

SANTIAGO AQUIÑO AND DIONISIA AGUIRRE, PETITIONERS, VS. MANUEL BLANCO, JUDGE OF FIRST INSTANCE OF ILOILO, AND DOMINGA SALVERON, RESPONDENTS.

G.R. No. L-1532. November 28, 1947

Ponente: HILADO, J.

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HILADO, J.:

On February 5, 1947, the Court of First Instance of Iloilo in an action brought therein by petitioners Santiago Aquino and Dionisia Aguirre, as plaintiffs, against respondent Dominga Salveron, as defendant, rendered judgment of which the following was the dispositive part:

"Por tanto, se dicta sentencia declarando que la demandada Dominga Salveron es la dueña de la parcela de terreno No. 1 de la demanda; y que los esposos demandantes Dionisia Aguirre y Santiago Aquino son los dueños de la parcela de terreno No. 2 de la demanda. Sin especial pronunciamiento en cuanto a las costas."
(Petition, p. 1.)

At the trial of that case the therein defendant Dominga Salveron was represented by Atty. Basilio Sorioso. Later said attorney was appointed, and qualified, as Assistant Provincial Fiscal of Iloilo, which position he was occupying on February 11, 1947. On this last date notice of the aforementioned judgment was served on him. For reasons which do not appear in the record, service of said judgment was served on Mr. Sorioso despite the fact that he was no longer in private practice and was already discharging the official duties of assistant provincial fiscal. The verified answer of respondent Dominga Salveron in the present proceedings alleges these last facts, and further avers that she only knew that a decision had been rendered in the case after the 21st of March, 1947, when the writ of execution in the meantime issued was served on her. This case having been submitted to this Court without the production of evidence but merely upon the verified petition and verified answer, under the doctrine laid down by this Court in *Evangelista vs. De la Rosa*, 76 Phil., 115, as well as in the case of *Bauermann vs. Casas*, 10 Phil., 386, 390, the petitioners must be understood to admit the truth of all material and relevant allegations of the adverse party, and to rest their petition upon those allegations taken together with such of their own as are admitted in the pleadings. Under this rule, the allegations of respondent Dominga Salveron above referred to must be accepted. But this is not all; there exists in the record of the instant case the affidavit of Mr. Basilio Sorioso dated April 1, 1947, which was attached to the defendant's (Dominga Salveron's) motion of April 2, 1947 (Annex A of answer) testifying to the following facts, among others: that he was the attorney of said defendant in the said case; that he received a copy of the decision of the court on February 11, 1947, when he was already in the discharge of the duties of assistant provincial fiscal; that being very busy in the performance of said duties when he received said copy, he left said decision on his table, and due to the many tenancy cases he was then attending to, and even up to the date of his affidavit, aside from attending to the trial of the cases assigned to him, he failed to notify said defendant, who was then living in Anilao, which is 45 kilometers from the City of Iloilo, of the same; that his failure to notify said defendant was due to inadvertence or excusable negligence on his part as at the time the copy of the decision was served on him he was no longer practising law but was discharging

his official duties as assistant provincial fiscal and there was at the time when he received said copy so many tenancy cases he was attending to and there were so many papers on his table that the said decision "just slipped out of my mind"; that a few days after the issuance of the writ of execution on March 21, the same was served on the defendant and the decision came to her knowledge; and that had the defendant been notified of the decision she would have taken steps to appeal therefrom because she believes she has a good case.

When Attorney Sorioso was appointed to the position of assistant provincial fiscal and therein qualified, by operation of law he ceased to engage in private law practice, and as a consequence he became simultaneously disqualified to continue representing his former client, the herein respondent Dominga Salveron, in the above-mentioned case. So that in contemplation of law the notice of the decision upon him on February 11, 1947, was not a notice upon said respondent, and the period for perfecting an appeal on the part of the latter in reality did not then commence to run but only, if at all, when she acquired knowledge of said decision upon the service on her of the writ of execution on March 26, 1947. But even if the above facts had not intervened, there is in the record a clear showing that the case is wholly covered by Rule 38, section 2.

The writ of execution thus issued under date of March 21, 1947, was served on respondent Dominga Salveron, as defendant, on March 26, 1947, according to paragraph 3 of the petition. But as alleged in paragraph 4 of the same petition and also in paragraph 4 of the answer, said respondent under date of April 2, 1947, filed a petition to vacate said writ of execution. And although said petition was first denied by vacation Judge Villalobos, it was later granted by respondent Judge Blanco through the latter's order of May 24, 1947, quoted in paragraph 5 of the petition herein. That writ of execution was an "order" or "proceeding" entered or taken against said respondent, as defendant, within the meaning of Rule 38, section 2, providing:

"SEC. 2. Petition to Court of First Instance for relief from judgment or other proceeding thereof.—When a judgment or ordered is entered, or any other proceeding is taken, against a party in a Court of First Instance through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same cause praying that the judgment, order, or proceeding be set aside."

Under these facts and circumstances, we are satisfied that a good case for equitable relief has been made out under Rule 38, section 2, and that Judge Blanco did not abuse his discretion in entering his order of May 24, 1947, quoted on page 3 of the instant petition, setting aside the order dated April 29, 1947, entered by vacation Judge Villalobos, and permitting the therein defendant to present a record on appeal.

Petition dismissed, with costs.

Paras, Perfecto, Briones, and Tuason, JJ., concur.

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