner in default and authorizing the respondent corporation to present its evidence (Annex F); that on 17 April 1959 the respondent corporation filed a motion praying that the petitioner's answer and "motion for the admission of third-party complaint" against Florencio Deudor (Annex E) and the "third-party complaint" attached thereto (Annex E-1) be denied admission in court and returned to her on the ground that having been declared in default, she had lost her standing in court (Annex G); that on 18 April 1959 the petitioner filed a verified "motion to set aside order of default" on the ground of excusable negligence, for the copy of the summons and of the complaint left by the Sheriff with Jovita C. Arenas, the petitioner's lessee, occupying the premises at AIB Avenue between Quezon Boulevard and Fil-American Street, Quezon City, whom she had not authorized to receive them for her, were delivered to her only on 4 April 1959 (Annex H); that attached to the "motion to set aside order of default" were the affidavits of Jovita C. Arenas and of the petitioner showing the excusable negligence relied upon and the facts constituting the petitioner's good and substantial defense (pp. 33-36, record on appeal, Annex L); that on 24

April 1959 the respondent corporation objected to the petitioner's motion to set aside the order of default (Annex I); that on 30 May 1959 the respondent court denied the petitioner's motion to set aside the order of default dated 11 April 1959, on the ground that there had been a valid service of summons upon the petitioner; that the latter had failed to file her answer within the reglementary period; and that the defense set up in her belated answer is not meritorious (Annex J); that on 19 June 1959 the petitioner filed an amended notice of appeal from the order denying her motion to set aside the order of default to the Supreme Court "because the issues involved are only legal and not factual" (Annex K) and an appeal bond; that on 22 June 1959 the petitioner filed her record on appeal (Annex L); that on 10 July 1959 the respondent corporation objected to the approval of the record on appeal, and appeal bond and prayed for the dismissal of the petitioner's appeal on the ground that she, having been declared in default and having failed to file a petition for relief under Rule 38 of the Rules of Court, had lost her standing in court and is not entitled to appeal (Annex M); that on 30 July 1959 the petitioner filed a reply thereto (Annex N); that on 12 August 1959 the respondent corporation filed a rejoinder to the petitioner's reply (Annex O); that on 16 August 1959 the petitioner filed a surrejoinder (Annex P); and that on 24 September 1959 the respondent court entered an order dismissing the petitioner's appeal on the ground that summons having been validly served upon her on 16 March of time to file an answer on 4 April 1959 and answer on 8 April were filed beyond the petitioner does not have a good and substantial defense (Annex Q). Upon those facts she now prays that a writ of mandamus issue directing the respondent court to allow her to appeal from the order denying order of default, and to approve the record on appeal and the appeal bond she had filed; that pending determination of her petition a writ of preliminary injunction also issue enjoining the respondent court from hearing and determining civil case No. Q-3789; for other just and equitable relief and for costs. On 2 November 1959 this Court ordered the respondents to file an answer to the petition within ten days of receipt of notice and granted the writ of preliminary injunction prayed for upon the filing of a bond of P500. After the petition had filed the required bond on the same day, this Court issued the writ.

The respondents answer and contend, among others, that summons had been validly served upon the petitioner by the Sheriff on 16 March 1959 by leaving a copy thereof and of the complaint "at her given address at AIB Ave., between Quezon Blvd. and Fil-American St., Quezon City, in the hands of Jovita G. Arenas, a person of suitable age and discretion, residing therein, * * *;" that the petitioner had failed to file her answer within the reglementary period of fifteen days and therefore was in default; that the petitioner's motion filed on 4 April 1959 (Annex B) for extension of time to answer the complaint and answer on 8 April 1959 (Annex D), filed after she had been declared in default, could not be entertained and considered by the respondent court; that the filing of such motion and answer constitutes "a recognition of the validity of the service of said summons, amounting to a waiver to objections belatedly interposed, and further estops petitioner from subsequently questioning the validity of the service of the same;" that the petitioner's motion to set aside order of default (Annex H) is not based on any of the grounds for relief provided for in Rule 38 of the Rules of Court and could not have acquired for her any standing in court; that for that reason the petitioner is not entitled to appeal from the order denying hear motion to set aside the order of default; and that the petitioner has a speedy and adequate remedy in the ordinary course of law by asking the respondent court to reconsider its order dismissing her appeal, but this she failed to do.

Mandamus is the remedy of an aggrieved party whose appeal or record on appeal is erroneously dismissed or disallowed.[1] It appears that the summons and the copy of the complaint to be served upon the petitioner were delivered to Jovita C. Arenas "at AIB Ave., between Quezon Blvd. and Fil-American St., Quezon City," on 16 March 1959; that the summons and the copy of the complaint were handed by Jovita G. Arenas to the petitioner on 4 April 1959; that on the same day, 4 April 1959, the petitioner filed in the respondent court a motion for extension of time to file her answer (Annex B) and on 8 April 1959 her answer (Annex D); that on 11 April 1959 the respondent court entered an order declaring her in default (Annex F); that on 18 April 1959 the petitioner filed

a verified "motion to set aside order of default" on the ground of excusable negligence because the copy of the summons and of the complaint left by the Sheriff with Jovita C. Arenas, a lessee occupying the premises at the address where they were delivered, but whom she had not authorize to receive them for her, were handed to her only on 4 April 1959, after the reglementary period of fifteen days within which to file her answer already had elapsed (Annex H); that attached thereto were the affidavits of Jovita G. Arenas and the petitioner showing the excusable negligence relied upon and the facts constituting the petitioner's good and substantial defense (pp. 33-36, record on appeal, Annex L); that the petitioner's good and substantial defense consists of her claim of ownership to the parcel of land in question which she acquired by purchase from Florencio Deudor; and that the petitioner's verified "motion to set aside order of default" was filed within sixty days after she had learned of the order declaring her in default and six months after the entry of the said order. From the order declaring the petitioner in default, she is entitled to appeal. The disallowance of her record on appeal and dismissal of her appeal by the respondent court constitute an unlawful exclusion of the petitioner from the use and enjoyment of her statutory right to appeal. The fact that the petitioner had not sought from the respondent court a reconsideration of its order dismissing her appeal is of no moment. When a definite question has been properly raised, argued, and submitted to the respondent court and has been passed upon by it, a motion for reconsideration of the same question is no longer necessary as a condition precedent to the filing of a petition for mandamus. [2] In the case at bar the question-whether or not the petitioner is entitled to appeal from the order denying her motion to "set aside the order of default-has been raised, argued and submitted by the parties to the respondent court in the "opposition to approval of record on appeal and appeal bond and petition to dismiss appeal" (Annex M) , filed by the; respondent corporation, in the "reply to opposition to the record on appeal" (Annex N), filed by the petitioner, in the "rejoinder to reply to opposition to record on appeal" (Annex O), filed by the respondent corporation and in the "surrejoinder to rejoinder to our reply" (Annex P), filed by the petitioner, and passed upon by the respondent court.

The writ prayed for is granted, with costs against the respondent corporation.

Bengzon, C.J., Bautista Angelo, Labrador, Reyes, J.B.L., Barrera, Paredes and De Leon, JJ., concur.

[1] Section 15, Rule 41, Rules of Court.

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