

REMEDIOS L. VILLANUEVA, PETITIONER, VS. COURT OF AGRARIAN RELATIONS (LEGASPI BRANCH), COMMISSIONER EVARISTO ORTEGA AND WILFREDO BRAGAIS, RESPONDENTS.*G.R. No. 13476. March 24, 1960*

Ponente: MONTEMAYOR, J.

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Remedios L. Villanueva has filed a petition for certiorari and prohibition with preliminary injunction, to annul the order of respondent Commissioner Evaristo Ortega of the Court of Agrarian Relations, dated, December 11, 1957, granting respondent Bragais' petition for relief from the order of default on Villanueva's counterclaim, and requiring her to deliver 13 cavanese of palay to Bragais, as well as the resolution signed by Judge Pastor P. Reyes of the Agrarian Court, dated January 28, 1958, denying Villanueva's motion for reconsideration. Upon petitioner's filing a surety bond, we issued a writ of preliminary injunction, commanding respondents to desist from proceeding with the hearing of CAR Case No. 61-Albay and from executing the order for the delivery of the 13 cavanese of palay to Bragais.

On February 6, 1957, respondent Bragais, a tenant of Villanueva, filed with the Court of Agrarian Relations, Sixth Regional District, against Villanueva, a petition for liquidation of past harvest from 1946 to 1957, docketed as CAR-61 (Albay). The petition was prepared for Bragais by Atty. Manuel Cordero of the Agricultural Tenancy Commission, the latter advising Bragais to look for private counsel or asked for one from the court, to represent him, since the Tenancy Commission was not authorized to represent tenants in court.

In his petition, Bragais claimed that since the land of which he was a tenant was first class and he had contributed all the items of production, such as, work animals, farm implements and final harrowing and transplanting, he was entitled to receive 70 per cent net of the harvest, in conformity with Republic Act No. 1199, known as the Agricultural Tenancy Law; that instead of getting 70% of the net harvest, he had been receiving only 55 % of the gross harvest; that pursuant to the 70-30 sharing basis, his share in the harvest since 1946 up to the day he filed the petition, should be 840 cavanese of palay instead of the 605 cavanese he Actually received, or a difference of 235 cavanese due to him. He also claimed that during the period from 1946 to 1957, he had spent the sum, of P24.50 for pest and weed control, as well as 22 cavanese for seedlings. His petition, ended with a prayer that Villanueva be ordered to give to him 235 cavanese plus 22 cavanese he had used for seedling and the amount of P24.50 spent for pest and weed control, and that for the agricultural year 1957, the harvest be divided on the 70-30 sharing basis.

In her answer, Villanueva denied the allegations of the petition and by way of special defense, claimed that the petition for the division of the harvest in April, 1957, on the 70-30 sharing basis was premature, inasmuch as the harvest had not yet been made; that Bragais had turned down her proposition to have the harvest divided on the 70-30 sharing basis, provided that he complied with his duties as tenant under the law; that Bragais had received all the share in the harvest due him for the entire period that he worked as a tenant; that he was bound by their contract providing for a share basis of 55 % for the tenant furnishing worked animals and farm implements and

45% for the landowner, which contract was valid and legal under the law enforced before the enactment of Republic Act No. 1199; that respondent had no right to share in the harvest for the years 1946, 1947 and 1948, because during that period, he did not cultivate the land, neither was he her tenant; and that in the year 1956, Bragais instead of cultivating the land, went to Manila where he worked as a driver.

For her counterclaim, Villanueva alleged that Bragais had violated the terms and stipulations of his tenancy contract because he had been negligent in his work, had not taken proper care of the land nor employed proven farm practices, thereby impairing and affecting the productivity of the land; and that, as already stated, in 1956, he had abandoned the standing crop on the land, having gone to Manila where he stayed and worked as a driver; that because of the filing of the petition by Bragais, she had spent P800 for attorney's fees and suffered moral damages in the amount of P2,000. She asked that Bragais be ejected from the land in question and that he pay her the attorney's fees spent by her and the damages she had suffered.

At the preliminary hearing held before Commissioner Evaristo Ortega on April 1, 1957, Bragais appeared. On motion of Villanueva, the Commissioner issued the order declaring Bragais in default as far as her counterclaim was concerned, because of his failure to answer the said counterclaim.

On April 10, 1957, during a conference presided by Commissioner Ortega, attended by counsel for Villanueva and Atty. Fernandez who appeared as amicus curiae, a temporary arrangement was agreed upon as regards the 1957 rice harvest, whereby 55% of the same was to be delivered to Bragais, 30% to Villanueva, and the balance of 15% whose equivalent¹ was 13 cavans, was to be delivered to Villanueva for custody and safekeeping, pending the determination of the case on the merits. This arrangement was embodied in the order of the Commissioner, dated April 10, 1957.

On September 12, 1957, over the opposition of Atty. Ramon Fernandez, the deposition of Villanueva in support of her counterclaim was taken and the same was presented in court as evidence during the hearing held before the Commissioner on September 21, 1957.

On September 24, 1957, Bragais, through Manuel A. Cordero, trial attorney of the Agricultural Tenancy Commission, filed a petition for relief from the order of April 1, 1957, declaring him in default as regards the counterclaim, and to set aside the proceedings had in connection therewith, claiming that his failure to answer the counterclaim was due to his ignorance of the law on procedure, his lack of and inability to employ counsel because of poverty, and his honest belief that the case will be settled or decided according to its merits without resorting to technicalities.

