

JOSE R. MARTINEZ, PETITIONER, VS. REPUBLIC OF THE PHILIPPINES, RESPONDENTS.

G.R. NO. 160895. October 30, 2006

Ponente: TINGA, J.

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TINGA, J.:

The central issue presented in this Petition for Review is whether an order of general default issued by a trial court in a land registration case bars the Republic of the Philippines, through the Office of the Solicitor General, from interposing an appeal from the trial court's subsequent decision in favor of the applicant.

The antecedent facts follow.

On 24 February 1999, petitioner Jose R. Martinez (Martinez) filed a petition for the registration in his name of three (3) parcels of land included in the Cortes, Surigao del Sur Cadastre. The lots, individually identified as Lot No. 464-A, Lot No. 464-B, and Lot No. 370, Cad No. 597, collectively comprised around 3,700 square meters. Martinez alleged that he had purchased lots in 1952 from his uncle, whose predecessors-in-interest were traceable up to the 1870s. It was claimed that Martinez had remained in continuous possession of the lots; that the lots had remained unencumbered; and that they became private property through prescription pursuant to Section 48(b) of Commonwealth Act No. 141. Martinez further claimed that he had been constrained to initiate the proceedings because the Director of the Land Management Services had failed to do so despite the completion of the cadastral survey of Cortes, Surigao del Sur.[1]

The case was docketed as Land Registration Case No. N-30 and raffled to the Regional Trial Court (RTC) of Surigao del Sur, Branch 27. The Office of the Solicitor General (OSG) was furnished a copy of the petition. The trial court set the case for hearing and directed the publication of the corresponding Notice of Hearing in the Official Gazette. On 30 September 1999, the OSG, in behalf of the Republic of the Philippines, opposed the petition on the grounds that appellee's possession was not in accordance with Section 48(b) of Commonwealth Act No. 141; that his muniments of title were insufficient to prove bona-fide acquisition and possession of the subject parcels; and that the properties formed part of the public domain and thus not susceptible to private appropriation.[2]

Despite the opposition filed by the OSG, the RTC issued an order of general default, even against the Republic of the Philippines, on 29 March 2000. This ensued when during the hearing of even date, no party appeared before the Court to oppose Martinez's petition.[3]

Afterwards, the trial court proceeded to receive Martinez's oral and documentary evidence in support of his petition. On 1 August 2000, the RTC rendered a Decision[4] concluding that Martinez and his predecessors-in-interest had been for over 100 years in possession characterized as continuous, open, public, and in the concept of an owner. The RTC thus decreed the registration of the three (3) lots in the name of Martinez.

From this Decision, the OSG filed a Notice of Appeal dated 28 August 2000,[5] which was approved by the RTC.

However, after the records had been transmitted to the Court of Appeals, the RTC received a letter dated 21 February 2001[6] from the Land Registration Authority (LRA) stating that only Lot Nos. 464-A and 464-B were referred to in the Notice of Hearing published in the Official Gazette; and that Lot No. 370, Cad No. 597 had been deliberately omitted due to the lack of an approved survey plan for that property. Accordingly, the LRA manifested that this lot should not have been adjudicated to Martinez for lack of jurisdiction. This letter was referred by the RTC to the Court of Appeals for appropriate action.[7]

On 10 October 2003, the Court of Appeals promulgated the assailed Decision,[8] reversing the RTC and instead ordering the dismissal of the petition for registration. In light of the opposition filed by the OSG, the appellate court found the evidence presented by Martinez as insufficient to support the registration of the subject lots. The Court of Appeals concluded that the oral evidence presented by Martinez merely consisted of general declarations of ownership, without alluding to specific acts of ownership performed by him or his predecessors-in-interest. It likewise debunked the documentary evidence presented by Martinez, adjudging the same as either inadmissible or ineffective to establish proof of ownership.

No motion for reconsideration appears to have been filed with the Court of Appeals by Martinez, who instead directly assailed its Decision before this Court through the present petition.

We cannot help but observe that the petition, eight (8) pages in all, was apparently prepared with all deliberate effort to attain nothing more but the perfunctory. The arguments raised center almost exclusively on the claim that the OSG no longer had personality to oppose the petition, or appeal its allowance by the RTC, following the order of general default. Starkly put, "the [OSG] has no personality to raise any issue at all under the circumstances pointed out hereinabove." [9] Otherwise, it is content in alleging that "[Martinez] presented sufficient and persuasive proof to substantiate the fact that his title to Lot Nos. 464-A and 464-B is worth the confirmation he seeks to be done in this registration case"; [10] and that the RTC had since issued a new Order dated 1 September 2003, confirming Martinez's title over Lot No. 370.

