

DEOMEDES S. ROJAS, IN HIS CAPACITY AS LEGAL ADMINISTRATOR OF THE ESTATE OF THE DECEASED MARIA SIPRIASO, PLAINTIFF AND APPELLEE, VS. ROSA PAPA, AS PRINCIPAL, CONSUELO PAPA VILLAN...*G.R. No. 13459. April 29, 1960*

Ponente: GUTIERREZ DAVID, J.

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In the Court of First Instance of Cavite, Deomedes S. Rojas, legal administrator of the estate of the deceased Maria Sipriaso, sued Rosa Papa, Consuelo Papa Villanueva, and the latter's husband, Mariano B. Villanueva, to collect the unpaid balance of a promissory note in favor of Maria Sipriaso, made by Consuelo Papa Villanueva as attorney-in-fact of Rosa Papa, the note being secured by a real estate mortgage on two parcels of land belonging to Rosa Papa. Upon petition of defendants, the court granted them a first extension of fifteen days and a second extension of twenty days within which to file their answer. Defendants having failed to file their answer, plaintiff, on April 21, 1956, moved to have them declared in default. This was opposed by defendants, but the court issued an order declaring them in default. Defendants' two motions for reconsideration of this order were both denied by the court. On September 4, 1956, plaintiff presented his evidence. Two days later, defendants filed another motion for reconsideration, asking that they be given the chance to answer the complaint and to be present at the trial. This was likewise denied by the court. On September 7, 1956, the court rendered a decision in favor of plaintiff and against defendants. On February 3, 1956, defendants asked for a fifteen day extension to answer which was duly granted by the court. On February 22, 1956, they filed another motion asking that their period to answer be extended up to April 15, 1956. Acting on this motion, the court issued an order. The latter asked for reconsideration of the decision on the ground that it was violative of Section 2, Rule 1 of the Rules of Court and the constitutional provision against deprivation of property without due process of law. Opposition thereto was filed by plaintiff. On November 2, 1956, the court denied defendants' motion.

So defendants appealed from the lower court's decision of September 7, 1956 and from the order of November 2, 1956 denying their motion for reconsideration. They claim that the trial court erred (1) in declaring them in default; (2) in depriving them of their right to due process of law by denying them their day in court; and (3) in rendering a decision not supported by preponderant evidence and without considering appellants' defense.

The principal issue herein is whether appellants were declared in default before the expiration of the period within which to file their answer. Resolution of the two other assigned errors are dependent on a determination of this main issue.

Within fifteen days after service of summons the defendant shall file his answer and serve a copy thereof to the plaintiff (Section 1, Rule 9, Rules of Court). But, upon motion and upon such terms as may be just, the court may extend the time to plead (Section 16, Rule 15, Rules of Court). If the defendant fails to answer within the original period, or if he had been so granted, within the period of extension, then the court shall, upon motion of the

plaintiff, order judgment against the defendant by default (Section 6, Rule 35, Rules of Court).

The complaint was filed on January 17, 1956 and summons was duly served on defendants on January 19, 1956. On February 3, 1956, defendants asked for a fifteen day extension to answer which was duly granted by the court. On February 22, 1956, they filed another motion asking that their period to answer be extended up to April 15, 1956. Acting on this motion, the court issued an order on February 24, 1956 granting them an extension of only twenty days. The controversy centers on the time from which this extension of twenty days should be counted. The court's order explicitly states that said period should run "from receipt of a copy of this order".

The record discloses that a copy of the court's order was sent by ordinary mail to appellants on February 26, 1956. But appellants claim that they never received said copy and that it was only on April 28, 1956 that their counsel accidentally learned of the court's order giving them an extension of 20 days from receipt thereof. According to appellants, on April 28, 1956, while their counsel was attending to his other cases in the lower court, he incidentally asked for information respecting his second motion for extension in this case, so he was furnished with a copy of the court's order dated February 22, 1956; and that upon investigation, said counsel found out that a certain Mr. Madrid, court employee who was in charge of sending the copy of the order, could not state with any degree of positiveness whether he delivered the copy personally or he had mailed it, although it appears in the record book that it was sent by ordinary mail, but this notation had been crossed out. There is no proof to substantiate their contention that the copy of the order had not been mailed to them and that they were apprised of the court's action only on April 28, 1956. If their contention were true, then they would have attached proof thereof to their motion for reconsideration of the court's order declaring them in default. They would have insisted that said Mr. Marquez make an affidavit that he failed to mail said copy. Or they could have annexed to their motion proof that there had been a deletion of the notation in the lower court's record book. This they failed to do, so we cannot give credence to their allegation that they did not receive the copy mailed to them.

The rule is that service by mail is complete upon expiration of five days after mailing, unless the court otherwise provides (Section 8, Rule 27, Rules of Court). In *Perez vs. Isip* (81 Phil., 218) it was held that notice sent by ordinary mail from one town to another town in Bulacan, was received by the addressee within 3, 4 or at the latest, 5 days, there being no proof that notice was returned by the post office to the court. In the present case, copy of the order was mailed on February 26, 1956, and there is no showing that said copy was returned to the lower court. Therefore, appellants received it at the latest on March 2, 1956, and the twenty days extension of time should be counted therefrom. Hence their period to file their answer expired on March 22, 1956. Having failed to file a responsive pleading within that period, they were properly declared in default.

Appellants insist that excusable negligence was the reason why they failed to file their answer. They were asking for "extension of time up to April 15, 1956, within which to file their answer, so as to give them sufficient time to raise the amount to pay their indebtedness, so as to have this case amicably settled." Yet, there is no showing that they tried to pay their indebtedness, or that they made any efforts towards amicable settlement. And worst of all, even on April 15, 1956, they were not yet ready to file their answer. On or before the last day of the period of extension they were praying for, they should have taken steps to find out what action the court had taken on their motion for extension and should have been prepared to file their answer. This was the least they could have done. But they neglected to do this, so there is absolutely no ground on which to excuse their lack of diligence.

There is nothing to appellants' claim that they have been deprived of their right to due process of law. As applied to judicial proceedings, due process of law signifies that there must be a court or tribunal clothed with power to hear and determine the matter before it; that jurisdiction shall have been lawfully acquired; that the defendant shall have an opportunity to be heard and that judgment shall be rendered upon lawful hearing (*Banco Español Filipino vs. Palanca*, 37 Phil., 921). The requisites of due process have been amply satisfied. The trial court had

the power to try and determine the case and jurisdiction was lawfully acquired. Appellants were given the chance to be heard but they did not make use of their opportunity to present their side. They had the original fifteen days from summons within which to answer. This was extended for a period of fifteen days. They then again sought extension of the period, and this, too, was granted. But even when they were granted this second extension of twenty days they still neglected to file their answer.

The decision of the trial court was based on proof submitted by appellee during the hearing. This is only to be expected for once the defendant had been declared in default, the court shall proceed to receive the plaintiff's evidence and render judgment granting him such relief as the complaint and the facts proven may warrant (Section 6, Rule 35, Rules of Court). The trial court could not have considered appellants' defense of usury which they alleged for the first time in their brief. Having been declared in default, they lost their right to answer and to present evidence in support of their contentions.

For all the foregoing considerations, we find appellants' appeal to be frivolous. The appealed decision and order are hereby affirmed with double costs against the appellants.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, and Barrera, JJ., concur.
Padilla, J., took no part.

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