

**PERFECTO DIZON, FELIX DIZON AND EMITERIO DIZON,
PETITIONERS AND APPELLANTS, VS. FERMIN LEAL, RESPONDENT
AND APPELLEE.**

G.R. No. 12696. May 20, 1959

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from a decision of the Court of First Instance of Isabela, dismissing a petition filed by petitioners herein in Civil Case No. 381, entitled Perfecto Dizon, et al., vs. Fermin Leal, for annulment of the decision in Civil Case No. 322 of the same court, entitled Fermin Leal vs. Perfecto Dizon, et al. The case was forwarded to this Court by the Court of Appeals on the ground that only questions of law are involved in the appeal.

The record discloses that the following proceedings took place in the Court of First Instance in Civil Case No. 322:

"In Civil Case No. 322 of this court, Fermin Leal sued Perfecto Dizon, Felix Dizon and Emitterio Dizon for the recovery of possession of the land covered by his homestead application; that defendants Perfecto Dizon, Felix Dizon and Emitterio Dizon were duly served with summons on April 27, 1951; that on May 4, 1951, they filed a motion to dismiss the complaint; that on May 22, 1951, upon motion of plaintiff's counsel, they were declared in default; that on May 26, 1951 Dominador P. Nuesa, as counsel for the defendants, filed a motion to set aside the order of default against the defendants; that the said motion was heard and was denied by the court in its order dictated in open court on May 26, 1951 (page 52, record, Civil Case No. 322); that in the same date, May 26, 1951, immediately after the order denying the motion to set aside order of default was issued, plaintiff was allowed to present his evidence; that on July 16, 1951, decision was rendered in favor of the plaintiff and against the defendants; that on August 3, 1951, defendants filed a motion signed by them and dated July 27, 1951, to set aside the decision; that said motion was denied by the court on August 18, 1951; that on August 22, 1951, Mr. Elias Borromeo, as counsel for the defendants, filed a second motion to set aside the decision, which was also denied by the court on September 1, 1951; and that no appeal was interposed by the defendants against the order denying the motion to set aside order of default, nor against the order of the court denying the first and second motion to set aside the judgment by default." (pp. 81-82, Rec. on Appeal)

The decision in said civil case No. 322 discloses the following facts: one Paulino Reyes applied for a parcel of land as a homestead (Homestead Application No. 1690) in the year 1935, and entered thereon in 1937. In 1947, he transferred his homestead rights over the land to the plaintiff Fermin Leal, first over 9 hectares and later on over the 11 hectares remaining, all of which were under cultivation. In July, 1948, the defendants Perfecto Dizon, Felix Dizon and Emitterio Dizon entered upon the land by force and stealth, over plaintiff's opposition, and since then had been cultivating the land and harvesting its produce. As a consequence the court ordered the defendants to return the land to the plaintiff, to pay the latter by way of indemnity the amount of P2,900, and to pay the costs. (pp. 15-19, Rec. on Appeal)

The present action was instituted on November 29, 1951, and seeks to have the decision and orders of the court in

Civil Case No. 322, annulled and set; aside for a new hearing. It also seeks to have the decision sought to be annulled suspended, pending final resolution of this case, and to have the case between the petitioners and the respondents decided on its merits. In support of the petition, it is alleged that when the petitioners, defendants in Civil Case No. 322, were served with summons, they contracted the services of Atty. Dominador P. Nuesa to represent them in the case; that said attorney, instead of filing an answer, prepared a motion to dismiss which he asked petitioners herein to sign and which he himself presented in court; but that because of the negligence or fault of said attorney, the motion to dismiss was received by the clerk of court only on May 14, 1951, when the period for filing the answer had already expired; that Atty. Nuesa presented in said case a motion to reconsider the order of default, but the court did not act on said motion, perhaps, because the lawyer for the petitioners herein failed to set the motion for hearing; that the trial of said civil case No. 322 proceeded without the presence of the petitioners herein or their lawyer, and on July 16, 1951, the court rendered a decision, of which said attorney was notified by mail on July 21, 1951; that on July 27, 1951, Atty. Nuesa prepared a motion to set aside judgment, and asked petitioners herein to execute an affidavit which he prepared, and he presented this motion on August 2, 1951; that this motion was denied on August 18, 1951; that on August 22, 1951, the petitioners herein, thru Atty. Elias Borromeo, presented a last motion to set aside judgment supported by an affidavit of Perfecto Dizon, but said motion was also denied by the court in an order of October 1, 1951; that Atty. Borromeo never informed the petitioners herein of the denial of their last motion, and that the failure of said lawyer deprived petitioners herein of the privilege to appeal from the decision as well as from the said orders denying the motions to set aside judgment.

