

JOVENAL R. FERNANDEZ, PLAINTIFF AND APPELLEE, VS. TAN TIONG TICK, ET AL., DEFENDANTS. TAN TIONG TICK, DEFENDANT AND APPELLANT.

G.R. No. 15877. April 28, 1961

Ponente: BARRERA, J.

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BARRERA, J.:

This is a direct appeal from the judgment of the Court of First Instance of Manila, Honorable Carmelino G. Alvendia, presiding, quoted hereunder:

"DECISION

"This is an action, to recover damages arising from the seizure of thirty long tons of unprepared scrap iron by the defendant Sheriff of Manila at the instance of defendant Tan Tiong Tick.

"From the evidence presented by the parties, it appears that plaintiff is the owner of thirty long tons of scrap iron which was salvaged from the U. S. Navy Base at Sangley Point, Cavite (Exhs. A, B, and C). Said scrap iron was stockpiled at the scrap yard of Tan Tay Cuan at the Madrigal Compound on Cristobal Street, Manila.

"In April, 1958 defendant Tan Tiong Tick filed a replevin suit against Tan Tay Cuan (Civil Case No. 35804, C. F. I., Manila) for the recovery of the scrap iron allegedly belonging to Tan Tiong Tick and in the possession of Tan Tay Cuan (Exh. D-1). An order of seizure (Exh. D-2) was issued in due course and defendant Sheriff seized the scrap iron belonging to the herein plaintiff at the Madrigal Compound.

"Plaintiff filed a third party claim (Exh. E) but because defendant Tan Tiong Tick filed an indemnity bond in favor of the Sheriff (Exh. F), the scrap iron seized was not returned to plaintiff.

"In the course of the proceedings in this case, the plaintiff asked for the dismissal of the complaint insofar as the defendant Sheriff is concerned. This step on the part of the plaintiff automatically dismisses the complaint against the bonding company.

"The evidence by the plaintiff shows that the thirty long tons of scrap iron belonging to plaintiff was worth P50.00 per ton, after deducting the expenses of preparation. The value of the entire scrap iron of plaintiff which was taken by defendant Tan Tiong Tick is P1,400.00.

"WHEREFORE, judgment is rendered ordering defendant Tan Tiong Tick to pay plaintiff the value of his scrap iron in the sum of P1,400.00, plus compensatory damages which the Court fixes in the sum of P2,000.00; attorney's fees in the sum of P250.00 and costs.

"SO ORDERED."

The Notice of Appeal announces that defendant will raise on appeal the following legal questions:

"1. Whether the act of the former counsel of the defendant of not pressing his request for continuance for the second day set for the hearing of this case to enable the herein defendant to testify and abruptly rested the case

would constitute a confession of judgment and, hence, a valid ground to set aside the judgment and to reopen the case since counsel was not specially authorized to confess judgment.

"2. Whether the negligence of the former counsel for the herein defendant in not informing the defendant that he rested the case and the negligence of the defendant in not inquiring from his counsel about the status of the case is an excusable negligence and, hence, a valid ground to set aside the judgment."

The brief of appellant contains but one single assignment of error: The trial court erred in denying appellant's petition to set aside judgment and reopen the case. This error, in the language of appellant himself, is predicated on the following grounds:

"1. That the act of the former counsel of appellant of not pressing his request for postponement for the second day set for the hearing of the case to enable the appellant to testify and, instead, abruptly rested the case, is in effect a confession of judgment and hence a valid ground to set aside the judgment and to reopen the case since said counsel was specially authorized to confess judgment;

"2. That the negligence of the former counsel for the herein appellant in not informing the appellant that he rested¹ the case and the negligence of the appellant in not inquiring from his counsel about the status of the case is an excusable negligence and hence a valid ground to set aside the judgment.

"3. That the appellant has a good defense inasmuch as he has evidence to prove that all the scrap iron seized by the Sheriff of Manila in Civil Case No. 35804 belong to him; and

"4. That Exhibits 'A' and 'B' of the appellee, which formed the basis of his alleged ownership of thirty (30) tons of scrap iron, show that the alleged scrap iron of the appellee "were to be deposited at Bacood, Sta. Mesa, Manila, and not at Cristobal St., Paco, Manila, which is at the opposite bank of the Pasig River."

