

**MARIANO DE GUIA AND APOLONIA DE GUIA, PETITIONERS, VS.
CIRIACO, LEON, VICTORINA, TOMASA AND PABLO, ALL SURNAMED
DE GUIA, RESPONDENTS.**

G.R. No. 135384. April 04, 2001

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Under the pre-1997 Rules of Civil Procedure, a notice of pretrial must be served separately on the counsel and the client. If served only on the counsel, the notice must expressly direct the counsel to inform the client of the date, the time and the place of the pretrial conference. The absence of such notice renders the proceedings void, and the judgment rendered therein cannot acquire finality and may be attacked directly or collaterally.

The Case

Before us is a Petition for Review under Rule 45 of the Rules of Court, assailing the February 17, 1998 Decision[1] of the Court of Appeals (CA) in CA-GR CV No. 42971. The dispositive portion of the CA Decision reads as follows:

"WHEREFORE, without anymore touching on the merit of the judgment, we hereby SET ASIDE the default Order of June 18, 1992 which the lower court had improvidently issued as well as the ensuing judgment which suffers from the same fatal infirmity. Let the case be remanded to the lower court, which is directed to promptly set the case for pre-trial conference in accordance with the present Rules, and for further proceedings."[2]

Also assailed is the September 11, 1998 CA Resolution[3] which denied petitioners' Motion for Reconsideration.

The Facts

The appellate court summarized the antecedents of the case as follows:

"The record shows that on October 11, 1990, plaintiffs Mariano De Guia, Apolonia De Guia, Tomasa De Guia and Irene Manuel filed with the court below a complaint for partition against defendants Ciriaco, Leon, Victorina and Pablo De Guia. They alleged x x x that the real properties therein described were inherited by plaintiffs and defendants from their predecessors-in-interest, and that the latter unjustly refused to have the properties subdivided among them. Shortly after defendants filed their traverse, an amended complaint was admitted by the lower court, in which plaintiff Tomasa De Guia was impleaded as one of the defendants for the reason that she had become an unwilling co-plaintiff.

"It is further shown in the record that on June 11, 1992, the Branch Clerk of Court issued a Notice setting the case for pre-trial conference on June 18, 1992 at 8:30 a.m. Copies of said notices were sent by registered mail to parties and their counsel. It turned out that both defendants and counsel failed to attend the pre-trial conference. Hence, upon plaintiffs' motion, defendants were declared as in default and plaintiffs were allowed to present their evidence ex-parte.

"It appears that on July 6, 1992, defendants filed their Motion for Reconsideration of the June 16, 1992 Order

which declared them as in default. They explained therein that they received the Notice of pre-trial only in the afternoon of June 18, 1992, giving them no chance to appear for such proceeding in the morning of that day. The Motion was opposed by plaintiffs who pointed out that per Postal Delivery Receipt, defendants' counsel actually received his copy of the Notice on June 17, 1992 or one day before the date of pre-trial. Citing Section 2, Rule 13 of the Rules of Court, plaintiffs further urged that counsel's receipt of the said notice on June 17, 1992 was sufficient to bind defendants who received said notice on the next day. Finally, they faulted defendants for failing to support their Motion for Reconsideration with an affidavit of merit showing among others that they had a meritorious defense.

"In an Order dated August 19, 1992, plaintiffs' motion for reconsideration was denied and on June 11, 1993, judgment was rendered ordering the partition of the controverted parcels of land."[4]

The CA Ruling

The CA sustained respondents' claim that the trial court had improperly declared them in default. It held that the Notice of pretrial received by their counsel a day before the hearing did not bind the clients, because the Rules of Court in effect at the time mandated separate service of such Notice upon the parties and their counsel. Said the appellate court:

"In fine, we hold that the lower court committed a reversible error in declaring appellants as in default for their failure to attend the pre-trial conference [of] which they were not properly served x x x notice and in subsequently rendering the herein appealed judgment. And while we commend the lower court for its apparent interest in disposing of the case with dispatch, the imperatives of procedural due process constrain us to set aside the default order and the appealed judgment, both of which were entered in violation of appellants' right to notice of pre-trial as required by the Rules."[5]

Hence, this Petition.[6]

Issues

Petitioners impute the following alleged errors to the CA:

"I

The Respondent Court of Appeals, with grave abuse of discretion, erred in not finding private respondents as in default despite the existence of fraud, for being contrary to law, and for being contrary to the findings of the trial court.

