

DOMINGO, DOMINADOR, LAURO AND PABLO, ALL SURNAMED ANTONIO, PLAINTIFFS AND APPELLEES VS. JOSE RAMOS, LEONORA RAMOS AND NICOLAS FRANCISCO, DEFENDANTS. NICOLAS FRANCISCO, DEFENDANT...

G.R. No. 15124. June 30, 1961

Ponente: PAREDES, J.

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PAREDES, J.:

On January 3, 1953, plaintiffs Dominga, Dominador, Lauro and Pablo, surnamed Antonio, filed a complaint for the recovery of real property with an area of 14.7600 hectares, against defendants Jose Ramos, Leonora Ramos and Nicolas Francisco. Because only defendant Francisco answered, the other two defendants were declared in default on March 21, 1956, and August 20, 1956, was designated for the reception of plaintiff's evidence with respect to Francisco. On this date, neither defendant Francisco nor his counsel, appeared, notwithstanding the fact that said attorney received the notice of hearing as early as March 24, 1956. Plaintiffs presented their evidence in the absence of defendant Francisco and counsel. On August 23, 1956, Judge Makasiar rendered a decision, as follows:

"* * * WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendants Jose Ramos, Leonora Ramos and Nicolas Francisco DECLARING:

(1) Exhibit B, the extra-judicial partition with deed of absolute sale of the lot covered by Transfer Certificate of Title Nos. 14245 (Exhibit A) and 2491, executed by the defendants Jose Ramos and Leonora Ramos on November 24, 1947, null and void insofar as the one-half portion of said lot corresponding to the conjugal share of Teresa Antonio is concerned; and

(2) The plaintiffs herein as the only intestate heirs of the deceased Teresa Antonio and as owners of the said one-half portion of the aforesaid lot as their inheritance from the late Teresa Antonio; and ORDERING:

(a) The defendants Jose Ramos and Leonora Ramos to deliver to the plaintiffs their corresponding share and participation in the produce of the land from 1945 to 1947 at the rate of 100 cavanese of palay per agricultural year or a total of 200 cavanese of palay for 1945 to 1947 or their equivalent in cash computed at the rate of P8.50 per cavan;

(b) The defendant Nicolas Francisco to deliver to the plaintiffs their corresponding share and participation in the produce of the land from 1948 to 1956 or a total of 800 cavanese of palay or their equivalent in cash computed at the rate of P8.50 per cavan;

(c) The partition of the land in question between the plaintiffs and the defendant Nicolas Francisco in the following proportion: One-fourth (1/4) for the plaintiff Dominga Antonio, one-fourth (1/4) for the other plaintiffs Dominador, Lauro and Pablo, all surnamed Antonio, and one-half (1/2) to the defendant Nicolas Francisco;

(d) the defendant Nicolas Francisco to deliver immediately the possession to the plaintiffs of their

corresponding share of portion of said land;

(e) The cancellation of Transfer Certificate of Title No. 2491 in the name of Nicolas Francisco and in lieu thereof the issuance of another title in the name of the plaintiffs and the said defendant Nicolas Francisco in the proportion aforementioned;

(f) The defendants Jose Ramos, Leonora Ramos and Nicolas Francisco to pay the plaintiffs the sum of P500.00 as attorney's fees; and

(g) The said defendants to pay the costs."

On September 22, 1956, the defendant Francisco filed a "Motion for new Trial", with an affidavit of merit incorporated as Annex A, of counsel and defendant, asking that the decision dated August 23, 1956 be set aside and a rehearing be ordered in order that defendant may confront plaintiff's witnesses and present his defenses; alleging that their failure to appear during the hearing of the case was due to accident, mistake and excusable negligence which ordinary prudence could not have guarded against. In said affidavit, counsel alleged that in the new trial, if granted, he would adduce evidence sufficient to alter, modify, if not reverse, the decision, such as proofs (a) that the property in litigation is the exclusive property of Hermenegildo Ramos and not a conjugal property with his wife; (b) that defendant Francisco had no knowledge of the existence of the heirs of Teresa Antonio and that he was a purchaser in good faith and for value; (c) that the property in litigation was a forest land and has not been placed under cultivation from the time of its acquisition by Hermenegildo Ramos, until after the filing of the complaint; and (d) that as alleged in the answer, the cause of action has prescribed. An opposition was filed by the plaintiffs and on October 26, 1956, the lower court denied the motion to set aside the decision and for new trial. Defendant appealed to the Court of Appeals "from the decision rendered on August 23, 1956 and from the order rendered on November 26, 1956", announcing that he will raise "questions of law and facts". The case, however, was certified to Us, as the issues are purely legal in character.

