

JOSE JIMENA, PETITIONER, VS. HON. JOSE L. MADRID, AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 51, SORSOGON, AND SPOUSES VICTOR LEE, SR. AND ESTER E. LEE, RESPONDENTS.

Ponente: VIDAL, M.D., J.

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VIDAL, M.D., J.:

In this Petition for Certiorari under Rule 65 of the Revised Rules of Court, Petitioner JOSE JIMENA (hereinafter Petitioner) is seeking the reversal of the three Orders dated 19 May 2004,[1] 20 August 2004[2] and 11 November 2004[3] respectively of the Regional Trial Court (RTC), Fifth Judicial Region, Branch 51, Sorsogon City in Civil Case No. 2002-6983 for Quieting of Title and Recovery of Possession with Damages.

THE FACTS

On 25 March 2002, Respondent Spouses VICTOR LEE, Sr. and ESTER E. LEE filed a Complaint for Quieting of Title and Recovery of Possession with Damages against the Petitioner and one CRISTOBAL BANIEL. Summons were issued by the court a quo on 25 April 2002. Petitioner's daughter received the summons and signed the return, while the summons for the Petitioner's co-defendant, CRISTOBAL BANIEL, was received by the latter's wife, who refused to sign the return.

On 16 May 2002, Petitioner's former counsel, Atty. ISAGANI OCAMPO, filed an Entry of Appearance with Motion For Extension of Time To Plead, which was given due course by the court a quo in an Order dated 17 May 2002[4] granting the Petitioner 15 days from 17 May 2002 to file his answer. However, no responsive pleading was filed by the Petitioner. Hence, on 25 September 2002, or four months after the extended period, the Respondents filed a Motion to Declare Defendants in Default[5] which was granted by the court a quo on 27 September 2002.[6] Accordingly, Respondents presented evidence ex parte.

On 13 October 2003, the court a quo rendered its Decision,[7] the dispositive portion of which reads:

WHEREFORE, in light of the foregoing, judgment is hereby rendered:

- 1) Ordering the defendants to vacate the residential land denominated as Lot No. 9, Psd-05566216-013416, covered by Transfer Certificate No. T-47365, under Tax Declaration No. ARP-1999-14-003-0243, in the name of ESTER E. LEE and restore the peaceful possession to the plaintiffs;
- 2) Ordering the defendants to pay the plaintiffs jointly and solidarily the following:
 - a) commissioner's fee in the amount of Php7,000.00;
 - b) attorney's fee in the amount of Php20,000.00;
 - c) appearance fee, Php1,000.00; and
 - d) litigation expenses in the amount of Php10,000.00.[8]

On 5 December 2003, Petitioner filed a Motion for New Trial (with Affidavit of Merit)[9] on the following grounds, to wit:

- 1) that excusable negligence which ordinary prudence could not have guarded against and by reason of which

the herein defendant-movant has probably been impaired of his ri[g]hts – that is[,] due to gross negligence of counsel of the herein defendant-movant;

2) the default order and judgment were issued in violation of the rules because the herein defendant-movant was not furnished with a notice or copy of the motion to declare him in default; and

3) that the herein defendant-movant has a valid and meritorious defense of tenancy to transferree of the land subject matter of the case, thus, at the inception the honorable court has no jurisdiction to take cognizance of the instant case, but the DARAB.[10]

Respondents filed an opposition thereto dated 10 December 2003.[11] On 19 May 2004, the court a quo denied the said motion.

On 19 August 2004, Petitioner filed a Notice of Appeal with a Motion to Litigate as Pauper and be Exempt from the Payment of Appeal Docket and Other Fees. On 20 August 2004, the court a quo rendered an Order denying the appeal and the motion, the pertinent portion thereof states:

ACCORDINGLY, for non-compliance of (sic) Rule 15, Sections 4, 5 and 6 of the Rules of Court and for filing an inconsistent Notice of Appeal the same is DENIED.[12]

Petitioner's Motion for Reconsideration of 13 September 2004 was denied by the court a quo on 11 November 2004.[13]

Hence, the instant Petition, raising the following issues for Our resolution:

I

WHETHER OR NOT RESPONDENT HONORABLE PRESIDING JUDGE GRAVELY ABUSED HIS DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN ISSUING THE QUESTIONED ORDER OF MAY 19, 2004 DENYING PETITIONER'S MOTION FOR NEW TRIAL[;]

II

WHETHER OR NOT THE RESPONDENT HONORABLE JUDGE GRAVELY ABUSED HIS DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN ISSUING THE QUESTIONED ORDERS OF AUGUST 20, 2004 AND NOVEMBER 11, 2004 DENYING PETITIONER'S APPEAL AND MOTION TO LITIGATE AS PAUPER.[14]

OUR RULING

We uphold the court a quo's Order of 19 May 2002 and reverse the Orders of 20 August 2004 and 11 November 2004.