In its Comment dated 24 May 2004,[11] the OSG raises several substantial points, including the fact that it had duly opposed Martinez's application for registration before the RTC; that jurisprudence and the Rules of Court acknowledge that a party in default is not precluded from appealing the unfavorable judgment; that the RTC had no jurisdiction over Lot No. 370 since its technical description was not published in the Official Gazette; and that as found by the Court of Appeals the evidence presented by Martinez is insufficient for registering the lots in his name.[12] Despite an order from the Court requiring him to file a Reply to the Comment, counsel for Martinez declined to do so, explaining, among others, that "he felt he would only be taxing the collective patience of this [Court] if he merely repeats x x x what petitioner had succinctly stated x x x on pages four (4) to seven (7) of his said petition." Counsel for petitioner was accordingly fined by the Court.[13]

The Court's patience is taxed less by redundant pleadings than by insubstantial arguments. The inability of Martinez to offer an effective rebuttal to the arguments of the OSG further debilitates what is an already weak petition.

The central question, as posed by Martinez, is whether the OSG could have still appealed the RTC decision after it had been declared in default. The OSG argues that a party in default is not precluded from filing an appeal, citing *Metropolitan Bank & Trust Co. v. Court of Appeals*, [14] and asserts that "[t]he Rules of Court expressly provides that a party who has been declared in default may appeal from the judgment rendered against him." [15]

There is error in that latter, unequivocal averment, though one which does not deter from the ultimate correctness of the general postulate that a party declared in default is allowed to pose an appeal. Elaboration is in order.

We note at the onset that the OSG does not impute before this Court that the RTC acted improperly in declaring public respondent in default, even though an opposition had been filed to Martinez's petition. Under Section 26 of Presidential Decree No. 1529, as amended, the order of default may be issued "[i]f no person appears and answers within the time allowed." The RTC appears to have issued the order of general default simply on the premise that no oppositor appeared before it on the hearing of 29 March 2000. But it cannot be denied that the OSG had already duly filed its Opposition to Martinez's petition long before the said hearing. As we held in *Director of Lands v. Santiago*:^[16]

[The] opposition or answer, which is based on substantial grounds, having been formally filed, it was improper for the respondent Judge taking cognizance of such registration case to declare the oppositor in default simply because he failed to appear on the day set for the initial hearing. The pertinent provision of law which states: "If no person appears and answers within the time allowed, the court may at once upon motion of the applicant, no reason to the contrary appearing, order a general default to be recorded . . .," cannot be interpreted to mean that the court can just disregard the answer before it, which has long been filed, for such an interpretation would be nothing less than illogical, unwarranted, and unjust. Had the law intended that failure of the oppositor to appear on the date of the initial hearing would be a ground for default despite his having filed an answer, it would have been so stated in unmistakable terms, considering the serious consequences of an order of default. Especially in this case where the greater public interest is involved as the land sought to be registered is alleged to be public land, the respondent Judge should have received the applicant's evidence and set another date for the reception of the oppositor's evidence. The oppositor in the Court below and petitioner herein should have been accorded ample opportunity to establish the government's claim.^[17]

Strangely, the OSG did not challenge the propriety of the default order, whether in its appeal before the Court of Appeals or in its petition before this Court. It would thus be improper for the Court to make a pronouncement on the validity of the default order since the same has not been put into issue. Nonetheless, we can, with comfort, proceed from same apparent premise of the OSG that the default order was proper or regular.

The juridical utility of a declaration of default cannot be disputed. By forgoing the need for adversarial proceedings, it affords the opportunity for the speedy resolution of cases even as it penalizes parties who fail to give regard or obedience to the judicial processes.

