

CHINA BANKING CORPORATION, PLAINTIFF AND APPELLEE, VS. CHAN QUAN PANG ET AL., DEFENDANTS. CHA CHAT ET AL., APPELLANTS.

G.R. No. 37265. September 18, 1933

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the defendants Cha Chat, Yee Ah On, Lun Hing Tong, Yu Ping and Lui Kang from the judgment rendered by the Court of First Instance of Manila, the dispositive part of which reads as follows:

"Wherefore, let judgment be entered against the defendant, Chan Quan Pang, ordering him to pay to the plaintiff banking corporation, or to deposit in the office of the clerk of this court within ninety (90) days from the date this judgment becomes final, the sum of one hundred twenty-two thousand three hundred sixty-four pesos and twenty-two centavos (P122,364.22) together with the interest thereon at the rate of 12 per centum per annum from June 19, 1931, plus the sum of two thousand pesos (P2,000) for attorney's fees instead of the 10 per cent stipulated in the mortgage deed, with costs of the suit; with the understanding that if payment thereof is not made within the period above stated, the mortgaged land situated on the southwestern side of Cuevas Street, Paco, and described in transfer certificate of title No. 26087 of the register of deeds of the City of Manila, together with the buildings and improvements thereon, shall be ordered sold at public auction, the proceeds thereof to be applied to the payment of the judgment. So ordered."

In support of their appeal, the appellants assign the following alleged errors as committed by the court a quo in its decision, to wit:

- "1. The trial court erred in not setting aside its order of December 15, 1931, which reinstated and put into full force and effect its decision rendered in this case on June 18, 1931.
- "2. The trial court erred in not holding that the defendants and appellants are entitled to the relief they asked under section 113 of the Code of Civil Procedure.
- "3. The trial court erred in denying the motion of the defendants and appellants for a new trial or a reopening of the case notwithstanding the fact that its decision in question is contrary to law and not justified by the evidence."

On July 24 1930, the herein defendants and appellants, representing the stockholders of the corporate entity Central Steam Laundry, and the said corporation itself, brought an action in the Court of First Instance of Manila, docketed as civil case No. 37680, against the board of directors of the aforesaid corporation composed of Chan Quan Pang, A. Sing, Cheng Ah Soy, Sam Lee, and Wong Tong, and the register of deeds of the City of Manila, Gloria de Icaza de Massip, Julia de Icaza Vda. de Casanovas and the China Banking Corporation, for the purpose of annulling the said of the land described in certificate of title No. 14472 and in transfer certificate of title No. 26087, together with the improvements thereon, alleging as their ground that it was fraudulently and illegally acquired by Chan Quan Pang, then vice-president, treasurer and director, at the same time, of the aforementioned

Central Steam Laundry.

The corresponding notice of litispendencia was served on December 3, 1930, and was noted on the reverse side of the transfer certificate of title No. 26087 (Exhibit P).

On October 16, 1930, the China Banking Corporation filed an action, from which the present cause originated, in the same Court of First Instance of the City of Manila, docketed as civil case No. 38274, to recover from Chan Quan Pang the sum of P116,452.72 with interest thereon at the rate of 12 per cent per annum, and in default of payment thereof, to foreclose the mortgage constituted by the said defendant as security for the payment of his debt to the said China Banking Corporation. Inasmuch as this mortgaged property in question is the same property which is involved in civil case No. 37680, the plaintiffs in the latter case, Cha Chat et al., were included as party defendants herein.

The China Banking Corporation, defendant in civil case No. 37680, interposed a general denial and as a special defense alleged that the action of the plaintiffs had prescribed.

In civil case No. 38274, the defendant Chan Quan Pang never answered the complaint nor appeared at the trial. The other defendants Cha Chat and others filed their answer of general denial and interposed three special defenses and requested that the two cases Nos. 37680 and 38274 be tried together on the ground that the same subject matter and substantially the same parties are involved therein.

When the two cases were called for trial on June 18, 1931, the aforementioned defendants Cha Chat, Yee Ah On, Lun Hing Tong, Yu Ping and Lui Kang, and their attorney Pedro Arteché, as well as Chan Quan Pang, did not appear in spite of the fact that they were duly notified of the said trial. Consequently, the court a quo declared them in default and proceeded to receive the evidence of the plaintiff China Banking Corporation, at the conclusion of which judgment was rendered, ordering Chan Quan Pang to pay to the said corporation the sum of P122,364.22 plus interest thereon and the sum of P2,000 as attorney's fees, or in default of payment thereof the mortgage constituted by Chan Quan Pang shall be foreclosed to satisfy said judgment.

