

VICTORIANO SALAZAR, PLAINTIFF, VS. CAYETANA SALAZAR, DEFENDANT.

G.R. No. 2995. March 27, 1907

Ponente: MAPA, J.

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MAPA, J.:

In an action instituted in the Court of First Instance of Mindoro, in the matter of losses and damages, between Cayetana Salazar as plaintiff and Victoriano Salazar as defendant, on October 2, 1905, the court rendered judgment against the defendant by default, ordering him to pay to the plaintiff the sum of 6,000 pesos, together with the costs of the action. On November 10 of the same year Victoriano Salazar filed a complaint in this court alleging that he had been unjustly deprived of the right of defense in the said case and asking that the said judgment be annulled and that this court order a new trial by virtue of the provisions of section 513 of the Code of Civil Procedure.[1]

The record together with such proofs as the parties have found it proper to present herein, show as proven the following facts:

First. That on March 11, 1905, the court below ordered cited by subpoena, among other persons, Victoriano Salazar as the defendant in the cause above mentioned, to appear in said cause together with his witnesses at 8 o'clock on the morning of the 13th day of the same month and year; and that said citation could not be served for the reason that Salazar could not be found. This fact is sufficiently shown in the return on said order as made by the sheriff at the foot of said citation. The literal wording of this return of the 13th of March, is as follows: "On this date I made all efforts and used all possible ways and means to obtain personal service on the persons mentioned in the preceding citation, and I have been informed that the said persons can not be found in this, the town of Calapan, nor in any other accessible locality of this province; I have made the necessary investigations personally for the purpose of ascertaining the actual whereabouts of the same and according to information received by me, said persons or individuals can not be found within the Province of Mindoro nor in this, the town of Calapan, but in the town of Bauan of the Province of Batangas where they have been for some time." (Plaintiff's Exhibit B.)

Second. That on March 14, 1905, the court below entered an order finding Victoriano Salazar in default in the following terms: "In this case the defendants after having been served in due form with the complaint and summons and not having appeared nor answered to the complaint, and the time fixed by the law having expired, the court finds the defendants in default, and due entry and note will be made of this finding in accordance with law." (Plaintiff's Exhibit C.)

Third. That on October 2, 1905, judgment in default was rendered against Victoriano Salazar ordering him to pay the sum of 6,000 pesos to Cayetana Salazar, together with the costs of the action. (Plaintiff's Exhibit A.)

The record in this case does not show the date of the filing of the complaint by Cayetana Salazar in the case referred to, neither is there shown the date of the citation and service of the same upon Victoriano Salazar wherein

he could answer to such complaint. It appears to this court, however, that this defendant, Victoriano Salazar, was undoubtedly cited and served with the complaint in accordance with law and that this was long before the 11th of March, 1905. This fact is proven and evidenced by Exhibit G of the plaintiff, which exhibit is a copy of the pleading filed herein by Attorney F. E. Dominguez, representing Victoriano Salazar, and which pleading reads as follows: "Now comes the defendant and asks the court to allow and permit him to file his answer to the complaint filed against him by the plaintiff * * *." Victoriano Salazar could not have said this if he had not been notified or served with the complaint that he was to answer, as he said on the 29th of March, 1904, the date of the filing of his said pleading. He was allowed the permission asked for the purpose of answering such complaint, and the time fixed for the filing of such answer was five days, yet he never at any time filed his said answer referred to, all of which is shown by plaintiff's Exhibit H. And notwithstanding it was not until March 11, 1905, a year after that date, that he was adjudged in default, and not only was said default entered, but on the said 11th day of March he was cited to appear with his witnesses on March 13, judgment in default only being entered and rendered against him on the day following, March 14, all of which appears and indicates that that which determined principally the allegation and judgment against him by default was for his failure to appear in the case on the 13th of March.

If this was the case, and such appears to have been the reason as shown in the order and judgment of default on which the same is based, not only for not having answered the complaint but also for not having appeared; if this was really the case, then the order of the court below was unjustified as pertains to this last part of the same, for the reason that Victoriano Salazar could hardly appear on the 13th, not having received the citation, which under order of date the 11th was directed to him for this purpose.

But this it not precisely the true point of view under which the question should be settled. The plaintiff herein, Victoriano Salazar, explains in his pleading the reasons he had for not having answered the complaint of Cayetana Salazar. The complaint was not answered, he says, for the following reasons:

"(a) That a transaction or compromise had been executed, before a notary public, and between the attorney for the defendant herein (Cayetana Salazar) with the knowledge and consent of the same, and the now plaintiff herein, then a defendant, and Paulino Villarosa, then also a defendant, wherein the litigation pending between them was terminated and compromised. This was on the 25th day of June, 1903.

"(b) That he was called upon to appear again in March, 1904, and employed and engaged Attorney Dominguez, of the firm of Montagne & Dominguez, to attend to the case for the purpose of having Dominguez show in court said transaction and compromise and to do whatever else was required by law to have the case brought to a happy conclusion.

