

CEFERINO TAVORA, ET AL., PLAINTIFFS AND APPELLEES, VS. ANTONIA TAVORA, DEFENDANT AND APPELLANT.*G.R. No. 14325. June 30, 1960*

Ponente: REYES, J.B.L., J.

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In Civil Case No. 12792 of the Court of First Instance of Pangasinan, plaintiffs and appellees, Ceferino Tavora Numeriana Tavora y Querol and Catalina Suguitan, sought to annul a deed of donation executed in favor of the defendant-appellant, Antonia Tavora, by the deceased Maxima Zarate. After two motions for dismissal and another for a bill of particulars were denied, defendant failed to answer the complaint within the reglementary period. Consequently, upon motion of the plaintiffs, she was declared in default. From the order of default, defendant filed with this Supreme Court a petition for certiorari to have the same set aside, but which was denied for lack of merit. Evidence was presented, after which the trial court rendered judgment dismissing the complaint "without pronouncement as to costs". From the judgment, plaintiffs perfected an appeal to the Court of Appeals, which, after due consideration, promulgated judgment, dated July 18, 1956, the dispositive portion of which reads:

"From the consideration of all the evidence, we are of the opinion that the case for appellants has not been sufficiently established. The judgment appealed from is therefore hereby affirmed, with costs against appellants."

It appears that before the promulgation of the above decision, appellant (appellee therein) filed a motion before the said Court of Appeals, the substance and resolution of which is contained in the Resolution of said Court of April 4, 1956, to wit:

"Passing upon the motion filed by counsel for defendant-appellee in case C.A.-G.R. No. 15872, Ceferino Tavora, et al., vs. Antonia Tavora, praying: on the grounds therein stated that the appeal be dismissed; that Exhibits A, B, C and D, attached thereto be admitted as parts of the record on appeal, and that appellants be Ordered to print the same and be included in the printed record on appeal, and that they finally be ordered to serve copy of their brief upon the appellee; and the answer thereto filed by counsel for appellants for the denial thereof; and folding that defendant-appellee was declared in default, against which order she did not properly proceed to appeal, and that a petition for certiorari to review and set aside said default order was denied by the Supreme Court in case G.R. No. L-7854, for which reason she lost her standing and personality and therefore she is not entitled to be heard as appellee (*Limtoco vs. Go Fay*, 80 Phil., 166; 45 Off. Gaz., [8] p. 3340, and *Tecson et al., vs. Malendres, et al.*, 88 Phil., 703 the Court RESOLVED to deny the motion for lack of merits."

It is further disclosed that when the case was heard thereat on July 16, 1956, counsel for appellee (now appellant) appeared and was allowed to argue her case when counsel for the appellants (now appellees) withdrew his objection on appellee's right to do so.

Upon the return of the records to the trial court, defendant submitted for the court's approval a bill of costs, wherein she claims costs in the Court of First Instance of Pangasinan, the Court of Appeals, and the Supreme Court (for the docket fee she paid for the filing of her petition for certiorari to set aside the order of default, see

supra.). Acting thereon and on appellees' opposition, the trial court denied in toto the said bill of costs. From this denial and from the order denying her motion for reconsideration, defendant appealed to the Court of Appeals, which court later certified the case to us as the issues involved are all questions of law.

The issues are simple and only deal on the right of the appellant to recover costs from the appellees and the proper amount recoverable, should the same be held proper.

In one case (Tanega vs. Nazareno, 73 Phil., 354) where the defendant was absolved from the complaint by the trial court "without special pronouncement as to costs", but, on appeal, the judgment was reversed by the Court of Appeals "with costs against the appellee", this Court, resolving the issue of whether the costs awarded by the Court of Appeals referred only to the costs of suit in that court or also in the trial court, had occasion to state:

"Where * * * the prevailing party is entitled to costs as a matter of course, the words 'with costs' in an order of reversal or affirmance in the court of appeals will be construed to mean all costs made in both the appellate court and the court below (15 C. J. 260; 20 C.J.S. 590). In the absence, therefore, of any qualification, the costs awarded by the Court of Appeals in the instant case should be construed to mean the costs of suit from its commencement to its termination."

Consonant with the above ruling, we hold that the pronouncement as to costs made by the Court of Appeals (affirming the trial court's judgment dismissing the case "with costs against the appellants"), should be deemed to include not only the costs of suit in the said appellate court, but also in the trial court. On the other hand, it could not comprehend the docket fee paid to the Supreme Court on the petition for certiorari filed by the herein appellant to set aside the order of default, for while the filing thereof was an off shot of the civil case, it partook the nature of an independent suit.

Conformably with the rules laid down under sections 10 and 11 of Rule 131 of the Rules of Court, the appellant may recover as costs, in the Court of Appeals, P20.00 for counsel's attendance in said tribunal, it appearing that, while there was the default order still in effect, counsel for the appellees consented to his (appellant's counsel) appearance before the said court; in fact, he was allowed to argue orally thereat. Other expenses allegedly incurred in taking the deposition of the defendant and in procuring certified copies of certain pleadings in the Court of First Instance for purposes of the appeal to the Court of Appeals are not recoverable, since, being in default, defendant was not entitled to have the same documents presented in evidence or included as part of the records of the appealed case (see Resolution of April 4, 1956 of the Court of Appeals, supra.) In the trial court, the recoverable costs include the P10.00 allowed for the attendance of counsel in said court, since before the declaration of default by the court, defendant's counsel had previously filed two motions for dismissal and another for a bill of particulars. The item for P25.00 representing alleged expenses contracted in taking the deposition of two witnesses should be disallowed, for it does not appear that the same (depositions) were properly produced in evidence as required by the Rules.

Wherefore, the order of the lower court appealed from denying in toto the bill of costs is hereby reversed and set aside, and another one is entered requiring appellees to pay the total sum of P30.00 by way of costs in Civil Case No. 12792 and CA-G.R. No. 15872. No pronouncement as to costs in this appeal.

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

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