The extent to which a party in default loses standing in court has been the subject of considerable jurisprudential debate. Way back in 1920, in *Velez v. Ramas*,^[18] we declared that the defaulting defendant "loses his standing in court, he not being entitled to the service of notices in the case, nor to appear in the suit in any way. He cannot adduce evidence; nor can he be heard at the final hearing."^[19] These restrictions were controversially expanded in *Lim Toco v. Go Fay*,^[20] decided in 1948, where a divided Court pronounced that a defendant in default had no right to appeal the judgment rendered by the trial court, except where a motion to set aside the order of default had been filed. This, despite the point raised by Justice Perfecto in dissent that there was no provision in the then Rules of Court or any law "depriving a defaulted defendant of the right to be heard on appeal."^[21]

The enactment of the 1964 Rules of Court incontestably countermanded the *Lim Toco* ruling. Section 2, Rule 41 therein expressly stated that "[a] party who has been declared in default may likewise appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition for relief to set aside the order of default has been presented by him in accordance with Rule 38."^[22] By clearly specifying that the right to appeal was available even if no petition for relief to set aside the order of default had been filed, the then fresh Rules clearly rendered the *Lim Toco* ruling as moot.

Another provision in the 1964 Rules concerning the effect of an order of default acknowledged that "a party declared in default shall not be entitled to notice of subsequent proceedings, nor to take part in the trial."^[23] Though it might be argued that appellate proceedings fall part of "the trial" since there is no final termination of

the case as of then, the clear intent of the 1964 Rules was to nonetheless allow the defaulted defendant to file an appeal from the trial court decision. Indeed, jurisprudence applying the 1964 Rules was unhesitant to affirm a defaulted defendant's right to appeal, as guaranteed under Section 2 of Rule 41, even as *Lim Toco* was not explicitly abandoned.

In the 1965 case of *Antonio, et al. v. Jacinto*,^[24] the Court acknowledged that the prior necessity of a ruling setting aside the order of default "however, was changed by the Revised Rules of Court. Under Rule 41, section 2, paragraph 3, a party who has been declared in default may likewise appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition for relief to set aside the order of default has been presented by him in accordance with Rule 38."^[25] It was further qualified in *Matute v. Court of Appeals*^[26] that the new availability of a defaulted defendant's right to appeal did not preclude "a defendant who has been illegally declared in default from pursuing a more speedy and efficacious remedy, like a petition for certiorari to have the judgment by default set aside as a nullity."^[27]

In *Tanhu v. Ramolete*,^[28] the Court cited with approval the commentaries of Chief Justice Moran, expressing the reformulated doctrine that following *Lim Toco*, a defaulted defendant "cannot adduce evidence; nor can he be heard at the final hearing, although [under Section 2, Rule 41,] he may appeal the judgment rendered against him on the merits."^[29]

Thus, for around thirty-odd years, there was no cause to doubt that a defaulted defendant had the right to appeal the adverse decision of the trial court even without seeking to set aside the order of default. Then, in 1997, the Rules of Civil Procedure were amended, providing for a new Section 2, Rule 41. The new provision reads:

SECTION 1. Subject of appeal.-An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

- (a) An order denying a motion for new trial or reconsideration;
- (b) An order denying a petition for relief or any similar motion seeking relief from judgment;
- (c) An interlocutory order;
- (d) An order disallowing or dismissing an appeal;
- (e) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;
- (f) An order of execution;
- (g) A judgment or final order for or against or one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and
- (h) An order dismissing an action without prejudice.

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

Evidently, the prior warrant that a defaulted defendant had the right to appeal was removed from Section 2, Rule 41. On the other hand, Section 3 of Rule 9 of the 1997 Rules incorporated the particular effects on the parties of an order of default:

Sec. 3. Default; declaration of.-If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court.

(a) Effect of order of default.-A party in default shall be entitled to notice of subsequent proceedings but shall not take part in the trial.

(b) Relief from order of default.-A party declared in default may any time after notice thereof and before judgment file a motion under oath to set aside the order of default upon proper showing that his failure to answer was due to fraud, accident, mistake or excusable negligence and that he has a meritorious defense. In such case, the order of default may be set aside on such terms and conditions as the judge may impose in the interest of justice.

(c) Effect of partial default.-When a pleading asserting a claim states a common cause of action against several defending parties, some of whom answer and the others fail to do so, the court shall try the case against all upon the answers thus filed and render judgment upon the evidence presented.

(d) Extent of relief to be awarded.-A judgment rendered against a party in default shall not exceed the amount or be different in kind from that prayed for nor award unliquidated damages.

x x x

It cannot be escaped that the old provision expressly guaranteeing the right of a defendant declared in default to appeal the adverse decision was not replicated in the 1997 Rules of Civil Procedure. Should this be taken as a sign that under the 1997 Rules a defaulted defendant no longer has the right to appeal the trial court decision, or that the Lim Toco doctrine has been reinstated?

If post-1997 jurisprudence and the published commentaries to the 1997 Rules were taken as an indication, the answer should be in the negative. The right of a defaulted defendant to appeal remains extant.