The following day, June 19, 1931, the defendants, Cha Chat et al., filed a motion asking, for the reasons stated therein, that the decision rendered by the court on June 18, 1931, be set aside and that civil case No. 38274 be set for hearing on August 4, 1931, the day on which the other civil case No. 37680 was to be tried.

Granting said petition and that of July 13, 1931, the court a quo, by its order of July 25, 1931, set aside its decision rendered in this case on June 18, 1931, and decreed that the same be heard on August 4, 1931, together with civil case No. 37680.

Upon petition of the attorney for the said defendants, Cha Chat et al., the court a quo, for the last time, postponed the trial of the two cases to December 15, 1931.

When the civil case No. 37680 was called for hearing on December 15, 1931, Attorney Joaquin Yuseco appeared for the defendant-appellants who were also present in court and asked for the postponement of the hearing. The court denied the petition and ordered the said defendant-appellants to present their evidence. The aforesaid attorney, Joaquin Yuseco, stated in open court that he was not ready to proceed with the trial. In view of this statement, the court a quo ordered the dismissal of the aforementioned civil case No. 37680.

The court a quo, then, called this case for trial. The defendant-appellants who were present, instead of appearing for themselves or through their attorney, Joaquin Yuseco, left the court with their said attorney. In view of this attitude of the defendant-appellants, the court a quo, by its order dated December 15, 1931, reinstated its decision of June 18, 1931, reproducing the dispositive part thereof which was quoted above.

The principal question to be decided in this appeal is whether or not, in accordance with the provisions of section 113 of the Code of Civil Procedure, the defendant-appellants are entitled to be relieved from the effects of the judgment by default of June 18, 1931, which was restored to its original force and effect by the court's order dated December 15, 1931.

In the motion filed by the defendant-appellants on January 25, 1932, praying that the lower court set aside its decision of June 18, 1931, and order a new hearing, they alleged as their ground that they were deprived of their right to be heard through error, inadvertence, surprise and excusable neglect.

As may be noted from the foregoing, the defendants themselves asked the court that civil cases Nos. 37680 and 38274 be tried together on June 18, 1931, which petition was granted by the court in its order dated March 24, 1931. Notwithstanding the fact that the said defendant-appellants had been duly notified of the date of the hearing, they neither appeared personally nor through their attorney, Pedro Arteche. In view of their non-appearance, the court declared them in default and after hearing the evidence presented by the plaintiff-appellee, China Banking Corporation, rendered judgment in civil case No. 38274. The aforesaid court, however, was very accommodating for, on July 25, 1931, granting the petitions of the defendants' attorney, Pedro Arteche, dated June 19, and July 13, 1931, it entered an order setting aside its decision of June 18, 1931, and ordered a new hearing of the cases in question on August 4, 1931. Upon petition of Attorney Pedro Arteche, the hearing of the two cases was postponed for the last time to December 15, 1931, the date on which the defendant-appellants refused to present evidence in civil case No. 37680 or appear as defendants in civil case No. 38274, thus causing the dismissal of the first case and the reinstatement of the decision rendered in the second case on June 18, 1931.

The motion for a new trial based on the ground of alleged excusable negligence filed on January 25, 1932, was a second motion and referred to the order entered on December 15, 1931, which reinstated the judgment by default of June 18, 1931. During the hearing held on December 15, 1931, the defendant-appellants not only refused to present their evidence as plaintiffs in the aforementioned civil case No. 37680 giving as their reason therefor that they were not prepared to do so, but also refused to appear as defendants in civil case No. 38274, notwithstanding the fact that they were accompanied by their attorney.

Hence, the defendant-appellants were not in any way justified in not presenting their evidence as plaintiffs in the said civil case No. 37680 and as defendants in civil case No. 38274, and they cannot now claim that they have been deprived of their day in court without any fault on their part.

Wherefore, there being no error in the judgment appealed from, it is hereby affirmed in toto, with the costs against the appellants. So ordered.

Malcolm, Abad Santos, Hull, and Imperial, JJ., concur.

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