The first two grounds relied upon by appellant involve questions of law; the last two require review of the evidence presented or offered. The appellant having chosen to appeal direct to this Court on the announced purpose of raising only legal questions posed by the first two issues, we shall limit this opinion and decision accordingly.

The antecedents pertinent to the legal questions raised by appellant are briefly these:

After the issues have been joined, the case was set for hearing for February 3 and 5, 1959, as to defendant Tan Tiong Tick.[1] On the first date mentioned plaintiff testified in his own behalf and was cross-examined by counsel for defendant. Several documents were presented as exhibits of plaintiff. Thereafter, plaintiff rested his case. Thereupon, defendant's counsel called on the Deputy Sheriff of Manila as his first witness. Two documents (Exhibits 1 and 2) were presented as evidence. At this juncture, the following proceeding took place:

"Atty. Mapa: At this point I have another witness, the defendant himself, but he developed flu, and since this case is set for another day, the day alter tomorrow.

"Court: Why did you not bring a medical certificate?

"Atty. Mapa: I came to know of it this morning when I came to fetch him. I think it is for the 5th.

"Court: When, they set for two (2) or three (3) days tha purpose is not to enable the parties to ask for a postponement of the first two (days).

"Atty. Mapa: I realize fully the correctness, but owing to the fact that when I ... I was a little bit late because I came to fetch him he was indisposed. We request this Honorable Court, in the interest of justice, his testimony will not be very long, some identification only of certain matters.

"Court: Where are those? The plaintiff might be willing to admit the genuineness, of those documents, what

are those?

"Atty. Mapa: As a matter of fact the testimony of ...

"Court: You said merely identification. Identification of the contract? Are you ready to pay fifty pesos (P50.00) to the plaintiff to reimburse him of his expenses for having to come again next time?

"Atty. Mapa: We respectfully rest our case by presenting only Exhibit 1 diagram made by the plaintiff of the stockyard in which the alleged thirty (30) tons were deposited and Exhibit 2, which is also marked as Exhibits D-7.

"Court: Exhibit 2 is also admitted. Submitted." (Pages 58-60, t.s.n., Mallari.)

Subsequently, on April 16, 1959, the court rendered the decision quoted earlier.

The first legal question propounded by appellant is: Is the act of the appellant's counsel of not pressing his request for postponement for the second day set for the hearing of the case to enable the appellant to testify and, instead, abruptly rested the case, in effect a confession of judgment and hence a valid ground, to set aside the judgment and to reopen the case since counsel was not specially authorized to confess judgment?

We do not think so. Appellant's attorney has not withdrawn his client's defenses, much less consented to an entry of judgment against his client. On the contrary, the records show that he extensively cross-examined the plaintiff-appellee and thoroughly scrutinized the documentary evidence for appellee, which were adduced and offered in evidence. After appellee had rested his case, appellant's counsel presented the Deputy Sheriff of Manila as witness for appellant and adduced documentary evidence, which he requested to be marked as Exhibits 1 and 2. He then asked for postponement because appellant was not present, but the trial court would not consent unless counsel would be willing to pay reasonable expenses to appellee for his having to come to trial again if postponed. Under the circumstances, counsel, who is not under obligation to pay the expenses imposed by the court as a condition for the postponement, could do nothing. His resting the case with the evidence already introduced, whatever it meant, did not constitute confession of judgment. At most, it might be considered as a mistake or lack of foresight or preparation on the part of the attorney. But a client is bound by the action of his counsel in the conduct of a case and cannot be heard to complain that the result might have been different had he proceeded differently. (U.S. vs. Umali, 15 Phil., 33; Vivero vs. Santos, et al., 98 Phil., 500; 52 Off. Gaz., 1424) A client is bound by the mistake of his lawyer (Montes vs. Court, 48 Phil., 640; Isaac vs. Mendoza, 89 Phil., 279). As held in a case, "If such grounds (mistakes, lack of preparation, etc.) were to be admitted as reasons for reopening cases, there would never be an end to a suit so long as new counsel could be employed who could allege and show that prior counsel had not been sufficiently diligent, or experienced, or learned." (De Flores vs. Reynolds, Fed. Case No. 3742, 16 Blatch [U. S.] 397, cited in Vivero vs. Santos, et al., supra.)