"II

The Respondent Court, with grave abuse of discretion, erred in reversing the trial court's Decision notwithstanding private respondents' violations of Rule 15, Sections 4 and 5 and Administrative Circular No. 04-94 and Revised Circular No. 28-91.

"III

The Respondent Court of Appeals, with grave abuse of discretion, erred in not affirming the compromise agreement which has the effect and authority of res judicata even if not judicially approved.

"IV

The Respondent Court gravely erred in not applying Rule 135, Section 8 as warranted by the facts, admission and the evidence of the parties."[7]

In the main, petitioners raise the following core issues: (1) the propriety of the trial court's order declaring respondents in default; and (2) petitioners' allegation of procedural prejudice.

The Court's Ruling

The Petition has no merit.

First Issue:

The Propriety of the Default Order

When the present dispute arose in 1992, the applicable rule was Section 1, Rule 20 of the pre-1997 Rules of Civil Procedure, which provided as follows:

"SECTION 1. Pre-trial mandatory. -- In any action after the last pleading has been filed, the court shall direct the parties and their attorneys to appear before it for a conference to consider:

x x x x x x x x."

This provision mandated separate service of the notice of pretrial upon the parties and their lawyers.[8] In *Taroma v. Sayo*,[9] the Court explained:

"For the guidance of the bench and bar, therefore, the Court in reaffirming the ruling that notice of pre-trial must be served separately upon the party and his counsel of record, restates that while service of such notice to party may be made directly to the party, it is best that the trial courts uniformly serve such notice to party through or care of his counsel at counsel's address with the express imposition upon counsel of the obligation of notifying the party of the date, time and place of the pre-trial conference and assuring that the party either appear thereat or deliver counsel a written authority to represent the party with power to compromise the case, with the warning that a party who fails to do so may be non-suited or declared in default." (emphasis supplied)

Hence, before being declared non-suited or considered in default, parties and their counsel must be shown to have been served with notice of the pretrial conference.[10] Moreover, if served only on the counsel, the notice must expressly direct him or her to inform the client of the date, the time and the place of the pretrial conference. The absence of such notice renders the proceedings void, and the judgment rendered therein cannot acquire finality and may be attacked directly or collaterally.[11]

In this case, respondents received the notice on the afternoon of June 18, 1992, or after the pretrial scheduled on the morning of that day. Moreover, although the Notice was also sent to their counsel, it did not contain any imposition or directive that he inform his clients of the pretrial conference. The Notice merely stated: "You are hereby notified that the above-entitled case will be heard before this court on the 18[th] day of June, 1992, at 8:30 a.m. for pre-trial." [12]

Such belated receipt of the notice, which was not attributable to respondents, amounted to a lack of notice. Thus, the lower court erred in declaring them in default and in denying them the opportunity to fully ventilate and defend their claim in court.

Of course, this situation would not have arisen under Section 3,[13] Rule 18 of the 1997 Rules of Civil Procedure. It specifically provides that notice of pretrial shall be served on counsel, who is charged with the duty of notifying the client. Considering the milieu of the present case, however, such amended proviso is not applicable.

Second Issue:

Allegation of Procedural Bias

Petitioners allege that, to their detriment, the appellate court disregarded established procedural precepts in resolving the case, and that it did so for three reasons. First, respondents' Manifestation and Motion to Lift the Order of Default, filed with the trial court, was merely pro forma because the former lacked the requisite notice of hearing. Second, it also lacked an affidavit of merit. Third, respondents' Appeal Brief did not contain a certificate of non-forum shopping.

