

PATRICK VILLEZA, PLAINTIFF AND APPELLEE, VS. JESUS OLMEDO, DEFENDANT AND APPELLANT.

G.R. No. 15672. March 24, 1961

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BENGZON, ACTING C.J.:

Sometime in 1955, in an action to recover ownership and possession of a parcel of land filed by Patricio Villeza against Jesus Olmedo and Tiu Tin alias Penga, judgment was rendered by the Leyte court of first instance in the following words and phrases:

"Premises considered judgment is rendered in favor of the plaintiff and against the defendants, declaring the plaintiff owner of the land in question which is described in paragraph 3 of the complaint, ordering the defendants to deliver the possession of the land to the plaintiff, condemning the defendants to pay P990.00 for copras and P216.00 for nipas for the nine-year period; to pay the sum of P139.00 every year while the possession remains with the defendants beginning with March 1, 1956, and to pay the costs of this action."

On appeal, the Court of Appeals, on May 30, 1958, affirmed the decision but modified the amount of damages.

After the record had been remanded to the court below, Tiu Tin filed on September 6, 1958, a "petition for relief from judgment" alleging that throughout the proceedings, petitioner never learned nor understood that he was a co-defendant; that he was not served the pleadings nor any legal processes; that he was not duly represented by counsel, nor given his day in court; that he did not know of the decision of the Court of Appeals until September 3, 1958; that the decision had been secured through fraud, accident or mistake because his co-defendant Olmedo had assured him that he (petitioner) was merely a witness in the case, and that he (Olmedo) would take care of the litigation, would hire a lawyer, etc.; and that now it turns out said lawyer did not protect his interests.

Plaintiff Villeza opposed the petition for relief, and after hearing the parties, the Court refused to grant relief saying:

"It appears of record that the complaint which originated the case between the parties was filed with this Court on March 28, 1955, the corresponding summons and a copy of the complaint "were served upon the herein petitioner Tiu Tin as shown by the return of services appearing at the back of page 11 of the record. As early as the 13th day of April, 1955, the said defendant Tiu Tin like the other defendant in the case, Jesus Olmedo, was represented by Atty. Ciriaco V. Tupaz who, on that date, filed with the court a motion to dismiss the case for and in behalf of the said defendants. The said motion to dismiss having been overruled on the 26th day of May 1955, the same attorney, Atty. Ciriaco V. Tupaz, acting for the said Tiu Tin and his co-defendant, filed the corresponding answer to the complaint. During the hearing of the case, the same lawyer represented him, and the defendants in the case having been defeated, on Sept. 4, 1956, Attys. Torres and Bandalan filed an Exception and Notice to Appeal for and in representation of the said Tiu Tin and his co-defendant Jesus Olmedo. * * *."

Tiu Tin appealed. There is no question that he was given copy of the complaint and that he was summoned. In fact, he testified in that case. He may not, therefore, profess ignorance thereof nor allege deprivation of his day in court. If it is true that he relied on the assurances of his co-defendant Jesus Olmedo, his remedy is against the

latter or against the attorney who allegedly had failed to protect his interests.

In his brief here, Tiu Tin has made vigorous efforts to show that the decision erred in many respects. It is too late now. The decision has become final, and his petition for relief was submitted beyond the limit provided by Rule 38.

However, he argues that "law and jurisprudence concede relief from a judgment which is void either (1) for want of facts or findings to support the decree (Yangco vs. CFI of Manila, 29 Phil., 183-191) ; (2) for want of jurisdiction over the subject matter (Anuran vs. Aquino, 38 Phil., 29); and (3) for want of due process of law. * * *."

But the decision of the Court of Appeals, appended to appellate's brief, made findings of fact and law; Tiu Tin was summoned and was represented by an attorney, and the suit referred to land in Abuyog, Leyte. Therefore, his assertions of invalidity do not rest on any solid foundation.

Needless to say, supposing he had been the victim of fraud by his co-defendant, such fraud may not affect the rights of the plaintiff who had obtained judgment after a trial and after submitting evidence, which must at this stage be conclusively presumed to be sufficient. If Tiu Tin had asserted—he did not—that his co-defendant had colluded with the plaintiff, a different situation might arise.

The order denying relief is affirmed, with costs against appellant.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, and Paredes, JJ., concur.

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