

SOCORRO V. ALEJANO, EUGENIO P. ALEJANO, RODOLFO ALEJANO, EUGENIO V. ALEJANO, JR. AND CONCEPCION ALEJANO DE PERLAS, PETITIONERS-APPELLANTS, VS. THE HONORABLE COURT OF APPEALS AND...*G.R. No. 27961. November 25, 1967*

Ponente: FERNANDO, J.

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Petitioners seek the reconsideration of the resolution of this Court of September 28, 1967, denying their petition for review on certiorari of a decision of the Court of Appeals. No further legal arguments are adduced in support of their petition, their plea for reconsideration being buttressed on the claim that such a denial "has deprived them of their only chance to find redress from the errors of law committed" not only by the trial court but by the Court of Appeals, which errors of law, in their opinion, "are substantial and deserve the consideration of [this Court] which is the court of last resort." [1] The claim is further made that the questions raised by them are "substantial" in character, their right to property of which they were deprived without due process of law being invoked, an infringement thereof being unavoidable "unless [this Court] comes to their aid." [2] There is the further assertion that their petition finds support in "law and jurisprudence which cannot just be brushed aside as in-consequential." [3] They maintain that justice "cannot be served by simply denying their petition without so much as stating the reason why the same was denied." [4]

There was no need to state the reasons for denial as a careful perusal of their petition as well as the decision of the Court of Appeals sought to be reviewed in the case indicate quite unmistakably that the questions raised were factual in character. The first error of law assigned, while apparently couched in terms that would attach to it the character of a legal question, namely, that respondent Court of Appeals should not have sustained a declaration of default made by the lower court in violation of their constitutional rights to due process, cannot be viewed in isolation but must be correlated to the facts as found. What are those facts? According to the decision:

"In support of the alleged error, defendants-appellants maintain that they did not receive the summons issued by the trial court, and their filing a motion to dismiss the second cause of action constituted as a voluntary appearance only for the second cause of action but not for the first cause of action. Therefore, the order of default dated January 12, 1963, and the resulting judgment against them would have no force and effect for being null and void, the trial court not having acquired jurisdiction over their persons in accordance with Rule 16, Sec. 1 (a), new Rules of Court.

"It is Our opinion that when the lawyer of the defendants-appellants filed the motion to dismiss the second cause of action, We can presume that they received the summons. Even if they failed to receive the summons, if the party appeared generally in a case and not by a special appearance for the exclusive purpose of questioning the jurisdiction of the trial court, they submit themselves to the jurisdiction of the trial court, and they cannot now claim before this Court for the first time that they have never submitted to its jurisdiction, especially so, after the said Court dismissed the second cause of action in the complaint of plaintiff-appellee.

After all, the trial court permitted them to present evidence during the trial, represented by Atty. Rexes V. Alejano, thus giving the defendants-appellants their day in court." [5]

The second alleged error assigned, namely, the insufficiency of evidence presented by petitioner Eugenio V. Alejano, Jr. to show that the real estate mortgage to be foreclosed was without valid consideration and in violation of the Usury Law, is on its face a question inherently factual. It would appear therefore that a more careful scrutiny on the part of petitioners as to the nature of the petition presented ought to have given rise to a more realistic appraisal of the chances of its being given due course by this Court. Then perhaps no undue disappointment would have been caused by their petition being denied.

Since no new matter invested with legal significance is found in this motion for reconsideration, the resolution of September 28, 1967 should stand. It is not inappropriate to remind petitioners that an attempt to dress essentially factual matters in the habiliments of legal terminology is not likely to meet with success.

WHEREFORE, the motion for reconsideration is denied.

Dizon, Acting C.J., Makalintal, Bengzon, Zaldivar, Sanchez, Castro, and Angeles, JJ., concur.
Concepcion, C.J., and Reyes, J., on official leave.

[1] Pars. 1 and 2, Motion.

[2] Par. 3, Motion.

[3] Par. 5, Motion.

[4] Par. 11, Motion.

[5] Decision of Court of Appeals, Annex A, p. 4.

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