It is also alleged that petitioners herein have a good and valid defense, for the reason that the respondent Leal never had possessed the land subject of said civil case No. 322, and that the petitioners herein, defendants in that case, only possessed the lands as tenants of Maria Marzo and Elino Plado, and that a portion of the land occupied by them is only 2 hectares, and that they had paid an annual rental to said Maria Marzo and Elino Plado.

It is further alleged that inasmuch as the period to appeal from the decision and the orders denying the motions to set aside judgment has already expired without the fault of the petitioners herein, there has been excusable neglect to warrant granting of a new trial on the merits of the case.

The court a quo held that by the motion of petitioners herein dated August 2, 1951 filed by Atty. Nuesa, and by another motion filed on October 2, 1951, by Atty. Borromeo, the petitioners have already availed themselves of the remedy provided for in Rule 38, Rules of Court, because said motions have already alleged excusable neglect as the main ground for setting aside the judgment; that the remedy that was open to the petitioners after the denial of their motions was to appeal from the orders as well as from the decision now sought to be annulled, and that the last action is unavailing. The court a quo cited in support of its ruling the cases of *Sitchon, et al. vs. The Provincial Sheriff, et al.* 80 Phil., 397; 45 Off. Gaz., Supp. (9), p. 25; *Rios vs. Caluag, et al.* 79 Phil., 243; 45 Off. Gaz., (No. 3) p. 1265; *Ongsiako vs. Judge*, 79 Phil., 2; 45 Off. Gaz., (No. 1) p. 229; *Lim Toco vs. Go Fay*, 80 Phil., 166; 45 Off. Gaz., (No. 8), p. 3350; *Cruz vs. Judge*, 51 Off. Gaz., (No. 6), p. 2955.

On this appeal, the petitioners-appellants have assigned the following errors:

"The trial court erred in not vacating the judgment in Civil Case No. 322 in view of the special circumstances prevailing in said case, in the interest of justice and equity.

"The trial court erred in confusing an independent civil action to annul a judgment, with the remedy provided for under Rule 38, Rules of Court.", (pp. 1-2, Appellant's Brief)

The first assignment of error is so devoid of merit as to deserve no more than a passing remark. The court below correctly held that if the defendants in civil case No. 322, petitioners herein, believed the decision was

inequitable, they should have appealed therefrom and from the orders denying their motion for reconsideration. Having failed to do so, the decision rendered in said civil case No. 322 became final and binding upon the petitioners herein. Said decision can no longer be set aside except by an action based on the ground of fraud or lack of jurisdiction. None of these grounds is alleged in the petition.

In support of the second assignment of error, it is claimed that the present action is not a petition for relief under Rule 38 of the Rules of Court, but an independent action on the ground that the judgment is void ab initio, having been rendered without due process of law. It is true that petitioners herein could have the judgment set aside but, as indicated above, the only grounds on which a final judgment may be set aside are fraud and lack of jurisdiction. The cases cited by appellants in their brief do not support their contention because none of the grounds set forth in said cited cases are present in the case at bar. In the case of *Anuran vs. Aquino*, 38 Phil., 29, the ground for the action is fraud, while in that of *Banco Español vs. Palanca*, 37 Phil., 921, it is lack of notice to an adverse party and the judgment therein was annulled because the court did not acquire jurisdiction over the person of the defendant.

Finding no merit in the appeal, the decision appealed from is hereby affirmed, with costs against the appellants.

Paras, C. J., Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepcion, and Endencia, JJ., concur.
Benzon, J., concurs in the result.

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