

ROSARIO DE JESUS-ALANO, PETITIONER, VS. HON. BIENVENIDO A. TAN, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, AND TRINIDAD DE LEON VDA. DE ROXAS, RESPONDENTS.*G.R. No. L-9473. November 28, 1959*

Ponente: GUTIERREZ DAVID, J.

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Sometime in 1953, Mrs. Trinidad de Leon Vda. de Roxa filed an action in the Court of First Instance of Manila for the foreclosure of the real estate mortgage made in her favor by the spouses Fernando Ocampo and Lourdes Luciano Ocampo for the security of a debt of P120,000.00 payable with 10% interest. As several months elapsed without the case being heard, the plaintiff Mrs. Roxas, after consulting Judge Gavino S. Abaya, then presiding one of the branches of the court, withdrew her suit, and availing of the services of herein petitioner Atty. Rosario de Jesus-Alano upon the recommendation of Judge Abaya, sought extrajudicial foreclosure, pursuant to Act No. 3135, as amended, by filing the necessary application with the Sheriff of Manila. Acting on the application, the sheriff sold the mortgaged property at public auction and out of the net proceeds of the sale delivered to Mrs. Roxas the sum of P153,020.00 representing the principal of the mortgage loan and its compounded interest. But it appears that, in addition to the said sum, Mrs. Roxas claimed that she was entitled to 10% attorney's fees, or P15,302.00, for on April 27, 1954 the herein petitioner Rosario de Jesus-Alano acting "for and in behalf" of Mrs. Roxas and signing as her attorney, so informed the sheriff by letter and even asked that the claim for attorney's fees be given preference over other claims. Due to this claim of Mrs. Roxas, the sheriff refused to satisfy fully from the balance of the proceeds still in his hands the claims of various creditors against the Ocampo spouses until the said claim could be decided by the court. And the sheriff having in particular declined to pay a part of the claim of judgment creditor Pacita de los Reyes Philipps, the latter brought suit in the Court of First Instance of Manila (Civil Case No. 22881) impleading, among others, the sheriff and Mrs. Roxas, as defendants, for the payment of the balance of her claim amounting to P5,145.50, plus damages. The complaint alleged that Mrs. Roxas was not entitled to any attorney's fees because the mortgage provided for the payment of such fee only in case of judicial foreclosure. In her answer, which was signed by herein petitioner Rosario de Jesus-Alano as attorney, Mrs. Roxas reiterated her claim for attorney's fees and citing Art. 2208 of the new Civil Code, contended that it was only just and equitable that such fees be paid to her. The answer also contained a counterclaim for moral damages. After hearing, the court, in its decision dated January 31, 1955, denied the claim for damages and fixed the amount to be paid by the sheriff out of the money still in his hands to the different claimants. And considering the extrajudicial as but a continuation of the judicial foreclosure previously filed and on the authority of articles 1167, 1247 and 2208 of the new Civil Code, the court made the following adjudication in favor of Mrs. Roxas:

"PREMISES CONSIDERED, the Sheriff of the City of Manila is hereby ordered to deliver the corresponding claims of the claimants in the following order of priority:

"1. To Mrs. Trinidad de Leon Vda. de Roxas, the amount of P2,500.00 representing her attorney's fees and

other expenses incurred in the foreclosure proceedings;"

Two months thereafter, or on March 31, 1955, on motion of herein petitioner Rosario de Jesus-Alano, the court issued the following order of execution:

"Petition for execution dated March 30, 1955, filed by counsel for defendant Mrs. Trinidad de Leon Vda. de Roxas being meritorious, the same is granted. Let a writ of execution issue in this case and the amount of P2,500.00 be delivered to Atty. Rosario de Jesus Alano being the lawyer of defendant Mrs. Trinidad de Leon Vda. de Roxas,

SO ORDERED."

In obedience to this order, the sheriff, on April 21, 1955, delivered to herein petitioner Central Bank Check No. CB063360 in the sum of P2,497.00.