"(c) That the said Dominguez obligated himself to do this and, on the other hand the attorney then representing the present defendant, filed in said court in September, 1904, a written motion asking for the dismissal of the cause based on the compromise and transaction above mentioned; that the present plaintiff not only believed that Dominguez had complied with his duties but that the case had been definitely terminated. For this reason he did not answer the complaint or pay any further attention to the matter."

These facts have been shown in the case. The transaction or compromise entered into between Cayetana and Victoriano Salazar has been proven by Exhibit I of the plaintiff, and is a certified copy executed by a notary of the original instrument covering said transaction, which instrument was left in the possession of Macario Adriatico, the attorney for Cayetana Salazar. Said instrument covering this transaction appears executed before a notary public and was so executed for the purpose of compromise as is stated in the text of the same: "The civil complaint filed against Sres. Salazar and Villarosa by Sr. Adriatico, in the name and in representation of Doña Cayetana, so that the said complaint remains completely terminated, and without having the right to continue the same at any time." Exhibit E of the plaintiff, a certified copy of the pleading filed by Cayetana Salazar in the

original case on September 20, 1904, corroborates conclusively the certainty of the transaction referred to, for the reason that such compromise or transaction is expressly referred to in the same. Cayetana Salazar says in this pleading, in effect, the following: "The attorney, Sr. Adriatico (her attorney in that case), filed a complaint in this court; that the complaint being filed, the defendants (Victoriano Salazar and Paulino Villarosa) compromised the case under agreement with my attorney and with my consent."

The powers given to Attorney F. E. Dominguez for the purpose of answering the complaint of Cayetana Salazar and making a defense against the same through the compromise above mentioned, is proven by Exhibit G, a copy of the pleading filed by said attorney, the tenor of which shows without doubt the truth of such commission or duty.

And with reference to the pleading filed in September, 1904, by the attorney for Cayetana Salazar asking for the dismissal of the action by reason of the aforesaid compromise or transaction, we have the testimony of a witness in the original case who affirms that he saw and read the same: "When you (meaning Attorney Ilustre) sent me to the court to examine the record, I saw and read a document signed by the attorney and attorney in fact of the plaintiff Cayetana Salazar, Sr. Adriatico, in which he asked for the dismissal in view of the compromise entered into between himself and the defendants." The fact testified to by this witness is the more worthy of belief and credence, inasmuch as Cayetana Salazar has admitted in court the existence of such compromise or transaction in her pleading referred to above. The petition asking for the dismissal of the action was a natural and logical consequence of the compromise and transaction entered into precisely for the object, as is said in the same, of completely terminating the complaint filed by Cayetana Salazar.

In view of these proofs we consider it natural and logical that Victoriano Salazar believed, and that such belief was well founded, that the action brought against him by Cayetana Salazar had been ended in fact by virtue of the aforesaid compromise and that he was, therefore, relieved from the duty of filing his answer. Perhaps technically such belief would be erroneous, but it was, without doubt, excusable and the causes were reasonable why he did not answer; and this having been the cause that prevented Salazar from making or utilizing a defense which would have been good and efficacious—that is, the aforesaid transaction or compromise—it is seen that this is a case provided for in section 513 of the Code of Civil Procedure as invoked by said Salazar in his complaint herein.

The attorney for Cayetana Salazar has opposed the admission of the exhibits hereinbefore mentioned, alleging that the best proofs are the original records referring to the same. These said exhibits being certified copies of certain proceedings appearing in the original records, and so certified and issued by the clerk of the court who has in his custody such records, such authentic documents should have legal consideration, and are, therefore, admissible as proof in the case. The opposition of Cayetana Salazar to their admission is without basis in law and should consequently be dismissed.

All of the defense of Cayetana Salazar consists solely, it appears, in the fact that the judgment, the annulment of which is now in question, has been rendered in her favor and in her name and office as administratrix of the estate of her deceased husband, Mariano Castan, and the action to which Victoriano Salazar refers in his complaint now before this court had been brought by her in her own name and not in her capacity as administratrix. It appears, without doubt, from all the proofs before us that this is a case brought from the first in the personal name and capacity of Cayetana Salazar (that such is the title of the case that appears in all of the exhibits referred to in the same, including that exhibit containing the judgment rendered in the case), and that judgment was finally rendered in her favor in her capacity as said administratrix. One witness testifies emphatically that she obtained her letters of administration of the estate of her deceased husband on the same day on which the judgment was rendered. This being the fact she could not have begun the action as the administratrix but in her own personal name.

Wherefore, in view of the above considerations, we annul the judgment rendered by the court below on October 2, 1905, and grant a new trial of the case wherein Victoriano Salazar shall be permitted to answer the complaint of Cayetana Salazar within the time fixed by rule, without special mention as to costs. After the expiration of twenty days from the notification of this decision let judgment be entered in accordance herewith, and ten days thereafter let the case be remanded to the court from whence it came for proper action. So ordered.

Arellano, C. J., Torres, Willard, and Tracey, JJ., concur.

[1] I Pub. Laws, 466.

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