

MARIANO DIAZ AND LEONCIA REYES, PLAINTIFFS AND APPELLEES VS. PASCUAL MACALINAO, ET AL., DEFENDANTS AND APPELLANTS.

G. R. No. 10747. January 31, 1958

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from a judgment of the Court of First Instance of Isabela, Hon. Manuel Arranz presiding, ordering the defendants to restore to the plaintiffs the possession of the land described in the sketch, Exhibit "B", to pay the plaintiffs the sum of P2,100 as damages, and to pay the costs.

Plaintiffs-appellees brought this action, alleging that they are absolute owners of a parcel of land situated in Barrio Aneg, Tumauni, Isabela; that said land was acquired as a homestead by Maria Diaz in the year 1939, by virtue of her H.A. No. 229763 (Entry No. 138890), approved by the Secretary of Agriculture and Natural Resources on November 29, 1950; that plaintiffs herein, parents of Maria Diaz, succeeded to the possession of the said homestead; that defendants illegally took possession of a portion of the said homestead, containing an area of 6 hectares and yielding an annual harvest of 480 cavans of palay valued at P7.00 per cavan. They pray that judgment be rendered ordering the defendants to deliver to them the land in question together with its annual produce since 1948 up to the termination of the case, and to pay the costs.

The defendants filed a motion to dismiss, but the same was denied. As the defendants failed to file an answer, they were declared in default, and after presentation of the evidence for the plaintiff, judgment was rendered ordering the restoration of the land to the plaintiffs, the payment of P2,100 by the defendants to the plaintiffs, and the payment of costs. On November 18, 1953, the decision was, however, set aside on a motion for relief from judgment, because the court found that the attorney for the defendants was not furnished with copy of the order of the court denying the motion to dismiss. The order set the case for trial in the 1954 calendar.

Subsequently, however, the defendants were again declared in default, and after a hearing of the evidence for the plaintiffs, the court again rendered a judgment identical to that which it has previously promulgated. This was on August 25, 1955. Upon notice of the judgment the defendants moved for a new trial on the ground that the lawyers who received a copy of the order for relief from judgment was not their counsel but one who was temporarily engaged by them; that the failure of the defendant's attorney to file their answer within the time fixed by the Rules was due to excusable negligence of their counsel; that they have a good and meritorious defense because defendant Pascual Macalinao is another homestead applicant and his application conflicts with that of the late Maria Diaz, predecessor-in-interest of the plaintiffs, and that the other defendants have no interest or right over the land subject matter of the action. The court, however, denied the motion for new trial, and upon such denial and after a denial also of the motion for reconsideration of the order of denial, they appeal directly to this Court.

The assignment of errors raised on this appeal is as follows:

"1. The trial court erred in not sustaining the defendants-appellants' motion to dismiss on the ground that said

court has no jurisdiction of the subject-matter of the action or suit.

2. The trial court erred in holding that its decision by default of August 25, 1955, has already become final and executory, and therefore could no longer be set aside and grant a new trial to the defendants-appellants.

3. The trial court erred in not entertaining defendants-appellants' motion for new trial so as to afford them the chance of putting up their defense of res adjudicata." (pp. 1 & 2, Brief for the Defendants-appellants.)

In support of the first assignment of error it is argued that as the land subject matter of the action is still a part of the public domain, no homestead patent or title has been issued as yet, and consequently the one that has jurisdiction over the case is the Director of Lands. The action presented is not one of ownership, although plaintiffs allege ownership and pray that the land be declared in their favor. However, the allegation of ownership in the complaint is not incompatible with the allegation that the plaintiffs have succeeded to the right of a homesteader who has been granted entry but to whom no homestead patent has yet been issued. The allegation of ownership and the prayer therefor may, therefore, be considered as a mere surplusage and this case be considered as an action for possession. The complaint alleges that the defendants entered possession in 1948. The case is, therefore, one for the determination of the right of possession, whether it is the plaintiffs or the defendants who have a right thereto. Inasmuch as the possession of the defendants has lasted for more than three years, there is no doubt that the action falls within the jurisdiction of the court of first instance and not of the justice of the peace of court.

The contention that the Director of Lands has the jurisdiction to determine which of the rival homesteaders should be entitled to possess is without merit. A homestead entry having been permitted by the Director of Lands the homestead is segregated from the public domain and the Director of Lands divested of the control and possession thereof except if the application is finally disapproved and the entry annulled or revoked.

There is also no merit in the second assignment of error. The record sustains the finding of the trial court that the motion for new trial was presented after the judgment had become final and executory. The first order of default was issued on June 15, 1953 and the defendants learned of the decision on September 26, 1953, and the decision was a default judgment. As a matter of fact the court set aside the first judgment of default on November 18, 1953. Since September 26, 1953, when the defendants presented their motion to set aside the judgment, they were aware that they had not presented their answer. From that day, September 26, 1953, up to the second judgment by default on August 25, 1955, the defendants had not filed their answer to all, inspite of the fact that the court had set aside its previous judgment by default to give an opportunity to the defendants to file an answer to the complaint. The reason given to the effect that another lawyer was notified of the order setting aside the judgment of the court is no excuse for delaying the presentation of an answer. The lawyer who appeared for defendants to secure the relief from the first default judgment was the lawyer who should be notified of the order of relief and the defendants were bound by the notice to such lawyer. Since the notification to their lawyer no answer had been presented by defendants and such notification took place around September 26, 1953. So that for about two years they have failed to file an answer and they cannot claim now that they have presented their motion for new trial in due time.

The resolution of the second assignment of error renders unnecessary the consideration of the third assignment.

Judgment is hereby affirmed, with costs against defendants-appellants.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

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