Anent the first issue, the Petitioner argued that his failure to file an answer was the fault of his negligent former counsel, whom he, being unlettered and ignorant of procedural technicalities, unquestioningly trusted. While the general rule is that the mistake of the lawyer binds the client, the law allows an exception when reckless or gross negligence of counsel deprives the client of due process of law, or when its application will result in outright deprivation of the client's liberty or property or when the interests of justice so require.[15] The Petitioner also argues that he was not furnished copies of the Motion to Declare Defendants in Default and the Order granting the same.[16]

In denying the Petitioner's motion, supra, the court a quo ratiocinated as follows:

Firstly, the defendant-movant was himself at fault for not being so vigilant and vigorous in protecting his right

or interest, if ever he maintained meritorious defense against plaintiff's claims. Nonetheless, it was his own gross negligence for not updating his case with his chosen counsel, who, as record shows, failed to file the necessary answer despite being validly served with summons. As a person whose interest in the property subject of this case is at stake, the defendant should have been more vigilant, prudent and circumspect in protecting that right. Failure to do so (sic), the declaration of default against his favor was obviously his own undoing.

Secondly, record shows that his counsel Atty. Isagani Ocampo was duly notified of the order of default contrary to the claim of the movant. It is elemental (sic) that notice to the counsel is itself a notice to his client. In such case, the procedural remedy available for the defendant was to file a motion to set aside the order of default issued by the Court. For failure to do so, the plaintiffs were correct in asking from the Court to present their evidence ex parte, which was the Court's basis in rendering judgment.

Lastly, the contention of the defendant-movant that it should be the DAR who has the jurisdiction over the case on the alleged ground that the former is a tenant of the plaintiff holds no legal basis. It is a basic rule of procedure that jurisdiction of the court over the subject matter is determined by the allegation of the complaint (Eugenio vs. Velez, 185 SCRA 425). The jurisdiction of the court cannot be made to depend upon the defenses set up in the answer or upon motion to dismiss for otherwise the question of jurisdiction would almost entirely depend upon the defendant (D.C. Crystal vs. Malaya, 170 SCRA 734). What really determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in the complaint.

Lastly (sic), granting arguendo that the defendant-movant's motion is warranted under the circumstances, and that new trial should be conducted over the case, the Court however would still not waver to alter or set aside its decision. An exhaustive review of the case clearly shows that movant has no meritorious defense to counter the plaintiff's claim. Indeed, it would appear that on the strength of the preponderance of evidence in favor of the plaintiffs, e.g. the Certificate of Title, Relocation Survey, [t]he Court's ruling that plaintiffs are the owners of the property, would legally stand. No evidence on record in favor of the defendant could influence the Court to change its mind.[17]

We agree with the court a quo.

A party may be entitled to relief from an order of default when the failure to answer was due to fraud, accident, mistake or excusable negligence and when the party has a meritorious defense.[18] The Petitioner has not shown that his failure to answer was due to any of the abovementioned reasons. In passing the blame to his errant counsel, he cannot claim excusable negligence for he is expected to be put on guard of the action commenced against him after being properly summoned and given proper notice. As correctly pointed out by the court a quo, the Petitioner, as the party whose rights were potentially at risk, was charged with the duty to vigilantly follow up with his counsel from time to time.

The ruling of the Supreme Court in Pahilanga v. Luna,[19] is highly relevant, thus:

It is within the sound discretion of the court to set aside an order of default and to permit a defendant to file his answer and to be heard on the merits even after the reglementary period for the filing of the answer has expired, but it is not error, or an abuse of discretion, on the part of the court to refuse to set aside its order of default and to refuse to accept the answer where it finds no justifiable reason for the delay in the filing of the answer. In motions for reconsideration of an order of default, the moving party has the burden of showing such diligence as would justify his being excused from not filing the answer within the reglementary period as provided by the Rules of Court, otherwise, these guidelines for an orderly and expeditious procedure would be rendered meaningless. Unless it is shown clearly that a party has justifiable reason for the delay the court will not ordinarily exercise its discretion in his favor. (emphasis provided)

Anent the second issue, We agree that the court a quo indeed committed grave abuse of discretion in denying the

