

J. M. TUASON & CO., INC., PLAINTIFF-APPELLEE, VS. EMILIO DE LA ROSA, DEFENDANT-APPELLANT.

G. R. No. L-21904. October 29, 1966

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Suit against defendant "and all persons claiming under him" to recover possession of a 500 square-meter portion of a parcel of land described in plaintiff's Transfer Certificate of Title No. 37686, Quezon City, and to compel defendant to remove his house and other constructions therefrom, with damages. [1]

Defendant's answer, inter alia, avers that he is "the rightful and lawful owner and possessor of said land by virtue of lawful titles thereto".

The trial, originally set for February 1, 1961, was transferred "to February 9, 1961, at 8:30 a.m.", on defendant's urgent motion for postponement filed on January 31, 1961.

On the date and hour set for trial - February 9, 1961, 8:30 a.m. - neither defendant nor his counsel appeared. The court thereupon issued an order in open court delegating the reception of plaintiff's evidence to a commissioner, Paulino C. Santillan, Judicial Reporter.

On the same day, February 9, 1961, defendant urgently moved, in writing, to set aside the open court order of delegation just mentioned, and to have the case set for hearing. His reason: He did not arrive late in court.

On said day, February 9, 1961, His Honor, Judge Nicasio Yatco, rendered judgment directing defendant to remove his house and other constructions built on the land in question as well as those of other persons claiming under him; to vacate the said premises and restore possession thereof to plaintiff; to pay plaintiff P50.00 per month from January, 1952, until possession of the land shall have been delivered to plaintiff, and to pay the costs.

On February 15, 1961, the court denied defendant's urgent motion for reconsideration of February 9.

On February 16, 1961, defendant filed a motion to set aside the judgment. He there reiterated the ground set forth in his previous urgent motion of February 9, pleaded mistake or excusable negligence of counsel. But he did not allege facts constituting a substantial defense on the merits.

On February 18, 1961, the court denied the foregoing motion for the reason that it is not "in accordance with the pertinent provisions of the Rules of Court".

On February 23, 1961, defendant sought reconsideration of the decision of February 9, and the orders of February 15 and 18, all of 1961, aforesaid. He urged, amongst others, the nullity of the delegation to take evidence aforesated.

On February 25, 1961, the court denied the motion to reconsider just stated.

The Court of Appeals - to which appeal was taken [2] - certified the case to us.

1. It is beyond debate that on February 9, 1961, defendant's counsel arrived in court late for trial. The Court of Appeals so found. And not without reason. The lower court's order of February 15, 1961 denying defendants motion to reconsider the February 9 order, made of record this fact. Judge Yatco there stated that he opened the session at exactly 8:30 in the morning; that several other cases, criminal and civil, have been called ahead of this case; but that neither defendant nor his counsel appeared in court that counsel offered no explanation for lateness when he finally showed up; and that then neither defendant nor any witness was with him. Obviously, he was not ready for trial. And this, in spite of the fact that the trial was set for that date, February 9, 1961, on his motion to postpone the original hearing of February 1, 1961.

It is in this situation that we are constrained to say that the court's order of February 15, 1961 -denying plaintiff's motion of February 9, 1961 to reset the case for hearing - suffers from no infirmity at all.

2. Defendant challenges the legality of the court's order authorizing the commissioner to receive evidence. The commissioner merely took the evidence. Nothing more. He exercised no discretion at all. The taking of evidence was but a ministerial act. The all important function - rendition of judgment - was directly and personally performed by the judge himself. We perceive no Irregularity In this procedure. The judgment thus rendered is not null and void. We have heretofore ruled that delegation to a commissioner to receive evidence - "in view of the non-appearance of the defendants and their counsel" - is sanctioned by Rule 34 (now Rule 33) of the Rules of Court.[3]

3. At all events, if error it was for the court to have delegated the reception of evidence to a commissioner, such error is harmless.[[4]] Because, the substantial rights of defendant have not been impaired;[5] the error was merely procedural, not jurisdictional. So that, the proceedings below are not tainted with nullity.[[6]]

And then, no showing is offered that if the evidence had actually been taken before the trial judge, instead of before a commissioner, the judgment would have been different. Nor is it even as much as intimated that the commissioner so appointed committed an irregularity, or, for that matter, an error in the performance of his task. And, again, we say that the proceedings in the trial court are valid.

4. Having reached the conclusion that the proceedings below are not vitiated by nullity, the next problem that crops up is whether defendant is entitled to an equitable relief from judgment. The trial court's order of denial of relief, dated February 18, 1961, recites as ground thereof defendant's failure to comply with the pertinent provisions of the Rules of Court. Obviously, the court meant the lack of affidavit of merits, a prerequisite under Section 2, Rule 37, Rules of Court. The lower court is correct. Defendant's answer to the complaint, it will be recalled, avers that he is "the rightful and lawful owner and possessor" of the disputed property "by virtue of lawful titles thereto". It would have been an easy matter for him to write down under oath what his titles really are, and recite the facts constituting legal possession. He could even attach thereto his "lawful titles" and thereby convince the court that in this legal fight, he had a leg on which to stand. An affidavit containing such substantial defense becomes all the more important, considering that his adversary's (plaintiff's) claim of ownership is planted upon a Torrens title. Two motions - those of February 16 and February 23, 1961 - defendant lodged with the court in an effort to jettison the judgment below. In neither did he show that if the judgment were set aside, a different result could reasonably be expected.

It thus results that reversal of the judgment and of the orders complained of would be an idle ceremony. It would not advance or for that matter serve the ends of justice. It would only result in another waste of time, effort and expense. Paraphrasing the language of this Court in *Paner vs. Yatco, etc., et al.*,[[7]] it would be pointless to reopen this case, "for like a mirage it would merely raise false hopes and in the end avail her (him) nothing". Except, of course, the benefit of continued and prolonged possession of the disputed property to the detriment of

plaintiff's rights thereto.

Upon the record, we vote to affirm the appealed judgment and orders. Costs against defendant.

SO ORDERED.

Concepcion, Reyes, J. B. L., Dizon, Regala, Makalintal, Bengzon, J. P., Zaldivar and Ruiz Castro, JJ., concur.

Barrera, J., on leave.

[1] Civil Case No. Q-5430, Court of First Instance of Rizal, Branch V, Quezon City, entitled "J.M. Tuason & Co., Inc., plaintiff, versus Emilio de la Rosa, defendant".

[2] CA-G.R. No. 29557-R. Matters subject of the appeal: Orders of February 9, 15, 18 and 25, 1961, and the judgment of February 9, 1961, Record on Appeal, p. 37.

[3] Province of Pangasinan vs. Palisoc, et al., G.R. No. L-16519, October 30, 1962. Also in point: Wack Wack Golf and Country Club, Inc. vs. Court of Appeals et al., G.R. Nos. L-11724 and L-11725, November 23, 1959. See also: Wassmer vs. Velez, G.R. No. L-20089, December 26, 1964, where delegation was made in a default case.

[4] Section 3, Rule 53, 1940 Rules of Court; Section 5, Rule 51, 1964 Rules of Court.

[5] J. M. Tuason & Co., Inc., vs. Magdañal, G.R. No. L-15539, January 30, 1962.

[6] Joson, et al., vs. Nable, etc., et al., 87 Phil. 337, 340.

[7] 87 Phil, 271, 277.

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