

FELIPE YANGO, PLAINTIFF AND APPELLEE, VS. SIMPLICIO MILLAN ET AL., DEFENDANTS. JUAN FRONDA, APPELLANT.

G. R. No. 36039. December 21, 1932

Ponente: MALCOLM, J.

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MALCOLM, J.:

For over fourteen years this case has been a shuttlecock in the courts. Yet it is not a complicated proceeding, but on the contrary is an ordinary suit which could easily have been tried and decided in one or two days. And now the prayer of the appellant is that the Supreme Court should return the record for a new trial, thus retaining the case in the courts for countless years to come. That under such conditions we approach a decision on appeal unaffected by appellant's arguments and desirous of setting the seal of finality on the case will be readily understood.

The controlling dates are the following:

On October 21, 1918, a complaint was filed by Felipe Yango in the Court of First Instance of Pangasinan, in which he asked for the possession of a certain parcel of land, with damages.

On October 30, 1918, the answer of the defendant Laureano Tadeo was presented.

On November 15, 1918, an answer for the defendants was interposed in which the special defense alleged was that of prescription.

On September 4, 1924, the plaintiff filed an amended and supplementary complaint.

On September 17, 1924, the trial judge appears to have issued an order admitting the amended complaint.

On October 21, 1924, the defendants interposed a demurrer to the amended complaint.

On November 3, 1924, the plaintiff presented an answer to the demurrer.

On November 15, 1924, the trial judge sustained the demurrer.

On January 10, 1925, counsel for the defendants presented a motion in which they asked for the dismissal of the case in so far as it related to Segismundo and Victorino Millan.

On January 21, 1925, the trial judge acceded to the motion last mentioned.

On February 18, 1925, the attorney for the plaintiff filed a motion to have the other defendants declared in default.

On March 11, 1925, the trial judge promulgated an order in conformity with the motion for a default judgment.

On March 17, 1925, a decision was rendered in favor of the plaintiff and against the remaining defendants for the possession of the land in question and for damages in the amount of P19,200.

On June 25, 1925, the attorney for the defendant Juan Fronda presented a verified motion of reconsideration.

On June 25, 1925, the attorney for the defendant Juan Fronda filed an answer in the form of a general denial.

On July 11, 1925, the attorney for the plaintiff entered an opposition to the motion of reconsideration.

On August 3, 1925, the trial judge promulgated an order in which the decision of March 17, 1925, was vacated and the case restored to its original status.

On August 11, 1925, the exception of the plaintiff was noted.

On September 26, 1925, a motion of reconsideration on behalf of the plaintiff was filed.

On October 19, 1925, the motion of reconsideration was denied.

On October 27, 1925, the exception of the plaintiff was noted.

On April 8, 1929, a second amended complaint was filed, and at the foot thereof there appeared the following:

"Se facilita copia al Sr. D. Eusebio V. Sison, abogado del demandado Juan Fronda, Urdaneta, Pangasinan, por correo certificado. (Fdo.) PEDRO C. QUINTO, Abogado."

On July 17, 1929, on petition of counsel for the defendants, the trial of the case was postponed to a future date.

On June 24, 1930, the attorney for the plaintiff filed a motion in which it was asked that the defendant Juan Fronda be declared in default for having failed to answer the second amended complaint within the period prescribed by the rules of court.

On June 28, 1930, the trial judge sustained the motion of the plaintiff and accordingly declared the defendant in default.

On July 5, 1930, the trial judge rendered a decision in favor of the plaintiff and against the defendant Juan Fronda for the possession of the land, and damages.

On July 7, 1930, the defendant presented a verified motion of reconsideration.

On July 12, 1930, opposition to the motion of reconsideration was entered by the plaintiff.

On July 12, 1930, the court permitted the postponement of the hearing to August 9, 1930.

On July 15, 1930, a verified motion of reconsideration addressed to the order of June 28, 1930, was filed by the defendant.

On September 3, 1930, the trial judge handed down a decision and judgment giving a chronological statement of the case and of the facts, concluding with an order denying the motion of reconsideration as without any merit.

On September 20, 1930, a motion for a new trial was filed and exception noted.

On September 27, 1930, the motion for a new trial was denied and the exception made of record.

On October 17, 1930, exception was noted to the last order and notice of appeal given.

On March 28, 1931, a petition for mandamus was filed in the Supreme Court under G. R. No. 35312,[1] to compel the trial judge to approve the bill of exceptions.

On August 7, 1931, following different incidents and a hearing, this court granted the petition and ordered that the writ be issued as prayed for.

On August 12, 1931, the trial judge approved the bill of exceptions as directed by the Supreme Court.

On August 17, 1931, the record was received in this court, and after the appeal had once been dismissed for failure to deposit the estimated cost of printing and had been reinstated, and after the consideration of motions asking for the dismissal of the appeal which were denied, and after the submission of briefs and an oral hearing, the case was finally placed on the July, 1932, calendar and made ready for decision in this court on August 19, 1932.

The motion to set aside the judgment by default is not accompanied by affidavits of merit. An examination of the record discloses that the stenographic record has not been written up and elevated to the appellate court.

Consolidating all the dates, the errors assigned, and the arguments made, the issue is whether or not the trial judge was justified in finding the defendant in default for failure to answer the second amended complaint within the time provided by the rules for Courts of First Instance, and a resolution of this question in turn depends on the sub- sidiary one of whether or not the attorney for the defendant was properly notified.

Paragraph 11 of the rules for Courts of First Instance provides that "The service of notices and pleadings may be made by delivering the copy to the lawyer personally, by leaving it at his office or residence with a person of sufficient discretion to receive it, whose name should appear in the affidavit of the party serving, or by sending it by registered mail." It is here conceded that the letter containing the second amended complaint was sent by registered mail to Urdaneta, Pangasinan, that it was there received, and that three notices were sent the addressee, but that nobody claimed the letter. It further is necessarily conceded that the attorney for the defendant has his residence in Urdaneta, had a law office in Lingayen, and part of the time was absent in Manila as a member of the Legislature. The attorney had on other occasions received registered mail in Urdaneta, and in sending the notice by registered mail to that place where his residence was, there was a sufficient compliance with the rule. As has previously been announced by this court in the case of *Islas vs. Platon and Ona* ([1924], 47 Phil., 162), it is the duty of a practising attorney to so arrange matters that communications sent him by mail, addressed to his office or residence, reach him promptly. The duty of an attorney does not end with making his appearance and then relying on government employees to look after his case, but includes the taking of such precautionary measures as will safeguard the interests of his client.

We might add in this particular case, if necessary, that the attorney appears to have had at least constructive notice of the hearing, and that having once been declared in default and having had the case reinstated, it was his particular duty to see that negligence of a similar nature did not recur. In California it has been held that "where it appears that a prior judgment by default against the defendant had been vacated upon motion, the entry of such prior judgment by default ought to have been sufficient to put the defendant upon his guard, so that he would have avoided a repetition of the same difficulties". (*Victor Power & Mining Co. vs. Cole* [1909], 105 Pac, 758.) In our opinion that is good law.

If public policy demands that at the risk of occasional errors judgments shall become final at some definite date fixed by law, and if good practice demands that attorneys take an active interest in the advancement of their cases, then surely *finis* must be written to this case.

Judgment affirmed, with the costs of this instance assessed against the appellant.

Avancena, C. J., Villamor, Abad Santos, and Butte, JJ., concur.

[1] *Fronza vs. De Leon and Manazan*, resolution of August 7, 1931.

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