

FELICIDAD CASTAÑEDA, DECEASED, SUBSTITUTED BY CORNELIO LADISLAO, PLAINTIFF AND APPELLEE, VS. BRUNA PESTAÑO, DEFENDANT AND APPELLANT.*G.R. No. L-7623. April 29, 1955*

Ponente: REYES, J.B.L., J.

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On February 26, 1951, appellee Felicidad Castañeda filed a complaint against appellant Bruna Pestano in the Court of, First Instance of Nueva Ecija (Civil Case No. 720) to quiet her title to, and be declared absolute owner of, a parcel of land located in barrio Mallorca, San Leonardo, Nueva Ecija. It is alleged in the complaint that defendant-appellee Pestaño asserts an adverse interest over the land in question, and that through fraudulent misrepresentations, she entered the same, destroying bamboo groves and carting away ripe bamboos, to the damage and prejudice of plaintiff.

Summons was served upon the defendant Pestaño on March 11, 1951, but she failed to answer within the reglementary period. On May 2, 1951, plaintiff filed a motion to have defendant declared in default. The next day, May 3rd, the defendant filed an answer. Finding defendant's answer in the records, the court below, instead of declaring her in default as prayed for in plaintiff's motion of May 2nd, set the case for hearing on the question of the admissibility of defendant's answer which was filed out of time but before the filing of the petition for default. On May 5th, defendant filed a verified written motion giving reasons why her answer should be admitted. It is alleged therein that defendant failed to answer the complaint on time because she fell ill on the third day after summons, was served upon her and that her illness lasted for 45 days, so that it was only on April 30, 1951 that she was able to get up and go to town to consult a lawyer about the case. Hearing was held on May 7, 1951, after which the parties filed memoranda and counter-memoranda on the issue of whether or not the answer should be admitted. Five months later, or on October 3, 1951, the lower court entered an order denying the admission of defendant's answer, and declaring her in default for the reason that her answer was filed about 52 days after summons, that the motion for default was filed ahead of the answer itself, and that the failure of defendant to file her answer within the time provided by the Rules did not come within the purview of excusable neglect. On October 10, 1951, plaintiff moved to have a date set for the reception of evidence in support of her case; hearing was set for October 12, 1951, and after plaintiff had presented her evidence, the court below, on January 7, 1952, rendered judgment finding her to be the lawful and absolute owner of the land in question and enjoining defendant not to molest or disturb her in her ownership and possession thereof. On February 12, 1952, defendant moved for the setting aside of the court's decision of January 7, 1952, and for a new trial. On March 4, 1952, defendant filed a supplementary motion, attaching thereto an affidavit explaining why she had failed to file an answer to the complaint on time. On March 5 and 11, 1952, the court below issued two separate orders denying defendant's motion of February 12 and her supplementary motion of March 15, 1952. Defendant appealed to the Court of Appeals, but because all questions raised in her appeal are of law, the Court of Appeals forwarded the records to this court.

The basic issue is whether or not the lower court committed error in refusing to admit defendant's answer and in declaring her in default.

It appears from the records that defendant's failure to file her answer on time was due to illness which prevented her from consulting a lawyer about her case within the period fixed by law for answer. It also appears that as soon as she got well, she wasted no time in putting her case in the hands of counsel, who in turn filed an answer promptly enough. These circumstances, which plaintiff did not even try to contradict or show to be untrue, constitute accident or excusable negligence which ordinary prudence could not have guarded against, and for which defendant-appellant can not be held blamable.

"If a party is prevented by sickness from preparing his case or attending the trial, and the circumstances are such that his personal attention and presence are necessary to the due protection of his rights, a judgment against him may be set aside on the ground of 'casualty' or 'excusable neglect'. (34 C. J. sec. 537, p. 316).

Plaintiff-appellee, on the other hand, was not particularly diligent in the exercise of her rights. She moved to have defendant-appellant declared in default only on May 2, 1951, more than a month after the statutory period for the filing of the answer had expired; and as it turned out, defendant-appellant filed her answer the very, next day after plaintiff's motion for default. Hence, no prejudice could have been caused to plaintiff by the admission of defendant's answer, since the latter had not yet been declared in default and plaintiff had not yet presented her evidence on the merits. The lower court, therefore, in the exercise of its discretion, should have admitted defendant's answer instead of declaring her in default.

Plaintiff-appellee argues that as held in *Duran vs. Arboleda*, 20 Phil., 253, and *Inchausti & Co. vs. De Leon*, 24 Phil., 224, a defendant is in default by operation of law when he fails to answer within the time prescribed, and the plaintiff may proceed to prove his case without further notice. There is no question that the defendant who fails to answer on time is already in default and not entitled to any further notice of the proceedings; but the rule is settled that the courts have the discretion to admit or not to admit an answer filed out of time, depending on the circumstances of each case, to the end that justice may be done (*Unson vs. Abrera*, 14 Phil. 147; *Bañares vs. Flordeliza*, 51 Phil., 786).

There is still another reason why, in the interest of justice, defendant-appellant should have been given her day in court. It appears from the records that she has a good and valid defense to plaintiff's action, so that the lower court should have been liberal in admitting her answer. According to the evidence for the plaintiff, she and her brother Francisco Castañeda inherited the land in question from their deceased father sometime in 1943 (Rec. App., p. 55); that they had partitioned said land verbally and had taken possession of their respective portions; and that the land now in question was the portion adjudicated to plaintiff in the oral partition. Defendant-appellant's defense to the complaint, upon the other hand, is based on a deed of sale of the same land described in the complaint (Annex A of the answer, Rec. App., pp. 13-15) executed in her favor in May, 1946, by plaintiff's brother Francisco Castañeda. The transcript of plaintiff's testimonial evidence discloses that her brother Francisco expressly admitted having signed said deed, although he allegedly was merely intimidated into so doing by the defendant (t. s. n. pp. 15-16). However, Francisco Castañeda made this allegation of intimidation without fear of contradiction from the defendant-appellant, who was not in court during the trial because she had been declared in default. There is thus the probability that if defendant had been given her day in court and allowed to present evidence to substantiate her defense, she might have succeeded in proving that Francisco Castañeda signed the deed of sale in her favor freely and voluntarily. Considering that the oral partition between plaintiff and her brother was not binding on third persons, including therein defendant-appellant, the latter would, in virtue of the conveyance made to her by Francisco, be entitled to the ownership of an undivided half portion of the whole land, which corresponds to Francisco's share therein.

Considering that the late filing of appellant's answer was uncontrovertedly due to illness, constituting accident over which she had no control; that she appears to have a meritorious defense; and that the filing of her answer only one day after the motion to declare her in default did not deprive the plaintiff of any substantial right, nor is there evidence of intent to unduly delay the case, we hold that the lower court committed error in refusing to admit defendant-appellant's answer and in declaring her in default.

Wherefore, the decision appealed from is set aside, and the lower court is ordered to admit defendant-appellant's answer and set the case for trial anew, after which another judgment should be rendered upon the evidence presented by both parties. Costs against the plaintiff-appellee.

Pablo, Acting C.J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, and Concepcion, JJ., concur.

Judgment set aside.

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