By 1997, the doctrinal rule concerning the remedies of a party declared in default had evolved into a fairly comprehensive restatement as offered in *Lina v. Court of Appeals*:^[30]

a) The defendant in default may, at any time after discovery thereof and before judgment, file a motion, under oath, to set aside the order of default on the ground that his failure to answer was due to fraud, accident, mistake or excusable neglect, and that he has meritorious defenses; (Sec 3, Rule 18)

b) If the judgment has already been rendered when the defendant discovered the default, but before the same has become final and executory, he may file a motion for new trial under Section 1(a) of Rule 37;

c) If the defendant discovered the default after the judgment has become final and executory, he may file a petition for relief under Section 2 of Rule 38; and

d) He may also appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default has been presented by him. (Sec. 2, Rule 41)^[31]

The fourth remedy, that of appeal, is anchored on Section 2, Rule 41 of the 1964 Rules. Yet even after that provision's deletion under the 1997 Rules, the Court did not hesitate to expressly rely again on the *Lina* doctrine, including the pronouncement that a defaulted defendant may appeal from the judgment rendered against him. This can be seen in the cases of *Indiana Aerospace University v. Commission on Higher Education*,^[32] *Tan v. Dumarpa*,^[33] and *Crisologo v. Globe Telecom, Inc.*^[34]

Annotated textbooks on the 1997 Rules of Civil Procedure similarly acknowledge that even under the new rules, a defaulted defendant retains the right to appeal as previously confirmed under the old Section 2, Rule 41. In his textbook on Civil Procedure, Justice Francisco answers the question "What are the remedies available to a defending party in default?" with a reiteration of the Lina doctrine, including the remedy that a defaulted defendant "may also appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default has been presented by him." [35] Justice Regalado also restates the Lina rule in his textbook on Civil Procedure, opining that the remedies enumerated therein, even if under the former Rules of Procedure, "would hold true under the present amended Rules." [36] Former Court of Appeals Justice Herrera likewise reiterates the Lina doctrine, though with the caveat that an appeal from an order denying a petition for relief from judgment was no longer appealable under Section 1, Rule 41 of the 1997 Rules. [37] Herrera further adds:

Section 2, paragraph [2] of the former Rule 41, which allows an appeal from a denial of a petition for relief, was deleted from the present Rule, and confined appeals to cases from a final judgment or final order that completely disposes of the case, or of a particular matter therein, when declared by these rules to be appealable. A judgment by default may be considered as one that completely disposes of the case. [38]

We are hard-pressed to find a published view that the enactment of the 1997 Rules of Civil Procedure accordingly withdrew the right, previously granted under the 1964 Rules, of a defaulted defendant to appeal the judgment by default against him. Neither is there any provision under the 1997 Rules which expressly denies the defaulted defendant such a right. If it is perplexing why the 1997 Rules deleted the previous authorization under the old Section 2, Rule 41 (on subject of appeal), it is perhaps worth noting that its counterpart provision in the 1997 Rules, now Section 1, Rule 41, is different in orientation even as it also covers "subject of appeal." Unlike in the old provision, the bulk of the new provision is devoted to enumerating the various rulings from which no appeal may be taken, and nowhere therein is a judgment by default included. A declaration therein that a defaulted defendant may still appeal the judgment by default would have seemed out of place.

Yet even if it were to assume the doubtful proposition that this contested right of appeal finds no anchor in the 1997 Rules, the doctrine still exists, applying the principle of stare decisis. Jurisprudence applying the 1997 Rules has continued to acknowledge the Lina doctrine which embodies this right to appeal as among the remedies of a defendant, and no argument in this petition persuades the Court to rule otherwise.

In *Rural Bank of Sta. Catalina v. Land Bank of the Philippines*, [39] the Court, through Justice Callejo, Sr., again provided a comprehensive restatement of the remedies of the defending party declared in default, which we adopt for purposes of this decision:

It bears stressing that a defending party declared in default loses his standing in court and his right to adduce evidence and to present his defense. He, however, has the right to appeal from the judgment by default and assail said judgment on the ground, inter alia, that the amount of the judgment is excessive or is different in kind from that prayed for, or that the plaintiff failed to prove the material allegations of his complaint, or that the decision is contrary to law. Such party declared in default is proscribed from seeking a modification or reversal of the assailed decision on the basis of the evidence submitted by him in the Court of Appeals, for if it were otherwise, he would thereby be allowed to regain his right to adduce evidence, a right which he lost in the trial court when he was declared in default, and which he failed to have vacated. In this case, the petitioner sought the modification of the decision of the trial court based on the evidence submitted by it only in the Court of Appeals. [40]

