

ENRIQUE B. DOMINGO, ET AL., PLAINTIFFS, ENRIQUE B. DOMINGO, PLAINTIFF-APPELLANT, VS. MAXIMO DE LA CRUZ, ET AL., DEFENDANTS-APPELLEES.

G.R. No. L-24932. June 27, 1968

Ponente: ANGELES, J.

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ANGELES, J.:

Enrique B. Domingo, one of the plaintiffs in Civil Case No. Q-7270 of the Court of First Instance of Rizal, appeals from the order of that court deny-ing his petition for relief of judgment therein.

The antecedents are recited in the judgment from which relief is sought, as follows:

"Plaintiffs, legitimate children and descendants of the late Eustaquio Beltran by first marriage to the late Severina Dizon, sue defendants, collateral heirs of the late Pelagia de la Cruz, se-cond wife of Eustaquio Beltran, for the partition of real proper-ties and bank deposits which plaintiffs are claiming to be conjugal assets of the deceased spouses Eustaquio Beltran and Pelagia de la Cruz. It is alleged in the amended complaint that Eustaquio Beltran brought into his marriage with Pelagia de la Cruz an untitled, income producing, ten-hectare rice lands, situated in Bago-bantay Quezon, City; that from the income of said rice lands, the couple were able to purchase on installment Lot No. 335 of the Piedad Estate x x x and Lot No. 293-B x x x x x; that on January, 1958, Pelagia de la Cruz sold Lot No. 335 of the Piedad Estate to the Peoples Homesite and Housing Corporation for P125,576.75, part of which were used in buying pro-perties and the balance deposited in the banks. Plaintiffs also seek to partition a parcel of land allegedly in possession of defendant Maximo de la Cruz, but the same can not be considered as involved in this case because neither the plaintiffs nor the court can determine its exact identity.

"In their answer, defendants claimed that the ten hectares rice lands which plaintiffs alleged to have been brought by Eustaquio Beltran into his marriage with Pelagia de la Cruz never belonged to Eustaquio Beltran nor to any of the plaintiffs; that Lot No. 293-B of the Piedad Estate was acquired by the late Pelagia de la Cruz with her own money long after the death of her second husband Eustaquio Beltran; and that Lot 335 of the Piedad Estate was formerly a Friar Land owned and disposable by the Government of the Philippines, through the Director of Lands, pursuant to Act No. 1120; that the late Pelagia de la Cruz contracted to buy on installment said lot from the Government in or about the year 1912, the first few installment were paid by Eustaquio Beltran and the remaining installments were settled by Pelagia de la Cruz; and that after the installments were paid, the Government caused a transfer certificate of title issued to Pelagia de la Cruz as sole and exclusive owner thereof.

"On October 25, 1963, defendants filed a request for admission re-requesting plaintiffs to admit or deny that the 10 hectares rice lands referred to in the complaint, and from which income Lot Nos. 335 and 293-B of the Piedad Estate were allegedly purchased, were originally registered in the names of Mariano Severo Tuason y de la Paz, Teresa Eriberto Tuason y de la Paz, Augusto Numberto Tuazon y de la Paz, and Angel Ordoñez y de la Paz as appearing under Original Certificate of Title No. 736 of the Office of the Register of Deeds of Rizal; that in or about the year 1934, the Tuason family recovered possession of said lot through execution of a court decision

declaring the Tuason family as the true owners thereof and neither Eustaquio Beltran, nor the plaintiffs have a right to the possession of the land. Plaintiffs' answer to said request for admission, denying the matters of which defendants have requested an admission, was not made under oath. Under the provisions of Section 2 of Rule 26 of the new Rules of Court, each of the matters treated in a request for admission not specifically denied under oath by the party to whom the request is directed shall be deemed admitted.

"Contending that there is no genuine issue as to any material fact of the case, defendants move, with supporting affidavit and public documents sustaining the allegations of their answer to plaintiffs' amended complaint, for a summary judgment. Plaintiffs did not serve opposing affidavits in accordance with Section 3, Rule 34 of the new Rules of Court, which failure negates their claim for the existence of a genuine or debatable issue of facts."

On June 8, 1964, the lower court rendered summary judgment in favor of the defendants and against the plaintiffs by dismissing the case.

Under date of October 23, 1964, the plaintiffs filed petition for relief claiming that the decision was rendered by the court *a quo* due to fraud committed by the defendants in connivance with one of the plaintiffs, Victoriano Beltran, the commission of which is being shown in the affidavit attached to the petition; and that plaintiffs have a good and substantial cause of action against defendants.

