

LUCENA VALENZUNA, PLAINTIFF AND APPELLEE, VS. FELICISIMO BALAYO, DEFENDANT AND APPELLANT.

G.R. No. 18748. March 30, 1963

Ponente: DIZON, J.

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DIZON, J.:

Appeal from an order of the Court of First Instance, of Camarines Sur denying Felicisimo Balayo's motion to annul and set aside its order declaring him in default and the judgment subsequently rendered against him in Civil Case No. 3753.

In the Justice of the Peace Court of Sipocot, Camarines Sur, appellee Lucena Valenzuna filed an action for forcible entry against appellant. After trial said court rendered judgment against the latter, who appealed therefrom in due time to the Court of First Instance of said province: On April 13, 1957, notice of the docketing of the case on appeal (Civil Case No. 3753) was sent by the Deputy Clerk of said court to the parties by registered mail. Appellant received this notice on April 27 of the same year.

Four months later, that is, on August 20, 1957, appellee filed a motion to declare appellant in default and on August 24, 1957 the Court granted the same, and after receiving appellee's evidence rendered judgment in her favor on October 28, 1957.

On December 7, 1957 appellant filed a motion to set aside the order of default and the judgment, and to allow him to present his evidence, claiming that the notice mentioned heretofore should have been served not on him but on his attorney, who filed the notice of appeal, and that no proof of such service was presented to the Court.

On February 20, 1958, the Court issued the appealed order.

Appellant raises the same issues in the five assignment of errors submitted in his brief. After considering the facts obtaining in this case and the law applicable thereto, we find his contentions to be untenable.

In the first place, the record discloses that although appellant received notice of the appealed case from the deputy clerk of the lower Court on April 27, 1957, he not only failed to file his answer to the complaint within the reglementary period of fifteen (15) days but filed his motion for relief from the order of default only on December 7, 1957, and the same was not under oath nor accompanied with supporting affidavits of merits.

In the second place, the service, of the notice mentioned heretofore on appellant himself instead of on the lawyer who filed, in his behalf, in the Justice of the Peace Court the corresponding notice of appeal was regular and in accordance with our decision in *Ortiz vs. Mania*, 93 ("fill., 817, June 2, 1953, where we held:

"In his second assignment of error appellant-claims that no legal notice of the pendency of the action in the Court of First Instance was given him, because the" notice was given to him and not to his attorneys. But the trial court found that the attorneys who perfected appellant's appeal from the justice of the peace court were his lawyers only for that purpose, i.e., to perfect the appeal. * * * Appellant's claim is, therefore, not justified by the facts.

"But assuming, for the sake of argument, that said attorneys were, from the time they perfected defendant's appeal, the defendant's lawyers; Section 7 of Rule 40, which governs appeals from justice of the peace courts to Courts of First Instance, expressly provides that notice of the pendency of the appeal be given to the parties. This provision, being express and specific, can not be interpreted to mean that the notice can be given to the lawyer alone. The reason for this provision for notification of parties, and not of the lawyers, lies in the fact that on an appeal, from an inferior court, only the complaint in the justice of the peace court is deemed reproduced, and the proceeding immediately following the filing of the complaint, is the summoning of the defendant. Instead, however, of being summoned, he is xmlly personally notified because he i& already within the court's jurisdiction, the notice taking the place wf the summons.

In view of all the foregoing, the order appealed from is affirmed, with costs.

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

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