If it cannot be made any clearer, we hold that a defendant party declared in default retains the right to appeal from the judgment by default on the ground that the plaintiff failed to prove the material allegations of the complaint, or that the decision is contrary to law, even without need of the prior filing of a motion to set aside the order of

default. We reaffirm that the Lim Toco doctrine, denying such right to appeal unless the order of default has been set aside, was no longer controlling in this jurisdiction upon the effectivity of the 1964 Rules of Court, and up to this day.

Turning to the other issues, we affirm the conclusion of the Court of Appeals that Martinez failed to adduce the evidence needed to secure the registration of the subject lots in his name.

It should be noted that the OSG, in appealing the case to the Court of Appeals, did not introduce any new evidence, but simply pointed to the insufficiency of the evidence presented by Martinez before the trial court. The Court of Appeals was careful to point out that the case against Martinez was established not by the OSG's evidence, but by petitioner's own insufficient evidence. We adopt with approval the following findings arrived at by the Court of Appeals, thus:

The burden of proof in land registration cases is incumbent on the applicant who must show that he is the real and absolute owner in fee simple of the land applied for. Unless the applicant succeeds in showing by clear and convincing evidence that the property involved was acquired by him or his ancestors by any of the means provided for the proper acquisition of public lands, the rule is settled that the property must be held to be a part of the public domain. The applicant must, therefore, present competent and persuasive proof to substantiate his claim. He may not rely on general statements, or mere conclusions of law other than factual evidence of possession and title.

Considered in the light of the opposition filed by the Office of the Solicitor General, we find the evidence adduced by appellee, on the whole, insufficient to support the registration of the subject parcels in his name. To prove the provenance of the land, for one, all that appellee proffered by way of oral evidence is the following cursory testimony during his direct examination, viz:

x x x x

Q

You mentioned that you are the owner of these three (3) parcels of land. How did you begin the ownership of the same?

A

I bought it from my uncles Julian Martinez and Juan Martinez.

x x x x

Q

x x x x Who took possession of these parcels of land from then on?

A

I took possession, sir

Q

As owner?

A

Yes, as owner.

Q

Up to the present who is in possession as owner of these parcels of land?

A

I took possession.

Q

Before Julian Martinez and Juan Martinez sold these parcels of land before you took possession who were the owners and in possession of these?

A

Hilarion Martinez, the father of my predecessors-in-interest and also my grandfather.

x x x x

Court:

Q

Of your own knowledge[,] where [sic] did your grandfather Hilarion Martinez acquire these lands?

A

According to my grandfather he bought that land from a certain Juan Casano in the year 1870's[,] I think.

x x x x

Q

By the way[,] when did your grandfather Hilarion Martinez die?

A

Either in 1920 or 1921.

Q

Since you said your immediate predecessors-in-interest Julian Martinez and Juan Martinez inherited the same from your grandfather. Can you say it the same that your predecessors-in-interest were the owners and possessors of the same since 1921 up to the time they sold the land to you in 1952?

A

Yes, sir.

x x x x

In the dreary tradition of most land registration cases, appellee has apparently taken the absence of representation for appellant at the hearing of his petition as license to be perfunctory in the presentation of his evidence. Actual possession of land, however, consists in the manifestation of acts of dominion over it of such a nature as a party would naturally exercise over his own property. It is not enough for an applicant to declare himself or his predecessors-in-interest the possessors and owners of the land for which registration is sought. He must present specific acts of ownership to substantiate the claim and cannot just offer general statements which are mere conclusions of law requiring evidentiary support and substantiation.

The record shows that appellee did not fare any better with the documentary evidence he adduced before the trial court. The October 20, 1952 Deed of Sale by which appellee claims to have purchased the subject parcels

from his uncle, Julian Martinez, was not translated from the vernacular in which it was executed and, by said token, was inadmissible in evidence. Having submitted a white print copy of the survey plan for Lot Nos. 464-A and 464-B, appellee also submitted the tracing cloth plan for Lot No. 370 which does not, however, appear to be approved by the Director of Lands. In much the same manner that the submission of the original tracing cloth plan is a mandatory statutory requirement which cannot be waived, the rule is settled that a survey plan not approved by the Director of Lands is not admissible in evidence.[41]

These findings of the Court of Appeals, arrived at after a sufficiently extensive evaluation of the evidence, stand in contrast to that contained in the RTC decision, encapsulated in a one-paragraph précis of the factual allegations of Martinez concerning how he acquired possession of the subject properties. The Court of Appeals, of course, is an appropriate trier of facts, and a comparison between the findings of fact of the Court of Appeals and that of the RTC clearly demonstrates that it was the appellate court which reached a more thorough and considered evaluation of the evidence.