Appellant alleges in his brief that the trial court erred: (1) in holding that their failure to appear at the hearing on Aug. 20, 1956, was not due to accident, mistake and excusable negligence; (2) in holding that the affidavit of merit is not sufficient to justify a new trial; and (3) in not granting the motion for new trial.

Counsel for the appellant explains that on March 24, 1956, or 6 months before August 20, 1956 the date scheduled for hearing, he received a registered enveloped containing the notice of hearing. But the envelope was lost before he knew what it was all about, and before he had an opportunity of opening it and knowing its contents. If the envelope was opened, he said, he must have read the order contained therein and must have recorded it in his calendar the date of the hearing, as it was his habit to do; but from the time he received the envelope, he did not see it again. He learned that said envelope contained an order of hearing, only when he checked it up in court the day after August 20, 1956, when he received the decision. Appellants counsel submits that the land being quite a wide tract, and the damages involved considerable, he and his client would not have deliberately absented themselves, during the hearing on August 20, 1956. Appellant's counsel argues that the accident consisted in the loss of the envelope containing the notice of hearing. There was mistake on his part, he asserted, because he did not open the letter and read its contents immediately upon receipt thereof from the post office, so that he could have been informed of the date of the hearing, before its loss.

Does the omission of counsel constitute an excusable mistake and negligence, so as to entitle his client, the appellants herein, to be heard?

The aggrieved party may move the trial court to set aside the judgment and grant a new trial on the ground of

"(a) fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against

and by reason of which such aggrieved party has probably been impaired in his rights" (Sec. 1, (a), Rule 37; *Sunico vs. Villapando*, 14 Phil. 352).

The allegation of counsel that he forgot to note the notice of hearing in his calendar is flimsy. It does not constitute the accident, mistakes or excusable negligence, contemplated by the Rules of Court. The exercise of ordinary prudence on his part could have guarded against or avoided such mistake or negligence. Counsel did not exercise ordinary prudence because he did not perform his routine job or duty of noting down the notice of hearing in his calendar. On this point, the learned trial judge commented:

"Considering the motion for new trial and the opposition thereto, the court believes the negligence of the counsel as not excusable in view of his admission that he received the registry notice from the court on May 24, 1956, and that it was duly registered and that its envelope shows it came from the court which made the envelope and its contents so important that he should have immediately opened the same and not just put it aside, that he misplaced the same is also indicative of his recklessness (See *Gonzales vs. Amen*, L-8963, Feb. 29, 1956). Furthermore, counsel for the defendant Nicolas Francisco has all the time from March 24, 1956, until the date of the trial on Aug. 20, 1956, to inquire from the Court records or Clerk of Court about the nature of the registered notice that was sent to him on March 24, 1956, if he really misplaced the same. This is what a diligent counsel should do as required by ordinary prudence. All he had to do was to examine the records of this case. This Court noted that since it reconvened on June 18, 1956, counsel for the defendant Nicolas Francisco has been appearing in Court almost every week if not everyday. He had, therefore, ample opportunity to verify the nature of the said registered notice of hearing which he allegedly misplaced upon his receipt thereof on March 24, 1956."

Little need be added to these observations of the trial court, except to state that lawyers should always be vigilant and alert, in order to properly safeguard the rights and interests of their clients. Upon the lawyers specially devolve the duty to evaluate the urgency and importance of registered letters coming from the courts where, they daily ply their trade.

The granting of a new trial in this case would not substantially change the result thereof. The trial court found that the spouses Hermenegildo Ramos and Teresa Antonio acquired in 1939, during their marriage, the properties in question, as evidenced by Transfer Certificate of Title No. 14245 (Exhibit A), issued in their names on February 3, 1939; that at the time of their death, the said properties were free from all liens and encumbrances; that when Pablo Antonio, a witness, saw the defendant Jose Ramos in 1948, to inquire about the lot left by his aunt, Jose Ramos informed him that he had already sold it to Nicolas Francisco and to see the latter; and that Nicolas Francisco asked them to sell their portion to him. The fact that defendants Jose Ramos and Leonora Ramos had defaulted, reveals that they admitted the conjugal character of the properties left by the spouses. Appellant cannot be said to have been impaired of his rights, as the trial court did not make pronouncement regarding his cross-claim.

The orders appealed from are therefore, affirmed. Costs against defendant-appellant.

Padilla, Labrador, Concepcion, Reyes, J.B.L., Barrera, Dizon, De Leon, and Natividad, JJ., concur.

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