On November 12, 1964, the defendants opposed the petition for relief on the grounds that: (1) the petition is not authorized by Sections 2 and 3 of Rule 38, in that it was filed beyond the sixty-day period; that it recites no extrinsic fraud in the procurement of the judgment in the case; that neither the petition for relief nor the affidavit in support thereof state facts constituting petitioner's good and substantial cause of action; and (2) that the appearance of Atty. Arsenio Gumahad is unauthorized.

On December 11, 1964, the petition was denied on the ground of late filing, "it appearing that it was filed only on October 23, 1964, 125 days after plaintiffs learned of the judgment complained of on June 20, 1964." Motion for reconsideration of this denial has likewise failed.

Only one of the plaintiffs has appealed, and the question raised in his appeal is whether or not the petition for relief was filed properly.

Section 3, Rule 38 of the Rules of Court, which governs the issue, reads:

"Time for filing petition; Contents and verification. - A petition provided for in either of the preceding sections of this rule must be verified, filed within sixty (60) days after the petitioner learns of the judgment, order, or other proceeding to be set aside, and not more than six (6) months after such judgment or order was entered, or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be."

It appears here that the court rendered judgment on June 8, 1964. Plaintiffs were served with copy thereof on June 20, 1964. And, only on October 23, 1964, the plaintiffs filed the petition for relief. So, in the order of the court, dated December 11, 1964, it correctly said:

"Considering that the petition for relief from judgment presented by plaintiffs, thru counsel, has been filed beyond the period allowed by law, it appearing it was filed only on October 23, 1964, 125 days after plaintiffs learned of the judgment complained of on June 20, 1964, said petition is hereby denied."

In appellant's brief, mention is made about a motion for reconsideration filed by the plaintiff-appellant on July 20, 1964. It is claimed that the sixty-day period to file the petition for relief should be counted from the denial of

the said motion for reconsideration. The argument, however, is untenable because it is based upon a mere allegation which is not supported by evidence, for nowhere in the record on appeal does it show that such a motion had been filed. The order of the court itself refutes the contention.

Some word about the affidavit submitted by the plaintiffs in support of their allegation of fraud committed by the defendants on account of which they were able to procure judgment in their favor. In substance, all that was stated in that affidavit was that, originally, Atty. Arsenio Gumahad was employed to represent all the plaintiffs in the controversy; that on February 25, 1964, Victoriano Beltran discharged Atty. Gumahad and hired one Atty. Ubarra to take his place; that Atty. Ubarra failed to submit, as required by the court, a memorandum on the question of whether the Friar Lands Law should be applied in the case and not the Civil Code; and that Atty. Ubarra merely requested for extensions of time to file the same.

The fraud claimed to have been committed here allegedly consists in the fact that Victoriano Beltran, in dismissing Atty. Gumahad as counsel for plaintiffs, misrepresented himself to be one of the plaintiffs while in reality he is only a son of one of them; that Atty. Ubarra was not in a position to prosecute plaintiffs' rights and interests because he belonged to the same law office that handled the estate and inheritance tax case of the late Pelagia de la Cruz whose properties are being litigated.

The mere failure of Atty. Ubarra to file a memorandum in behalf of plaintiffs is no reason for us to conclude that there was connivance between him and the defendants. For it seems that the other plaintiffs themselves did not even feel to have been cheated or defrauded by Ubarra's replacement of their first lawyer, otherwise, they should have joined the herein plaintiff-appellant in this appeal. What appears evident is that there has been an intramural misunderstanding among the plaintiffs as to who should be their lawyer. According to defendants, in their opposition to relief from judgment filed in the lower court, after the summary judgment, both Attys. Gumahad and Ubarra filed separate motions for reconsideration thereof, without any allegations, however, as to fraud. After denial of these motions, no appeal was interposed by either. Atty. Gumahad, who is again representing the plaintiff-appellant here, has himself waived the defense of fraud for not having raised it in his motion for reconsideration.

At any rate, We believe that a memorandum from Atty. Ubarra in behalf of the plaintiffs, discussing the applicability of the Friar Lands Law to the controversy, would not have altered the result. As the quoted portion of the decision shows the reason for its summary nature was plaintiffs' failure to specifically deny each of the matters treated in defendants' request for admission,[1] and also their failure to serve opposing affidavits to defendants' motion for summary judgment, which failure negated their claim for the existence of a genuine or debatable issue of facts.[2]

Upon the foregoing considerations, there is no justification for Us to overrule the conclusion reached by the court below. The order appealed from is hereby affirmed, with costs against the plaintiff-appellant.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, and Fernando, JJ., concur.

[1] See Section 2, Rule 26.

[2] Sec. 3, Rule 34.

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