Some 55 days thereafter, or on June 15, 1955, Atty. Jose Topacio Nueno, as attorney for Mrs. Roxas, filed in the same court a petition on her behalf, alleging in substance that the sum adjudged to her in Civil Case No. 22881 as attorney's fee belong to her and not to Rosario de Jesus-Alano, who had no right to the same because she had never engaged the latter's professional services as a lawyer and if the latter had any claim for such services, said claim had already been fully satisfied with the P350.00 paid to her; that the motion for execution was filed by Rosario de Jesus-Alano without her, Mrs. Roxas', knowledge and consent; and that she was not even notified thereof. Mrs. Roxas, therefore, asked that Atty. Rosario de Jesus-Alano be ordered to deliver the sum of P2,500.00 to her. By way of answer to this petition, Atty. Rosario de Jesus-Alano filed a manifestation stating, among other things, that the court had already lost its jurisdiction over the case, the judgment having already become final; that the order of execution directing the delivery to her of the amount of P2,500.00 was based on the fact that she acted as counsel for Mrs. Roxas in the extrajudicial foreclosure proceedings against the Ocampo spouses, and the amount was awarded, upon her petition, in her favor, "as her lien for her attorney's fees"; that all she received from Mrs. Roxas for fees and expenses was the amount of P350.00; and that in the case instituted by Pacita de los Reyes Philipps she again represented Mrs. Roxas but only to get her attorney's fees. After hearing, the court rendered on June 18, 1955 an order which reads in part as follows:

"In view of the sworn statement submitted by Mrs. Roxas and in order to determine, first, if Atty. Alano was really the lawyer of Mrs. Roxas or not, and second if the answer is in the affirmative, to what amount said Mrs. Alano is entitled for her services in accordance with the accepted rules as laid down in the case of Delgado vs. De la Rama, the Court hereby orders Atty. Alano to return and deposit with the Clerk of Court the amount of P2,500.00 within five (5) days from today and upon her failure to do so, the Court will declare said Atty. Alano in contempt of court and order her immediate arrest.

"The Court hereby sets the hearing of this motion on Saturday, June 25, 1955, at 8: 00 o'clock in the morning, for. the reception of evidence of both parties in support of their respective contentions."

Atty. Rosario de Jesus-Alano asked for reconsideration of the order, contending that the court acted without jurisdiction because the decision of January 31, 1965 is not only final but was already executed and the court had no power to modify it as no motion to set it aside under Rule 38 of the Rules of Court had been presented; that as counsel to Mrs. Roxas, she is unquestionably entitled to receive the amount of P2,500.00 since the latter does not claim the amount as her own but as fees for her attorney; that the petition of Mrs. Roxas is in the nature of a suit, and that the order of the court requiring her, petitioner, to deposit the amount with the clerk of court is in the nature of a preliminary attachment, which is illegal because it is not based on any of the grounds provided for in the Rules of Court; that the order was issued without hearing evidence and therefore violative of the due process clause of the Constitution; and that the order is likewise violative of the constitutional "provision that no person

shall be imprisoned for debt and that an accused is presumed innocent until the contrary is proved, since in the event that she, petitioner, has no money now to deposit with the clerk of court, she would be arrested in accordance with the tenor of the order. The motion having been denied, Atty. Rosario de Jesus-Alano has now come to this Court through a petition for certiorari to have the order of June 18, 1955 annulled "as issued without jurisdiction, besides being manifestly arbitrary, unjust, and unconstitutional."

The petition, we think, should be granted.

Examining the decision of January 31, 1955 in Civil Case No. 22881, we there find that the lower court, in awarding the amount of P2,500.00 in favor of the respondent Mrs. Roxas as "attorney's fees and other expenses incurred in the foreclosure proceedings,"¹ took into account the standing of her attorney—obviously referring to herein petitioner Rosario de Jesus-Alano—and actually considered that amount as the "equitable and just attorney's fees." Thus the court said:

"With respect to this point, the Court believes and so holds that the amount of P2,500.00 is a reasonable amount that can be given to Mrs. Roxas as her attorney's fees and other incidental expenses incurred by her in the foreclosure of the mortgage judicially and extrajudicially. under the circumstances, and taking into account the standing of her attorney, the Court considers this amount of P2,500.00 as the equitable and just attorney's fees."