Granting that respondents' Manifestation and Motion to Lift the Order of Default was pro forma, this issue has

become moot, not only because the trial court had denied such Motion, but also because what was appealed was the judgment rendered by the lower court. For the same reason, we must also reject petitioners' insistence that an affidavit of merit was absent. In any case, there was no need to attach an affidavit of merit to the Motion, as the defenses of respondents had been set out in their Answer.

With regard to the absence of a certification of non-forum shopping, substantial justice behooves us to agree with the disquisition of the appellate court. We do not condone the shortcomings of respondents' counsel, but we simply cannot ignore the merits of their claim. Indeed, it has been held that "[i]t is within the inherent power of the Court to suspend its own rules in a particular case in order to do justice."^[14]

One last point. Petitioners fault the CA for remanding the case to the trial court, arguing that the appellate court should have resolved the case on its merit.

We understand petitioners' apprehension at the prospect of re-hearing the case; after all, it has been nine years since the filing of the Complaint. However, their claim and the evidence supporting it -- and respondents' as well -- can be best threshed out and justly resolved in the lower court. In this regard, we cannot pass upon the validity of the Agreement of Partition between Mariano de Guia and Ciriaco de Guia, for such action would amount to a prejudgment of the case.

WHEREFORE, the Petition is DENIED and the assailed Decision and Resolution AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Melo, (Chairman), Vitug, Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., concur.

[1] Rollo, pp. 34-38; penned by Justice Godardo A. Jacinto, with the concurrence of Justices Artemon D. Luna (Division chairman) and Roberto A. Barrios.

[2] CA Decision, p. 5; rollo, p. 38.

[3] Rollo, p. 42.

[4] CA Decision, pp. 1-2; rollo, pp. 34-35.

[5] Ibid., p. 37.

[6] The case was deemed submitted for decision on October 4, 2000, upon receipt by the Court of the Manifestation of respondents, signed by Atty. Edgardo V. Cruz, stating that they were adopting their Brief (should be Comment) as their Memorandum. Petitioners' Memorandum, signed by Atty. Renato J. Santiago, was received by the Court on October 15, 1999.

[7] Petition, pp. 6-7; rollo, pp. 14-15; these are repeated in petitioners' Memorandum.

[8] *Ng v. Alfaro*, 238 SCRA 486, December 1, 1994; *Samson v. Court of Appeals*, 105 SCRA 786, July 24, 1981; *Patalinhug v. Peralta*, 90 SCRA 51, May 5, 1979; *Sagarino v. Pelayo*, 77 SCRA 402, June 20, 1977; *Lim v. Animas*, 63 SCRA 409, April 18, 1975.

[9] 67 SCRA 508, October 30, 1975, per Teehankee, J. (later CJ). See also *Service Specialists v. Sheriff of Manila*, 145 SCRA 139, October 17, 1986; *Five Star Bus Co., Inc. v. Court of Appeals*, 259 SCRA 120, July 17, 1996; *Agravante v. Patriarca*, 183 SCRA 113, March 14, 1990.

[10] Taroma v. Sayo, *supra*.

[11] Barde v. Posiquit, 164 SCRA 304, August 15, 1988.

[12] Rollo, p. 63.

[13] It reads: "SEC. 3. Notice of pre-trial. - The notice of pre-trial shall be served on counsel, or on the party who has no counsel. The counsel served with such notice is charged with the duty of notifying the party represented by him."

[14] Anacleto v. Van Twest, GR No. 131411, August 29, 2000, per Mendoza, J. See also Villanueva v. CA, 285 SCRA 180, January 28, 1998; Ginete v. CA, 296 SCRA 38, September 24, 1998; Batara v. CA, 300 SCRA 237, December 16, 1998; Uy v. Land Bank of the Philippines, GR No. 136100, July 24, 2000.

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