

BLAS ELNAR, PETITIONER, VS. HON. MACARIO P. SANTOS, JUDGE OF THE COURT OF FIRST INSTANCE OF NEGROS ORIENTAL, AND ROMAN VALENCIA, ET AL., RESPONDENTS.

G.R. No. 13113. August 13, 1959

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This case came before this Court on a petition for certiorari filed by Bias Elnar praying for the review of the decision rendered by the Court of Appeals on September 26, 1957, affirming the judgment of the lower court which holds that its decision on the merits has already become final and executory.

This petition stems from a case originally filed before the Court of First Instance of Negros Oriental wherein Bias Elnar prayed to be declared the owner of a parcel of land known as Lot No. 1182 of the Cadastral Survey of Dumaguete. Decision was rendered in favor of defendants declaring them the owners of the land and awarding in their favor attorney's fees in the amount of P1,000.00. Plaintiff filed a motion for reconsideration, which was denied, and when he tried to appeal from the decision, the trial court declared that the motion for reconsideration he had filed was merely pro forma and did not suspend the running of the period to appeal. Accordingly, the trial court held that its decision was already final and executory.

Plaintiff filed a petition for mandamus with the Court of Appeals in an attempt to secure an order directing the trial court to give due course to his appeal, but the Court of Appeals in a decision rendered on September 26, 1957, denied the petition. Hence the present petition for review.

It appears that the trial court rendered judgment in the main case on February 18, 1957, dismissing plaintiff's complaint but ordering him to pay defendants the sum of P1,000.00 as attorney's fees and the costs of action. Notice of this decision was served on plaintiff's counsel on March 28, 1957. On April 25, 1957, plaintiff's counsel filed a motion for reconsideration or new trial. On May 9, 1957, the trial court denied the motion holding that it was merely pro forma and as such did not suspend the period to appeal. This ruling was affirmed by the Court of Appeals.

The question to be determined is whether said motion for reconsideration or new trial is merely pro forma and did not suspend the period to appeal. Because of its intimate bearing on our discussion we quote hereunder the motion under consideration:

MOTION FOR RECONSIDERATION
and/or NEW TRIAL

"Comes now the plaintiff BLAS ELNAR thru his undersigned attorneys and to this Honorable Court respectfully moves for reconsideration and/or new trial on the following

GROUND

1) THAT THE EVIDENCE ARE INSUFFICIENT TO JUSTIFY THE DECISION IN FAVOR OF THE DEFENDANTS (Sub-sec, c, Sec. 1, Rule 37, RULES OF COURTS); and

2) THAT THE DECISION US CONTRARY TO LAW (Subsec. 6. Sec. 1, RULE 37, RULES OF COURT)

SPECIFIC ASSIGNMENTS OF ERRORS

It is respectfully submitted, as required by Sec. 2, RULE 37 of the RULES OF COURT, that the Trial Court made errors in its DECISION dated February 18, 1957 as hereinafter specified:

(A) ON QUESTIONS OF FACTS, this Court has erred on the following points:

I

(IN MAKING THE FOLLOWING CONCLUSION: 'THE COURT IS OF THE OPINION, AND SO HOLDS, THAT INASMUCH AS ANDRES LAS PIÑAS DID NOT HAVE ANY VALID AND LEGAL TITLE ON ANY PORTION OF LOT NO. 1182, TAN KING SIONG, THE PURCHASE AT THE PUBLIC AUCTION SALE OF THE LAND IN QUESTION BY THE SHERIFF IN 1937, ACQUIRED NOTHING * * *, (p. 6, DECISION).

II

(IN MAKING THE FOLLOWING CONCLUSION: 'IF THERE ARE PERSONS WHO ARE WANTING IN POSSESSION OF THE DISPUTED LAND, THEY ARE ANDRES LAS PIÑAS, TAN KING SIONG, WHO DID NOT EVEN KNOW THE EXACT LOCATION AND BOUNDARIES OF THE LAND IN LITIGATION, AND PLAINTIFF, WHO HAS AT NO TIME BEEN IN POSSESSION OF THE SAME. (pp. 6-7, DECISION).

III

IN FAILING TO MAKE A CATEGORICAL CONCLUSION THAT THE PLAINTIFF IS A CITIZEN OF THE PHILIPPINES DULY QUALIFIED TO OWN LAND (p. 7, DECISION).

(B) ON QUESTIONS OF LAW, the Court has erred on the following points:

I

IN MAKING THE FOLLOWING CONCLUSION: THE DEFENDANTS CAN NOT BE SAID TO HAVE BEEN BARRED BY THE PRINCIPLE OF LACHES IN ENFORCING THEIR RIGHT TO LOT NO. 1182 (p. 7, DECISION).