On October 25, 1957, Bragais filed a motion for an interlocutory order for the immediate delivery to him of the 13 cavans of palay deposited with Villanueva for safekeeping. Despite her opposition to both motions, Commissioner Ortega, by order of December 11, 1957, lifted the order of default and ordered the delivery to Bragais of the 13 cavans in the custody of Villanueva. Pertinent portions of said order are reproduced below:

"1. The Petition for Relief from the Order of this Court on counterclaim and to set aside proceedings in connection therewith should in the interest of justice be allowed, as it is hereby granted.

Petitioner is hereby given five (5) days from receipt of the copy of this order to file his answer to the counterclaims.

* * * * *

2. That there being no dispute to the items of production contributed by the parties to the effect that the respondent contributes solely the land, the least that petitioner-tenant should receive as his share in the harvest should be 70% (assuming the land to be first class riceland). The items of production contributed by each party

is paramount and should prevail over any dispute on any part or portion of the harvest when said dispute is not based on the items of productions shared or contributed. Consequently, the Motion for the Immediate Disposition of the Portions of the Last Two Harvest Deposited with the Respondents is hereby granted. Respondent Remedios Villanueva is hereby ordered to deliver and turn over to the petitioner Wilfredo Bragais thirteen (13) cavans of palay presently in her custody in the concept of deposit in accordance with the interlocutory order of this Court dated April 10, 1957."

Villanueva's motion for reconsideration was denied by resolution of Judge Pastor E. Reyes of the Court of Agrarian Relations, as follows:

"This refers to a motion for reconsideration of the order issued by the Court Commissioner, dated December 11, 1957, filed by respondent through counsel, under date of December 18, 1957,

"Finding the motion for reconsideration, dated December 18, 1957, filed by the respondent through counsel, to be without merit, the same should be, as it is hereby denied. Consequently, with the denial of the motion for reconsideration, the 'Motion for Rejection of Petitioner's Answer to Respondent's Counterclaims', dated December 22, 1957, should be as it is hereby, denied. Said Order dated December 11, 1957 is hereby adopted by the Court in toto and let the hearing of this case be set at an early date."

The first question to be determined is the propriety of the order of Commissioner Ortega requiring Villanueva to deliver to Bragais the remaining 15% of the harvest of 1957, which is 13 cavans of palay deposited with her for safekeeping. The right to said palay was still in controversy. As a matter of fact, the parties have agreed and their agreement was embodied in the order of April 10, 1957, namely, that this palay would be delivered to Villanueva for safekeeping or deposit, pending the determination of the case on the merits. Consequently, the order was premature. Furthermore, under Section 3, Rule 10 of the very Rules of Procedure adopted by the Court of Agrarian Relations, the authority of the Commissioner in liquidation cases to issue interlocutory orders for "temporary liquidation and outright delivery of a portion of the harvest" refers to those which are not in dispute because:

"* * * the Commissioners, may in liquidation cases, issue interlocutory orders providing for the temporary liquidation of the crop in question, either directing the outright delivery of the undisputed portion thereof to the parties and the deposit of the disputed portion in the names of both parties:"

The second and more important question for resolution is whether or not Commissioner Ortega acted with abuse of discretion or in excess of his authority or jurisdiction in lifting the order of default. This question of the lifting of an order of default has been definitely decided in the case of *Prudential Bank & Trust Company vs. Honorable Higinio Macadaeg, et al.*, 105 Phil., 791.

"In several decisions we said one who has defaulted may apply for relief under Rule 38 of the Rules of Court. (*Lim Toco vs. Go Fay*, 80 Phil., 166; *Gequillana vs. Buenaventura*, 48 Off. Gaz., 63.) This, at first glance, seems to require presentation of the petition within the time limits prescribed therein, i.e., within 60 days after knowing the default order and within six months after the entry of such order.

"In *Gana vs. Abaya*, 52 Off. Gaz., 231, we annulled on certiorari the order of the Manila court of first instance cancelling a decree of default, because the petition for relief had been filed more than six months after the issuance of such decree. We regarded the period fixed in Rule 38 to be jurisdictional. And in *Isaac vs. Mendoza*, 89 Phil., 279, applying the ruling in *Lim Toco vs. Go Fay*, supra, we expressed the view that if the petition for relief from a default order is not presented within the six-month period fixed in Rule 38, the court of first instance loses the power to grant it.

"However, in other decisions, the opinion was expressed that a default order being interlocutory, is subject to the control of the court, and may be modified or rescinded at any time before final judgment."

"From these decisions the resultant principle appears to be that an order of default may be set aside at any time before final judgment, provided the petition for vacating it is made within six months after entry of the order."

We shall assume that Bragais had the benefit of counsel or that he was being advised and aided by the attorneys for the Agricultural Tenancy Commission, and that he was duly notified of the order of default. True, he failed to ask for relief from said order within 60 days from the date of notification. However, he filed the petition for relief less than six months thereafter, or a little more than five months. In other words, his case comes within our ruling in the case of Prudential Bank and Trust Company vs. Macadaeg, *supra*, that the order of default may be set aside at any time before final judgment, provided the petition for relief is made within six months after entry of the order. In other words, the Commissioner was authorized in lifting the order and the Judge of the Agrarian Court committed no error in denying the petition for reconsideration of the order granting the relief.

In view of the foregoing, the order of the Commissioner requiring Villanueva to deliver to Bragais the cavans of palay deposited with her for safekeeping is set aside for being premature. The order lifting the order of default is hereby affirmed. The case is hereby remanded to the Court of Agrarian Relations for further proceedings where Bragais will be allowed to file his answer to Villanueva's counterclaim. No costs.

Paras, C. J., Bengzon, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, and Gutierrez David, JJ., concur.

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