

AURELIA T. DE PINEDA, PLAINTIFF AND APPELLEE, VS. FELINO V. VELOIRA, DEFENDANT AND APPELLANT.

G.R. No. 15145. June 30, 1961

Ponente: DE LEON, J.

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DE LEON, J.:

This is an appeal from an order of the Court of First Instance of Rizal (Quezon City , Branch IV) in Civil Case No. Q-2896, denying defendant's motion to set aside the order of default entered against him.

Said Civil Case No. 2896 is an action for forcible entry and illegal detainer originally filed in the Municipal Court of Quezon City and appealed to the court below by defendant Felino V. Veloira. The complaint therein filed by plaintiff Aurelia T. Pineda, as reproduced on appeal, alleges, among other things, that defendant on or about May 12, 1957 by means of force, stealth and strategy, unlawfully entered into and took possession of a parcel of land belonging to plaintiff situated in Barrio Tatalon, Quezon City, and that, despite repeated demands, said defendant refused to vacate the same and remove his constructions thereon.

Instead of filing an answer, defendant, on March 27, 1958, or two days after he received the notice of the receipt of the record by the court below and docketing therein of the cause under appeal, filed a motion to dismiss the complaint on the ground of lack of cause of action, alleging in substance that the question of ownership and title over the land in controversy is involved, and that the action is premature since the said question of title and ownership is still pending determination in an action before another court.

After plaintiff had filed her opposition, the motion to dismiss was, on May 17, 1958, called for hearing. On that same date, the lower court, acting upon the motion, denied the same, holding that the grounds alleged therein do not appear to be indubitable. The parties were notified of the denial in open court, but copy of the order of denial was sent to defendant by registered mail only on June 25, 1958 and was received by the latter on June 27, 1958.

Three days later, or on June 30, 1958, defendant filed his answer to the complaint containing a counter-claim for moral and actual damages. On that same day, however, the court, upon plaintiff's motion, handed down an order declaring him in default, it being of the opinion that the running of the period within which to file the answer was resumed on May 17, 1958, when the parties were notified in open court of the denial of the motion to dismiss, so that the time to plead had already expired. A copy of the order of default was received by defendant on July 11, 1958.

Alleging that the period within which to file his answer started to run again only on June 27, 1958, when he was actually served with a copy of the order denying his motion to dismiss, defendant, on July 14, 1958, filed a motion to set aside the order of default. The motion was opposed by plaintiff, and on January 2, 1959, the lower court denied the same for lack of merit. Reconsideration of this last mentioned order having been also denied, defendant took the present appeal.

The decisive question for determination is whether the running of the period within which to file defendant's

answer was resumed on May 17, 1958, when, thru his counsel, he was verbally notified in open court of the order denying the motion to dismiss, or on June 27, 1958, when he actually received a copy of said order of denial.

This Court has already held that notice given orally in open court as to the denial of a motion is not sufficient and does not constitute service under Rule 27 of the Rules of Court. (*Melgar vs. Delgado*, 53 Phil., 223; *Moran's Comments on the Rules of Court*, Vol. 1, 1957 ed., p. 411; *De la Peña, et al. vs. Teodoro, Sr., etc.*, G. R. No. L-10603, December 23, 1959; *Centenera vs. Yatco, etc.*, 106 Phil., 1064; 57 Off. Gaz., [27] 4923). The provisions of said Rule 27 prescribing the modes of service are "mandatorily intended to provide a uniform procedure affecting a matter of public interest which may not be changed by the parties." (*De la Peña, et al. vs. Teodoro, Sr., etc.*, supra.) To be effective, therefore, service of the denial of a motion should be made either personally or by mail. (Sec. 3, Rule 27, Rules of Court.)

Under section 7 of Rule 40, in appeals from a judgment rendered by an inferior court to the Court of First Instance, a defendant is required to file an answer within the reglementary period of 15 days from the date of the receipt of the notice that the cause on appeal has already been docketed in the latter court. (*Pimentel vs. Gomez, et al.*, 109 Phil., 1040; 60 Off. Gaz., [47] 7754). In this case defendant received such notice from the clerk of the court below on March 25, 1958 and filed a motion to dismiss two (2) days later, or on March 27, 1958. Since his motion interrupted the time to plead (sec. 4, Rule 8), he had thirteen (13) days from the denial of his motion within which to file his answer. He was served with notice of the order of denial only on June 27, 1958, when he actually received a copy thereof, so that he still had up to July 10, 1958 within which to file his pleading. As he submitted his answer on June 30, 1958, it is obvious that said answer was filed within the prescribed reglementary period. Consequently, his motion to lift the order of default entered against him should have been granted.

Wherefore, the order appealed from is set aside, and the case remanded to the court below for further proceedings. So ordered without costs.

Bengzon, C.J., Padilla, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, and Natividad, JJ., concur.

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