

**AURORA CAMARA VDA. DE ZUBIRI, PLAINTIFF-APPELLEE, VS.
WENCESLAO ZUBIRI ALIAS BEN, ET AL., DEFENDANTS. WENCESLAO
ZUBIRI ALIAS BEN, DEFENDANT-APPELLANT.**

G.R. No. 16745. December 17, 1966

Ponente: REGALA, J.

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REGALA, J.:

This is an appeal from the order of the Court of First Instance of Lanao del Norte in Civil Case No. IL-219, dated September 15, 1959 denying the defendant-appellant's motion to postpone, and from its order of the same date denying the latter's petition to set aside judgment.

On April 17, 1959, the plaintiff-appellee, Aurora Camara vda. de Zubiri, filed with the Court of First Instance of Lanao del Norte a complaint for the recovery of her alleged share in two commercial lots situated in Illgan City against the herein defendant-appellant, Wenceslao Ben Zubiri, and the Standard Vacuum Oil Co., the occupant of portions of the said properties. The plaintiff alleged that the said lots were conjugal, having been purchased by her and her late husband during their marriage, so that at least one half of the same belonged to her "plus the equal share of the heir or heirs of the decedent." Moreover, the plaintiff claimed that the said parcels were in the possession of the defendant who, "unless he can prove before this Honorable Court that he is a duly recognized natural child of the late Jesus Zubiri, [he] has no right, interest, and participation whatsoever over the abovementioned two lots."

On May 5, 1959, four (4) pleadings were filed in the aforementioned case, namely: 1) the herein appellant's answer which showed on its face that it was signed by the latter in his own behalf and unassisted by counsel; 2) a Stipulation of Facts, signed by the plaintiff, assisted by counsel, and the defendant, without such assistance; 3) a motion to render judgment on the pleadings, again signed by the plaintiff, duly assisted by counsel, and the defendant-appellant herein, signing alone, without benefit of counsel; and 4) the defendant Standard Vacuum Oil Company's answer to the above complaint.

On May 6, 1959, the trial court rendered judgment in accordance with the abovementioned Stipulation of Facts. Since in both the answer of the herein defendant-appellant and the stipulation of facts the latter admitted practically all the allegations of the complaint, the decision rendered in accordance therewith was actually in favor of the plaintiff.

On June 5, 1959, the defendant-appellant, for the first time thru counsel, filed with the trial court a petition to set aside judgment upon two grounds, to wit: first, the three pleadings filed on May 5, 1959, namely: appellant's answer, the stipulation of facts and the motion to render judgment on the pleadings were all prepared by the plaintiff's counsel and that he, the appellant, was made to sign all of them when he was ill and, therefore, incapable of realizing the full consequences of the act; and, second, that the plaintiff's cause of action was barred by a prior judgment. Under this latter ground, the appellant represented that the properties claimed by the plaintiff had already been determined and adjudicated to him in a previous decision, under Special Proceedings No. IL-2

of the Court of First Instance of Lanao del Norte, which has since become final. Attached to this petition to set aside judgment were two affidavits of merit executed by the defendant-appellant himself and Vicente A. Miranda, the Clerk of Court of the Court of First Instance of Cebu before whom the three pleadings repudiated in the petition were subscribed. In the affidavit of Vicente A. Miranda, it was recited that the said pleadings were sworn to before him "at the residence of the affiant [defendant-appellant] at F. Ramos Street [Cebu City] because he was then sick and confined in bed" and "suffering from fever, with an ice cap on his head and profusely perspiring."

On June 12, 1959, the trial court required the plaintiff to answer the abovementioned petition to set aside judgment within 15 days from receipt of the notice thereof and, thereafter, the said petition was set for hearing on August 29, 1959.

On August 22, 1959, or a week before the scheduled hearing, the counsel for the defendant-appellant filed with the trial court a motion to postpone the hearing set for the 29th on the ground that he, the defendant's counsel, could not release himself from his current employment as to be free to attend the said hearing. On August 29, 1959, however, the court denied the motion to postpone and proceeded with the scheduled hearing despite the absence of the defendant's counsel and, after hearing the plaintiff's argument, likewise denied the petition to set aside judgment. The subsequent motion for reconsideration thereof having been denied too, the defendant-appellant interposed the present appeal.

Although the allowance or denial of petitions for postponement and the setting aside of previous duly issued orders rest principally upon the sound discretion of the magistrate to whom they are addressed (*Tell v. Tell*, 48 Phil. 70; *Macke v. Camps*, 5 Phil. 185; *Salva v. Palacio, et al.*, G. R. No. L-4247, January 30, 1952), the exercise of this power, however, ought to be prudent and just. It should always be predicated on the consideration that more than the mere convenience of the courts or of the parties of the case, the ends of justice and fairness would be served thereby. In the case at bar, this consideration seems to have been incompletely observed.

In the first place, the motion for postponement under consideration was the very first filed by the counsel for the appellant. It was filed with the court a full week prior to the scheduled hearing, with due and proper notice to the opposing party. Its ground was not unreasonable and hardly flimsy since it is not denied that then, the counsel for the appellant was under some contractual commitments from which he needed time to be released. Under these circumstances, it does seem that the denial of the motion prevented rather than serve the ends of justice.