Notice of Appeal. In a long line of decisions, the Supreme Court held that a defaulted party may appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default has been presented by him.[20] The reasons given by the court a quo in denying the Notice of Appeal, i.e., non-compliance with Rule 15 sections 4, 5 and 6, are contrary to the recorded evidence, which showed that the Petitioner had complied therewith.[21] The Petitioner explained that the inconsistency in the Notice of Appeal filed in the court a quo and the one originally furnished the Respondent was due to the fact that after his lawyer has prepared a Notice of Appeal with the standard clause: attached is the appeal fee as evidenced by the attached official receipt, Petitioner readily informed his counsel that he could not afford to pay the docket fees. The latter then decided that the Petitioner should file a motion to litigate as pauper. However, it came to pass that the original Notice of Appeal was already sent to the Respondent. To remedy the situation, the Petitioner resent anew a copy of the proper Notice of Appeal to the Respondent.[22]

The court a quo committed grave abuse of discretion in denying the Petitioner's motion to litigate as pauper reasoning out that his motion to litigate is of no moment inasmuch that defendants were able to secure the services of counsel, Atty. Isagani P. Ocampo and subsequently, Atty. Gojol, during the entire litigation of this case.[23] The Petitioner maintains that his previous counsel provided his services pro bono.[24] Re this stance, no evidence appears on the record to counter the same, thus rendering the court a quo's theory as conjectural and speculative. It completely disregarded the affidavits and the other supporting documents submitted by the Petitioner.

Section 18 of Rule 141 of the Rules of Court provides:

Sec. 18. Pauper-litigants exempt from payment of legal fees. - Pauper-litigants (a) whose gross income and that of their immediate family do not exceed four thousand (P4,000.00) pesos a month if residing in Metro Manila, and three thousand (P3,000.00) pesos a month if residing outside Metro Manila, and (b) who do not own real property with an assessed value of more than fifty thousand (P50,000.00) pesos shall be exempt from the payment of legal fees.

The legal fees shall be a lien on any judgment rendered in the case favorably to the pauper-litigant, unless the court otherwise provides.

To be entitled to the exemption herein provided, the litigant shall execute an affidavit that he and his immediate family do not earn the gross income abovementioned, nor do they own any real property with the assessed value aforementioned, supported by an affidavit of a disinterested person attesting to the truth of the litigant's affidavit.

Any falsity in the affidavit of a litigant or disinterested person shall be sufficient cause to strike out the pleading of that party, without prejudice to whatever criminal liability may have been incurred.

A perusal of the records show that petitioner has complied with all the evidentiary requirements for the exemption of pauper-litigants from the payment of legal fees. He has executed an affidavit attesting to the fact that he does not earn a gross income of more than P2,000.00 a month, that his children cannot provide him financial help as they are poor and that he has no real property registered nor declared in his name.[25] He has also submitted an affidavit[26] executed by Barangay Chairman ARISTEO A. LASTICA, Sr. of Barangay Balogo, who generally attested that the Petitioner is an indigent and needs financial assistance for his basic needs as well as Certifications[27] from the Assessor's office to the effect that Petitioner has no property registered nor declared in his name in the City of Sorsogon. Based on this evidence, We find that Petitioner is qualified to litigate as an indigent.

A fortiori, the court a quo committed grave abuse of discretion amounting to lack or excess of jurisdiction in not giving due course to the notice of appeal and the motion to litigate as pauper. Verily, Certiorari is the appropriate

remedy to keep in check a tribunal, board or officer acting without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.[28]

WHEREFORE, in the light of the foregoing, We find that the court a quo committed no abuse of discretion in issuing the Order of 19 May 2004. However, for reasons aforestated, We hereby REVERSE and SET ASIDE its 20 August 2004 and 11 November 2004 Orders.

SO ORDERED.

Reyes, and Lampas Peralta, JJ., concur.

[1] Rollo, pp. 54-55

[2] Id., p. 63

[3] Id., p. 67

[4] Id., p. 34

[5] Id., p. 35

[6] Id., p. 36

[7] Id., pp. 38-40

[8] Id., p. 40

[9] Id., p. 41-46

[10] Id., p. 41

[11] Id., pp. 52-53

[12] Id., p. 63

[13] Id., p. 67

[14] Id., p. 13

[15] Id., p. 15

[16] Ibid.

[17] Id., pp. 54-55

[18] Sec. 3 (b), Rule 9, 1997 Rules of Civil Procedure.

[19] G.R. No. L-48724. August 29, 1988.

[20] Tiburcio vs. Judge Castro, G.R. No. L-58997, May 28, 1988

[21] Id., pp. 57-60

[22] Id., pp. 12, 66

[23] Id., p. 67

[24] Id., p. 14

[25] Id., p. 60

[26] Id., p. 61

[27] Id., p. 62

[28] Section 1, Rule 65, 1997 Rules of Civil Procedure; Heirs of Hinog vs. Hon. Achilles Melicor, G.R. No. 140954, April 12, 2005.

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