Appellant next inquires: Is the negligence of counsel in not informing appellant that he rested the case, and the negligence of appellant in not inquiring from his counsel about the status of the case an excusable negligence and, hence, a valid ground to set aside the judgment and reopen the case?

Again, we do not think so. Negligence is excusable where it is caused by failure to receive notice of the action or the trial, by a genuine and excusable mistake or miscalculation, by reliance upon assurances given by those upon whom the party had a right to depend, as the adverse party or counsel retained in the case, or a competent adviser, that it would not be necessary for him to take an active part in the case, or that the suit would not be prosecuted, by relying on another person to attend to the case for him, when such other person promised to do so, or was chargeable with that duty or by a well-founded belief that the case would not be reached for trial as it was in fact reached, or by other circumstances not involving fault of the moving party (34 C. J. 303, cited in 1 (part II)

Francisco, Rules of Court in the Philippines, 1957 Ed., pp. 774-775). The standard of care required of a defendant is that which an ordinarily prudent man bestows upon his important business (*Gaylord vs. Berry*, 169 N. C. 733, 86 S. E. 623). None of these mentioned circumstances obtains in the case at bar. Here it appears that appellant himself as well as his counsel were duly notified, and had full knowledge that the case was to be heard on the date it was actually tried. Counsel was, in fact, present thereat and conducted the hearing thereof, resting the ease after cross-examining appellee as witness and scrutinizing the evidence presented by the latter and, thereafter, presenting evidence in support of appellant's defense. Considering that the client is bound by his counsel's conduct and handling of his case during the trial, appellant cannot now seriously contend that he was not notified that the case was already submitted for decision. Neither is appellant's failure to inquire from his counsel regarding the status of the ease, an excusable negligence as to justify rehearing or retrial. As far as the trial court is concerned, appellant was already duly notified, through his counsel, of the entire proceedings in the case. If he failed to inquire from his counsel as to said status, appellant alone was to blame. As a client he should have been in contact with his counsel from time to time, in order that he may be informed of the progress of his case, thereby exercising that standard of care "which an ordinarily prudent man bestows upon his important business" (*Gaylord vs. Berry*, supra.).

Furthermore, it appears that appellant's petition to set aside the judgment and reopen the case, is grounded on his alleged excusable negligence in failing to appear and testify during the hearing of the case on February 3, 1959, namely, his becoming ill with flu (influenza) on said date. We find, however, that appellant failed to accompany said petition with affidavits of merit showing the excusable negligence relied upon, and the facts constituting his good and substantial cause of action or defense, as expressly required under Section 3, Rule 38 of the Rules of Court. We have repeatedly held that such a defect is fatal (*Abao vs. Virtucio, et al.*, 109 Phil., 821; *Price Stabilization Corporation vs. Court of First Instance of Manila, et al.*, 97 Phil., 153, which warrants the denial of the relief sought (*Abao vs. Virtucio, et al.*, supra, citing *Coombs vs. Santos*, 24 Phil., 446; *McGrath vs. Del Rosario*, 49 Phil., 330; *Villanueva, et al. vs. Alcoba*, 101 Phil., 277. The reason for the rule is that it is the affidavits of merit which serve as jurisdictional basis for a court to entertain a petition for relief (*Abao vs. Virtucio, et al.*, supra; *Omandam vs. Director of Lands*, 95 Phil., 450; *Off. Gaz.*, 4840. Stated differently, where a petition to set aside a judgment or reopen a case pursuant to Rule 38 of the Rules of Court is not accompanied with said affidavits of merit, the court with which it is filed is not called upon to entertain the petition. Applied to the instant case, appellant's petition to set aside the judgment in question and reopen the case acquired no standing in court and, consequently, it was rightly denied.

With these conclusions, we find it unnecessary to discuss the other points raised by the parties.

Wherefore, the order of the trial court dated May 19, 1959 denying appellant's petition to set aside the judgment of April 16, 1959 appealed from, is hereby affirmed, with costs against the appellant. So ordered.

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

[1] Upon petition of plaintiff himself, the complaint was earlier dismissed as to the defendant Sheriff which automatically carried the dismissal of the complaint as to the bonding company which furnished the bond for the Sheriff.

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