

J. M. TUASON & CO., INC., PLAINTIFF AND APPELLEE, VS. CORNELIO M. AGUILA, DEFENDANT AND APPELLANT.

G.R. No. 16757. November 29, 1963

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

By virtue of the authority given by the Court of First Instance of Quezon City in its order of March 31, 1959, J. M. Tuason & Co., Inc. filed on May 7, 1959 an action before the same court against Cornelio M. Aguila to recover the possession of a parcel of land located in said city, which was docketed as Civil Case No. Q-4275.

On September 5, 1959, defendant filed a motion to dismiss alleging that plaintiff had no cause of action since defendant's right to possess the property has been acknowledged by plaintiff itself in the compromise agreement approved by the parties in Civil Case No. Q-135. This motion was denied. After defendant had filed his answer and trial on the merits was held, the court a quo rendered judgment on September 8, 1959 in favor of the plaintiff ordering defendant to vacate the property in litigation. Defendant received copy of this decision on September 14, 1959, and on September 30, 1959, he filed a motion for new trial, which was denied on December 28, 1959. Then defendant tried to appeal from the decision on the merits, but the same was disapproved for having been perfected beyond the reglementary period. Hence, the decision became final and executory.

On January 5, 1960, defendant filed an urgent motion for relief from the decision rendered on September 8, 1959, to which plaintiff filed an opposition, and on January 9, 1960, the court a quo denied the motion on the ground that the same was filed after more than 60 days from the date counsel for defendant received copy of the decision. And on February 3, 1960, defendant gave notice of his intention to appeal from the order denying the motion for relief. This time the court a quo gave due course to the appeal, the same having been filed within the reglementary period.

There is no merit in this appeal. It appears that the decision on the merits was rendered on September 8, 1959, copy of which counsel for defendant received on September 14, 1959. From this decision defendant tried to appeal but it was disapproved on the ground that it was perfected beyond the reglementary period. Then on January 5, 1960, he filed an urgent motion for relief from said decision which was rendered on September 8, 1959, and on January 9, 1960, the court a quo issued an order of the following tenor:

"For the reasons stated in the opposition of counsel for the plaintiff to the urgent and ex-parte motion for relief from judgment of defendant's counsel, dated December 12, 1959, and it appearing that the said motion for relief from judgment was filed after more than sixty (60) days from the date counsel for the defendant received a copy of the decision in this case;

"The said urgent and ex-parte motion for relief from judgment is hereby DENIED."

Since defendant has appealed directly to this Court, and it appears from the record as well as in the order of the court a quo that the motion for relief was filed beyond the reglementary period, or beyond the period of 60 days from the date counsel for defendant received a copy of the decision, there is, therefore, no plausible reason to

disturb the order of the court a quo denying the motion for relief. The same is in accordance with Rule 38, Section 3, of our Rules of Court.

Defendant admits that his former counsel has committed several mistakes in handling his case one of them being the filing of the motion, for relief instead of a second motion for new trial because if the latter were the one filed it would still be within the period allowed by the rules, and so he requests that said motion for relief be now considered as a second motion for new trial invoking the rule that to obtain substantial justice technicalities of procedure should be disregarded. But we find no justifiable reason for acceding to this request it appearing that the motion for relief contains grounds other than what is allowed in a motion for new trial. It is clear that this appeal has no merit and should be dismissed.

Wherefore, the order appealed from is affirmed. No costs.

Bengzon, C. J., Padilla, Labrador, Concepción, Barrera, and Paredes, JJ., concur.

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