II

IN MAKING AN AWARD IN FAVOR OF THE DEFENDANTS OF ATTORNEYS' FEES IN THE AMOUNT OF P1,000.00 (p. 8, DECISION)

III

IN NOT RENDERING JUDGEMENT IN FAVOR OF THE PLAINTIFF AND AWARDING HIM ATTORNEYS' FEES OF 1,000.00.

ARGUMENTS

The plaintiff Bias Elnar respectfully reserves his right to submit either written or oral arguments to substantiate this motion for reconsideration and/or new trial within such period of time as this Honorable Court may grant.

PRAYER

Wherefore, the plaintiff Bias Elnar invoking the provisions of RULE 37 of the RULES OF COURT, particularly Sees. 1 and 3 thereof, respectfully prays this Honorable Court to set aside its DECISION dated February 18, 1957 and to render judgment in favor of plaintiff Bias Elnar in accordance with his COMPLAINT. Cebu City (for Dumaguete City), April 24, 1957

A. P. Deen & Eddy A. Deen
By: (Sgd.) A. P. DEEN
Attorneys for the plaintiff
Pond & Deen Bldg., Cebu City

Under section 2, Rule 37, a motion for new trial shall be made in writing stating the ground or grounds therefor, notice of which shall be served on the adverse party. When the motion is made upon the ground that "the evidence was insufficient to justify the decision, or it is against the law," the motion shall point out specifically the findings or conclusion of the judgment which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions.

Former Chief Justice Moran, commenting on the abovementioned provisions, says: "Where a motion for new trial is filed under the third paragraph of this section and fails 'to point out specifically the findings or conclusions of the judgment which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions', it shall be treated as a motion pro forma intended merely to delay the proceedings and it shall not interrupt or suspend the period of time for the perfection of an appeal.[1] However, where the motion for reconsideration was based on a claim that the finding of the trial court as to the authenticity of the disputed signature was not justified by the evidence submitted, which is the testimony of the expert witness denying such authenticity, the motion points out why the finding of the court is not justified by the evidence, and is clearly not a pro forma motion for new trial or reconsideration; such motion for reconsideration suspends the period for perfecting an appeal." [2]

Analyzing the averments made by petitioner in his motion for reconsideration we find that he attributes to the trial court two errors: One is on "questions of fact" and another on "questions of law." As to the former, he points out the findings or conclusions of the trial court which in his opinion are not supported by the evidence, although he does not make any express reference to such evidence, and as to the latter he also points out specifically the findings or conclusions which in his opinion are contrary to law. We likewise find that plaintiff expressly reserved his right to submit written or oral argument to substantiate his motion within such period of time as the Court may grant him, which request was however ignored when the Court denied outright his motion for reconsideration. We believe that the above averments when considered in the light of the decision on the merits may be considered substantial compliance with the rule and may come under the exception pointed out by former Chief Justice Moran. Here is where we may properly apply the principle that the rules shall be liberally construed in order to promote the interest of justice. Another reason why the petition for mandamus was dismissed by the Court of Appeals is the allegation not denied by respondent that as of June 14, 1957, long before said petition was filed, plaintiff has satisfied the judgment of the trial court from which he is now seeking to appeal. This point needs clarification. Plaintiff's main action is to recover the ownership and possession of a parcel of land which was dismissed by the trial court even it awarded to defendants attorney's fees in the amount of P1,000.00. It is from this dismissal that plaintiff is now appealing although incidentally he is also disputing the award of attorney's fees. What was executed over plaintiff's opposition is the award of attorney's fees. Payment, therefore, of said fees cannot be deemed an abandonment of his appeal from the dismissal of his main cause of action. Even then such payment cannot be taken as abandonment because it was forced upon him through a writ of execution. And

considering that under our rule a judgment may be executed even pending appeal if the trial court, in the exercise of its discretion, finds good reasons therefor (sec. 2, Rule 39), there is no plausible reason for holding that payment by plaintiff of said attorney's fees constitutes an abandonment of his appeal. Wherefore, the decision appealed from is reversed. The trial court is hereby ordered to give due course to the appeal of petitioner.

Paras, C. J., Bengzon, Padilla, Montemayor, Labrador, Concepcion, Endencia, and Barrera, JJ., concur.

[1] Valdez vs. Jugo, 74 Phil., 49; Alvero vs. De la Rosa, Phil., 428.

[2] Ylanan vs. Mercado, 94 Phil., 769; 50 Off. Gaz., 1982.

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