Secondly, the appellant's petition to set aside judgment, which was verified and duly supported by two affidavits of merit, was grounded on very serious allegations, to wit: that it was the plaintiff's counsel who prepared and induced the defendant to sign all the pleadings upon which the assailed decision was based, including and particularly the said defendant's answer, that the dismissal of the same, in the absence of the petitioner and without affording him the chance to be heard thereon, indeed was incompatible with the exercise of sound judicial discretion. This Court is gravely concerned with the truth of the above accusation — something which, on account of the lower court's precipitate dismissal of the appellant's petition to set aside judgment is now hidden and undeterminable — particularly because the very face, tenor, and form of the appellant's alleged answer establish a *prima facie* case, so to speak, for the petitioner. Thus, the said alleged answer reads in full:

"ANSWER

"Comes now the defendant, Wenceslao Zubiri alias Ben in his own behalf, and to this Honorable Court most respectfully states:

"1. That the defendant admits the allegations contained in the complaint of the case.

"2. That upon the request and suggestion of the defendant and with the conformity of the plaintiff and her

lawyer, both parties, plaintiff and defendant have agreed to settle the above entitled case amicably and to submit a STIPULATION OF FACTS for the corresponding decision, with the aim in view to finish this case as soon as possible, and to avoid troubles in coming to Iligan City from Cebu City, losing precious time of this Hon. Court and unnecessary expenses in the future.

"Cebu City (for Iligan City) Philippines, May 2, 1959.

(SGD.) Wenceslao (Ben) Zubiri

WENCESLAO ZUBIRI

alias Ben

Defendant

"A copy of this ANSWER was delivered personally to Atty. C. Jumapao, counsel for the Plaintiff at Mango Avenue, 470, Cebu City, and another copy was served personally to defendant Standard Vacuum Oil Company, Cebu City, this 2nd day of May, 1959.

(SGD.) Wenceslao (Ben) Zubiri

WENCESLAO ZUBIRI

alias Ben"

A mere glance at the above-quoted two-paragraph Answer should have prompted the trial court to wonder and inquire if the defendant was aware of what he was committing thereby. The admission in paragraph 1 of the same was so total and unqualified a repudiation of the defendant's own interest that indeed, especially as it was avowed in the said pleading that the defendant was unassisted by counsel, the trial court should have insisted upon some assurance that the defendant was solely and fully accountable therefor. After the defendant represented under oath that the plaintiff's counsel was the principal author of the same, and the one who talked him into participating in it, the intervention of the lower court became an absolute necessity.

To be sure, the active participation of a lawyer in one party's affairs relating to a pending case in which the said lawyer is the counsel for the opposing party is brazenly unethical to say the least. The Canons of Legal Ethics very explicitly declare that "it is unprofessional to represent conflicting interests" (No. 6), and command that —

"A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel; much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel. It is incumbent upon the lawyer most particularly to avoid everything that may tend to mislead a party not represented by counsel and he should not undertake to advise him as to the law." (No. 9)

As we have already said in the case of *Cantorne v. Ducusin*, 57 Phil. 23, the simultaneous representation by a

lawyer of both parties to a suit constitutes malpractice which should be severely condemned and the lawyer corrected by disciplinary action. If but for this consideration alone, the court below should have allowed the motion for postponement pleaded by the appellant and heard the merits of the latter's petition to set aside judgment.

Moreover, the affidavits of merit appended to the petition to set aside judgment recited that the defendant-appellant was seriously sick at the time he was made to sign and swear to the above three repudiated pleadings. To be sure, no less than the officer before whom the said pleadings were subscribed and sworn to admitted that this verification was conducted at the appellant's residence in Cebu where the latter was confined "suffering from fever, with an ice cap on his head and profusely perspiring." Under the circumstances, therefore, the mental capacity of the appellant to responsibly assent to commitments set forth in the same three pleadings became doubtful and the trial court should have exerted its earnest efforts to resolve the doubt. Especially so when account is taken of the fact that the subject matter of the suit was not just an insubstantial sum but properties allegedly worth some P165,000.00.

Finally, one of the grounds invoked by the defendant-appellant in his petition to set aside judgment was the alleged finality of a judicial decision in which the properties involved in the above complaint were involved in Special Proceedings No. IL-2 of the Court of First Instance of Lanao and that the decision in the said case declaring him as the sole heir of his deceased father, had since become final. In brief, the appellant maintained that inasmuch as the plaintiff-appellee's claim under her complaint was predicated upon her alleged right as an heir of the late Jesus Zubiri, the same was barred by the aforesaid judgment which, to repeat, allegedly held that the defendant-appellant was the sole and only heir of the same decedent.

By denying the appellant's petition to set aside judgment, therefore, the lower court failed to determine the truth and validity of the aforementioned ground. And yet, if it was true that the plaintiff's complaint was barred by a prior judgment, then the order denying the petition to set aside judgment — in other words, maintaining the decision rendered upon the alleged stipulation of facts — indeed would give rise to the promulgation of another decision that was totally inconsistent and irreconcilable with what was held, and had become final, under the decision in Special Proceedings No. IL-2, considering that in this latter case it was held that only the herein appellant was entitled to participate in the decedent's estate while in the decision upon the alleged stipulation of facts, the appellee as well was determined to be so entitled to participate.

Of course, the appellee assails the proceedings under Special Proceedings No. IL-2 as void on the ground of fraud. She claims that the herein appellant misrepresented in the said case that the late Jesus Zubiri had no other heir save him even as he knew that she, the plaintiff-appellee, was another such heir and that she was still living. This does not alter nor diminish the need for granting the appellant's petition to set aside judgment, however, and hearing the plaintiff's complaint upon its merits. The vice, if any, in Special Proceedings No. IL-2 may well be determined at such hearing.

IN VIEW OF ALL THE FOREGOING, the order of the court below denying the appellant's petition to set aside judgment is hereby revoked and set aside. Let the said petition be granted and the plaintiff-appellee's complaint under Civil Case No. IL-219 be heard or tried on its merits, after the herein appellant shall have been allowed to file his answer or the necessary responsive pleading thereto. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Barrera, Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

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