

NICANOR E. GABRIEL AND RICARDO INTERIOR, PLAINTIFFS AND APPELLANTS, VS. CAROLINO MUNSAYAC AND RAFAEL DE LEON, DEFENDANTS AND APPELLEES.

G.R. No. 12143. June 30, 1960

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Nicanor E. Gabriel brought this action before the Court of First Instance of Isabela to recover from Carolino Munsayac and Rafael de Leon certain sums of money allegedly advanced by the former to the latter in connection with the construction of a government project known as the "Pinakanawan Bridge Approach" along the Cagayan Valley road which was the subject of a contract entered into between plaintiff and the government on June 5, 1950, plus damages and attorney's fees.

Defendants filed separately their respective answers setting up certain special defenses and a counterclaim. After trial, the court rendered judgment ordering defendant Munsayac to pay to plaintiff the sum of P674.35, but plaintiff in turn was ordered to pay defendant Rafael de Leon the sum of P4,351.92 as prayed for in the latter's counterclaim.

On September 28, 1955, plaintiff filed a motion for new trial, which was denied by the court in an order entered on October 15, 1955. And on October 19, 1955, plaintiff gave notice of his intention to appeal from the decision rendered by the court on August 24, 1955.

On November 11, 1955, defendant Munsayac filed a motion to dismiss the appeal on the ground that the notice of appeal was filed beyond the reglementary period considering that the motion for new trial filed by plaintiff was merely pro-forma as it does not conform with the rule relative to a motion for new trial. On December 10, 1955, plaintiff filed a petition for relief praying that the order of the court of October 15, 1955 denying plaintiff's motion for new trial on the ground that it was merely pro-forma be set aside, to which defendant Munsayac filed an opposition on January 23, 1956. On October 29, 1956, the court, considering the reasons alleged in the opposition well founded, denied the motion for relief. Plaintiff interposed the present appeal seeking to set aside the order denying his petition for relief as well as the order denying his motion for reconsideration.

It should be noted that the decision of the trial court on the merits was rendered on August 24, 1955, copy of which was received by plaintiff's counsel on September 3, 1955. On September 28, 1955, plaintiff's counsel filed a motion for new trial with the request that it be included in the calendar for October 15, 1955 stating as reason the fact that counsel for plaintiff will be busy appearing before the House Electoral Tribunal in an election case then pending before it. The purpose of counsel was to appear before the court on said date and argue his motion orally and if necessary "supply" his oral argument with a written memorandum. However, he sent a telegram on October 14, 1955 praying that the hearing be postponed to October 18, 1955 alleging again as reason the fact that he was busy attending to the electoral protest. But when he went to Ilagan, Isabela on October 18, 1955 ready to argue on his motion for new trial he was surprised to find that his said motion was denied on October 15, 1955.

Plaintiff's counsel advanced as reasons for his petition for relief the following facts: that it was his intention to support his oral argument on the motion for new trial with a written memorandum so much so that he started its preparation in Ilagan, Isabela after filing the motion for new trial, but could not finish it on time as he had to leave for Manila in order to overtake the hearing of the electoral case between Albano and Reyes; that instead of finishing the memorandum, counsel prepared a supplementary petition for new trial wherein he pointed out in detail the errors which in his opinion were committed in the decision, putting the original and the copies in different envelopes ready to be sent to the court and to the parties, but when he went to the post office to mail them he found the same already closed; that in the morning of September 13, 1955, being indisposed because he was then suffering from severe headache, plain tiff's counsel decided to see his doctor for treatment and entrusted the three envelopes to his housemaid, one Virginia de Vera, with the request to mail the same, but unfortunately Virginia lost the three envelopes and failed to inform counsel of her failure to mail them. Counsel now claims that the trial court committed a grave abuse of discretion in denying the petition for relief.

There is no merit in the appeal. The record shows that appellant as well as his counsel received notice of the decision of the court on September 3, 1955. On September 28, 1955, appellant's counsel filed a motion for new trial which he asked that it be calendared for hearing on October 15, 1955. On October 15, 1955, the trial court issued an order denying the motion on the ground that it was merely pro-forma. On October 15, 1955, appellant's counsel received copy of the order denying the motion, and on October 19, 1955, He filed a notice of appeal from the decision on the merits. On November 11, 1955, appellee's counsel filed a motion to dismiss the appeal on the ground that it was filed beyond the reglementary period. On December 10, 1955, appellant's counsel filed a petition for relief, which the trial court dented on October 29, 1956.

It is apparent that the order of the trial court rendered on October 15, 1955 denying the motion for new trial on the ground that it is merely pro-forma has already become final for failure of appellant to ask for its reconsideration within the period of thirty days from the date it was received by counsel, inasmuch as instead of filing a motion for reconsideration he gave notice of his intention to appeal from the decision on the merits. It would appear, therefore, that appellant cannot now attack its validity for the first time in this instance.

But counsel may claim that the validity of said order has in fact been assailed in his petition for relief wherein he asked that it be set aside considering the explanation he has advanced justifying his failure to appear at the hearing of the motion for new trial, as well as his failure to send the supplementary petition wherein he set forth the reasons pinpointing the errors allegedly committed by the trial court. But the trial court acted correctly in not according merit to the alleged attempt to file a supplementary petition for new trial, considering that the petition for relief was filed on December 10, 1955, or almost a month after appellee's counsel had filed his motion to dismiss the appeal. This fact proves the groundlessness of counsel's claim that he prepared such supplementary petition and gave it to one Virginia de Vera for mailing, because if such claim were true counsel would have immediately filed a motion for reconsideration setting forth the reason for his failure to comply with the rule. But, as the record shows, instead of filing such motion, he gave notice of his intention to appeal, apparently in the belief that he could do away with such, technicality thru an oversight on the part of appellee's counsel. Verily, the alleged preparation of a supplementary petition is but an afterthought or a last-minute effort to obviate the objection that the motion for new trial was merely pro-forma, which scheme cannot justify a petition for relief.

"The granting of a motion to set aside a judgment or order on the ground of mistake or excusable negligence is addressed to the sound discretion of the court (See *Coombs vs. Santos*, 24 Phil., 446; *Daipan vs. Sigabu*, 25 Phil., 184). And an order issued in the exercise of such discretion is ordinarily riot to be disturbed unless it is shown that the court has gravely abused such discretion. (See *Tell vs. Tell*, 48 Phil., 70; *Macke vs. Camps*, 5 Phil., 185; *Calvo vs. De Gutierrez*, 4 Phil., 203; *Manzanares vs. Moreta*, 38 Phil., 821; *Salva vs. Palacio & Leuterio*, 90 Phil., 781; 53 Off. Gaz. [10] 3089.) Where, as in the present case, counsel for defendant was given

almost, one month notice before the date set for trial, and upon counsel's failure to appear thereat, the trial court received the evidence of the plaintiff and granted the relief prayed for, the trial court did not abuse its discretion in refusing to reopen the case to give defendants an opportunity to present their evidence." (Palileo vs. Cosio, 97 Phil., 919; 51 Off. Gaz., No. 12, 6181)

Wherefore, the order appealed from is affirmed, with costs against appellants.

Paras, C. J., Bengzon, Padilla, Montemayor, Labrador, Concepcion, Reyes, J. B. L., Barrera, and Gutierrez David, JJ., concur.

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