The respondent Mrs. Roxas, who appears to be claiming the amount of P2,500.00 not for herself but for her attorney, has not contested the value of the professional services rendered by her lawyer, herein petitioner, as fixed by the lower court. Indeed, the decision has already become final and therefore conclusive as to the parties. Neither has Mrs. Roxas claimed that she engaged the legal services of an attorney other than herein petitioner Atty. Rosario de Jesus-Alano for the foreclosure of the real estate mortgage made in her favor. Another attorney, it is true represented her, Mrs. Roxas, in the action filed for judicial foreclosure—which was later withdrawn without the case being heard—that it does not appear that this attorney has ever asserted any claim for attorney's fees. This could very well be the explanation why Mrs. Roxas did not insist upon her original claim of P15,032.00 for attorney's fees and instead had it reduced to only P3,000.00. Upon the other hand, it is not disputed that petitioner had actually rendered professional services to Mrs. Roxas in the foreclosure proceedings which resulted in the latter being able to recover the total sum of P153,020.00 representing the principal of the mortgage loan and its compounded interest. The record also shows that petitioner appeared as counsel for Mrs. Roxas in Civil Case No. 22881, which appearance, in the absence of any showing to the contrary, is presumed to be authorized. (Sec. 20, Rule 127, Rules of Court.)

It will thus be seen that the lower court has, in its decision of January 31, 1955 in Civil Case No. 22881, already fixed at P2,500.00 the value of herein petitioner's legal services rendered to Mrs. Roxas. Apparently, the court was familiar with the nature and extent of petitioner's professional services to Mrs. Roxas, for it expressly found that amount "under the circumstances and taking into account the standing of her attorney * * * as the equitable and just attorney's fees." Such being the case, and considering the facts on record, we see no valid reason Why the court should still require a hearing to determine, as stated in the order complained of, petitioner's right to attorney's fees and compel her to pay the sum of P2,500.00 into the court preliminary to that hearing under pain of contempt and imprisonment in case of failure to do so. To hold such a hearing would only result in duplicity of proceedings and would furthermore have the effect of permitting the reopening of a case which has already become final.

In any event, it is to be observed that the amount of P2,500.00 in question was by the writ of execution ordered delivered to petitioner, she "being the lawyer of the defend ant Mrs. Trinidad de Leon Vda. de Roxas." Petitioner has, therefore, acquired, and may validly exercise, a general or. retaining lien over the amount of P2,500.00. As

provided in the first sentence of section 33 of Rule 127 of the Rules of Court, "An attorney shall have a lien upon the funds, documents and papers of his client which have law fully come into his possession, and may retain the same until his lawful fees and disbursements have been paid, and may apply such funds to the satisfaction thereof." Such lien has been held to extend to moneys collected by the attorney for his client in the course of his employment, whether or not upon a judgment or award. (5 Am. Jur. p. 389.) The petitioner being in possession of the general or retaining lien conceded to her by the first part of section 33 of Rule 127, there can be no question that she had the right to retain the amount of P2,500.00 and to apply it to the satisfaction of her claim for attorney's fees, the same having been already adjudicated as the reasonable value of her professional services to the respondent Mrs. Roxas. Courts, in the exercise of their exclusive and supervisory authority over attorneys as officers of the court, are bound to respect and protect the attorney's lien, which, as held in the case of *Rustia vs. Abeto* (72 Phil., 133), "is necessary to preserve the decorum and respectability of the profession." (See also *Ulanday vs. Manila Railroad Co.*, 45 Phil., 540.)

We note, however, that petitioner had already been paid by the respondent Mrs. Roxas the amount of P350.00 during the foreclosure proceedings. That amount, in the light of the view we have taken of the case—not to mention the fact that there is no claim that the amount of P2,500.00 adjudicated as professional fees is unreasonable or insufficient—should be returned to the respondent Mrs. Roxas.

Wherefore, it being understood that the amount of P350.00 shall be returned by petitioner to the respondent Mrs. Trinidad de Leon Vda. de Roxas, the petition for certiorari is granted, and the preliminary injunction heretofore issued made permanent. Without costs.

Paras, C. J., Bengzon, Padilla, Labrador, and Barrera, JJ., concur.

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