As correctly held by the Court of Appeals, the burden of proof expected of the petitioner in a land registration case has not been matched in this case.

WHEREFORE, the petition is DISMISSED. Costs against petitioner.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio-Morales, and Velasco, Jr., JJ., concur.

[1] Records, pp. 1-4.

[2] Id. at 108-108a.

[3] Id. at 161.

[4] Id. at 229-230.

[5] Id. at 239.

[6] CA rollo, p. 17.

[7] Id. at 19.

[8] Rollo, pp. 12-20.

[9] Id. at 9.

[10] Id. at 9-10.

[11] Id. at 30-45.

[12] Id. at 37-42.

[13] Id. at 49.

[14] G.R. No. 110147, 17 April 2001, 356 SCRA 563.

[15] Rollo, p. 38, citing *Oriental Media Inc. v. Court of Appeals*, 250 SCRA 647.

[16] No. L-41278, 15 April 1988, 160 SCRA 186.

[17] Id. at 191.

[18] 40 Phil. 787 (1920).

[19] Id. at 792.

[20] 80 Phil. 166 (1948).

[21] Id. at 176; J. Perfecto, dissenting.

[22] See 1964 RULES OF COURT, Rule 41, Sec. 2. The entire provision reads:

SEC. 2. Judgments or orders subject to appeal.—Only final judgments or orders shall be subject to appeal. No interlocutory or incidental judgment or order shall stay the progress of an action, nor shall it be the subject of appeal until final judgment or order is rendered for one party or the other.

A judgment denying relief under Rule 38 is subject to appeal, and in the course thereof, a party may also assail the judgment on the merits, upon the ground that it is not supported by the evidence or it is contrary to law.

A party who has been declared in default may likewise appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition for relief to set aside the order of default has been presented by him in accordance with Rule 38. [Emphasis supplied.]

[23] See 1964 RULES OF COURT, Rule 18, Sec. 2. Except when the party in default files a motion to set aside the order of default, in which even he shall be entitled to notice of all further proceedings regardless of whether the order of default is set aside or not. See also 1964 RULES OF CIVIL PROCEDURE, Rule 13, Sec. 9.

[24] 121 Phil. 1128 (1965).

[25] Id. at 1131.

[26] 136 Phil. 157 (1969).

[27] Id. at 190.

[28] 160 Phil. 1101 (1976).

[29] Id. at 1128.

[30] No. L-63397, 9 April 1985, 135 SCRA 637.

[31] Id. at 642. See also *Tiburcio v. Castro*, No. L-58997, 28 May 1988, 161 SCRA 583; *Dulos v. Court of Appeals*, G.R. No. 87917, 7 August 1990, 188 SCRA 413; *Ramnani v. Court of Appeals*, G.R. No. 101789, 28 April 1993, 221 SCRA 582;

[32] G.R. No. 139371, 4 April 2001, 356 SCRA 367.

[33] G.R. No. 138777, 22 September 2004, 438 SCRA 659.

[34] G.R. No. 167631, 16 December 2005, 478 SCRA 433, 439.

[35] R.J. FRANCISCO, CIVIL PROCEDURE: RULES 1-22 (2001 ed.), at 340.

[36] F. REGALADO, REMEDIAL LAW COMPENDIUM, Vol. 1 (2001 ed.), pp. 173-174.

[37] O. HERRERA, REMEDIAL LAW (2000 ed.), pp. 570-571.

[38] Id. at 572; emphasis supplied. The quoted text actually reads, "Section 2, paragraph 3 of the former Rule 41 which allows an appeal from a denial of a petition for relief x x x." However, it is Section 2, paragraph 2, and not paragraph 3, which stated that "[a] judgment denying relief under Rule 38 is subject to appeal x x x." We consider

the error to be clerical in nature.

[39]G.R. No. 148019, 26 July 2004, 435 SCRA 183.

[40] Id. at 190-191.

[41]Rollo, pp. 17-20.

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