

ANTONIO PIMENTEL, PLAINTIFF AND APPELLEE, VS. JOSEFINA GOMEZ AND MANUEL BAUTISTA, DEFENDANTS AND APPELLANTS.

G.R. No. 15234. October 31, 1960

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

This is an appeal from an order of the Court of First Instance of La Union, denying appellants' petition for relief under Rule 38.

The record shows that the plaintiff Antonio Pimentel, herein appellee, filed with the Justice of the Peace Court of Bauang, La Union, an action for damages against Josefina Gomez and Manuel Bautista, herein appellants, for the unauthorized cutting of an acacia tree and a narra tree growing on the lot owned by plaintiff in common with his sisters and brothers.

Answering the complaint, the defendants denied the material allegations thereof and alleged that the trees belonged to them.

After trial, the justice of the peace court rendered decision in plaintiff's favor. From this judgment, the defendants filed a notice of appeal, and the appeal having been perfected, the record of the case was transmitted to the Court of First Instance of the province. Upon receipt of said record and the docketing of the case under appeal, the clerk of the court on February 20, 1958 notified the parties thereof stating therein that "pursuant to the provisions of Sec. 1, Rule 8 and Sec. 7, Rule 40 of the Rules of Court the period for interposing a motion to dismiss and making an answer shall begin with the date of the receipt hereof."

On March 20, 1958, plaintiff through counsel filed an ex-parte motion to declare defendants in default for failure to file an answer or a motion to dismiss within the reglementary period prescribed by the Rules of Court. Acting upon that motion, the lower court on the following day issued an order which reads:

"As prayed for by the attorney for the plaintiff in his ex-parte motion filed yesterday and it appearing that the summons was served on the defendants on February 24, 1958, said defendants for their failure to file their answer within the reglementary period are hereby declared in default."

"It is so ordered."

On March 29, 1958, plaintiff through counsel filed a motion for execution, which was denied. Upon another motion filed by plaintiff, the lower court authorized the clerk of court or his deputy to receive the evidence in support of the complaint. Thereafter, or on October 29, 1958; the court below rendered a decision, the dispositive part of which reads as follows:

"In view of the foregoing, the Court hereby renders judgment ordering the defendants to pay, jointly and severally, the total amount of P525.00 to the plaintiff for the value of the trees in question, for filing this action, attorney's fees, payment of the surveyor's services, and moral and exemplary damages suffered by the plaintiff, with legal interest from the date of the filing of the complaint. The defendants shall further pay the costs."

"So ordered."

The decision having become final, the lower court on December 3, 1958, upon plaintiffs motion, issued a writ of execution.

On January 3 of the following year, defendants, through counsel, filed their petition for relief from judgment, alleging, among other things, that their non-appearance, as well as that of their counsel, at the hearing was due to their failure to receive the proper notices; that the only notice received by them was a notification that the case had been received by the Office of the Clerk of Court from the Justice of the Peace Court of Bauang, La Union, in connection with the appeal interposed by defendants; and that they have a good and substantial defense which they can prove if given a chance, as shown by the affidavits of their counsel attached as annexes "A" and "B", respectively, "as an Affidavit of Merit of this case." In their "supplemental petition for relief from judgment," defendants' counsel also alleged that their failure to file an answer was due to the omission of their secretary to call their attention as to the time within which such answer should be filed. On January 23, 1959, the lower court issued the following" order:

"After hearing and consideration of the motion for relief filed by Atty. Lucilo Aquitania and considering the same to be not meritorious as the declaration of default was issued due to the failure of the defendants' counsel to file a written answer within the reglementary period after receipt of the notice sent by the office of the Clerk of Court, the Court orders that the motion for relief be, as it is hereby, denied.

"So ordered."

From this order, defendants appealed directly to this Court.

The motion for relief from judgment, in our opinion, was properly overruled. The granting or denial of such motion is, as a general rule, addressed to the sound discretion of the court. Counsel for defendants admit having received a notice, which they allegedly mistook as merely informing them of receipt of the record of the case from; the inferior court. The notification, however, expressly contained the information that the case under appeal had been docketed and that "pursuant to the provisions of Sec. 1, Rule 8 and Sec. 7, Rule 40 of the Rules of Court the period for interposing a motion to dismiss and mailing an answer shall begin with the date of the receipt hereof." Under said section 7 of Rule 40, a defendant is required to make an answer within the reglementary period from the date of the receipt of the notice that the case has already been docketed. (Moran's Rules of Court, Vol. 1, 1957 ed., pp. 626-627.)

Counsel for defendants have also alleged that their failure to file an answer to the complaint was due to their secretary's omission to call their attention as to the time within which such answer should be filed. Such omission, however, cannot constitute excusable neglect as would justify the lifting of the order of default and the reopening of the case. Having received the notice that the case had already been docketed, they were charged by law with the knowledge of the reglementary period within which to answer.

Moreover, nowhere in defendants' petition for relief could there be found any allegation of facts constituting their good and substantial defense as required in Sec. 3, Rule 38 of the Rules of Court. Such requirement not having been complied with, the court below committed no error in denying the petition.

As to the claim that defendants were not notified of the proceedings and hence denied their day in court, suffice it to say that a defendant in default loses his standing in court, and consequently cannot appear therein to adduce evidence or be heard. He is, for that reason, not entitled to notice, because it would be useless and of no purpose to do so, since he cannot appeal and be heard in the suit in any way. (Lim Toco vs. Go Fay, 80 Phil., 166.)

In view of the foregoing, the order appealed from is affirmed, with costs against appellants.

Paras, C.J., Bengzon, Padilla, Bautista Angelo, Labrador, Reyes, J.B.L., Barrera, and Paredes, JJ., concur.
Order affirmed.

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