

GIL BUENDIA, PLAINTIFF AND APPELLEE, VS. VICENTE SOTTO, DEFENDANT AND APPELLANT.

G.R. No. 45695. May 09, 1939

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

The present case is before us by virtue of an appeal taken by defendant Vicente Sotto from the judgment of the Court of First Instance of Manila, dated June 14, 1937, the dispositive part of which is as follows:

"Wherefore, the court sentences defendant to pay plaintiff the sum of P2,600.88, with legal interest from the date of the filing of the complaint in this case, or on November 21, 1936, until said sum is fully paid, plus the costs."

In support of his appeal, appellant assigns seven alleged errors committed by the trial court, two of which, errors IV and V, raise questions of procedure which should be first resolved, and are the following:

"IV. The lower court erred in not striking out from the record plaintiff's motion for reconsideration and reopening of trial because it was not filed in the manner prescribed by the Rules of the Courts of First Instance, paragraph 18.

"V. The trial judge furthermore erred in considering and deciding plaintiff's motion for reconsideration and reopening of trial, without setting the same for trial and without first hearing the defendant."

It appears from the record that on March 16, 1937 the Court of First Instance of Manila rendered judgment in favor of plaintiff and against defendant, the dispositive part of which is as follows:

"Wherefore, the court sentences the herein defendant to pay plaintiff the sum of P1,573.26 with legal interest from the date of the filing of the complaint in this case, or on November 21, 1936, until said sum is fully paid, plus the costs. So ordered."

On April 22, 1937 plaintiff and appellee Gil Buendia filed, through his attorneys, a pleading entitled "Motion for Reconsideration and Reopening of Trial," of which notice was sent to the defendant and appellant Vicente Sotto, accompanied by a copy thereof, but not by copies of the documents attached thereto. In said motion for reconsideration and reopening of trial defendant and appellee, Gil Buendia, excepted to the judgment rendered in his favor, dated March 16, 1937, alleging that the sum of P567.50 representing legal interest on the value of the land expropriated and that of P60.12 as costs were twice deducted from the total sum adjudicated, and that "through mistake, oversight, accident, and excusable negligence, and above all, through its being considered undisputed, plaintiff's attorneys have neglected to include in the stipulation of facts for decision the fact that the sum of P400 mentioned in Exhibit A of the stipulation of facts had already been paid to Atty. Vicente Sotto as may be seen from annexes A, B, C, and D of this motion, and prays the court that he be allowed to attach said annexes A, B, C, and D in support of the petition that the judgment be reformed and amended in the sense that the P400 referred to, subject of the agreement Exhibit A concerning fees, have already been satisfied and paid to Mr. Vicente Sotto, and should not be deducted from the sum to be returned by said defendant to the plaintiff."

The court a quo, after granting said motion for reconsideration and new trial and without holding the latter, admitted annexes A, B, C, and D which were attached to the motion referred to, reconsidered its decision of March 16, 1937 and rendered another amending the previous one, the dispositive part of which later decision we have transcribed at the beginning hereof.

Accordingly, the first question to be decided in this appeal is whether or not the court a quo erred in considering plaintiff's motion for reconsideration and reopening of trial although it does not appear that the notice made to the adverse party of the motion referred to was accompanied by copies of annexes A, B, C, and D on which the aforesaid motion is based.

In the case of *Soriano vs. Ramirez* (44 Phil., 519), this court laid down the following doctrine:

"For the validity of a motion for a new trial on the ground that the decision is not justified by the evidence and is contrary to law, it is not necessary that the movant give the adverse party notice of the date of the hearing thereof. Said notification lies within the discretion of the trial court, who may deny the motion without hearing the adverse party, and it is only when that court is disposed to grant the motion that it should order the adverse party to be notified in the manner it may deem fit. Although articles 9 and 10 of the Rules of the Courts of First Instance provide that no action shall be taken on any motions or applications, nor shall they be accepted for filing unless it appears that the adverse party had notice thereof three days before the time set for the hearing of the same, yet article 9 contains a proviso to the effect that this rule shall not govern where another provision is made by law. Section 146 of the Code of Civil Procedure does not require the party making the motion to give notice to the adverse party, but provides that said notification be made as 'the judge may direct;' hence the giving of notice is not an essential requirement for the validity of a motion for new trial like the one in question."

In the light of the doctrine above-cited, it is not necessary that the opposite party be notified of the filing of a motion for new trial, unless the court so orders, and the failure— if any—to attach to said notice copies of the pleadings and documents on which the motion is founded, is not such defect as will invalidate the order or decision of a competent judge by whom said motion is resolved.

The fourth assignment of alleged error is therefore without merit.

With regard to the fifth assignment of alleged error which consists in whether or not the lower court erred in considering and deciding plaintiff's motion for reconsideration and reopening of trial without setting said motion for trial and hearing defendant, if it were true that the court a quo committed the alleged error assigned in the second ground thereof by twice deducting from the total sum which defendant should restore to plaintiff the sum of P567.50 as legal interest on the value of the land expropriated, and the sum of P60.12 as costs, through inadvertence committed in good faith, said error could be corrected without the necessity of holding a new trial, since the decision already rendered could just be made to conform to the evidence, and this would not prejudice the defendant.

Concerning the first ground of the motion for reconsideration and new trial which consists in the failure of plaintiff's attorneys, through mistake, oversight, accident or excusable negligence, to include in the stipulation of facts, Exhibit A, for the decision of the court, the fact that the sum of P400, mentioned in said stipulation, had already paid to Atty. Vicente Sotto, as may be seen from annexes A, B, C, and D of the motion; although this court has held that neither the mistake nor the negligence of a party's attorney is a reasonable ground for a new trial (*U. S. vs. Umali*, 15 Phil., 33; *People vs. Manzanilla*, 43 Phil, 167), nevertheless, section 113 of the Code of Civil Procedure authorizes a court to relieve a party in a case, upon such terms as it may deem just, from compliance with, and the effect of, a judgment which may have been rendered against him through mistake, inadvertence, surprise or excusable negligence into which such party may have fallen. Since it is, therefore,

discretionary with the court having cognizance of a case to relieve a party in such circumstances from the effect of a judgment taken against him, said court could grant or deny said motion for reconsideration and new trial, considering it not as properly a motion for new trial, but as a motion to set aside a judgment in accordance with the provisions of section 113 of the Code of Civil Procedure aforementioned upon such terms as it may deem just. If it grants the petition, it should set aside the judgment and order the holding of a new trial, by setting a date therefor and hearing the parties, and may not immediately proceed to reconsider its decision, admit new evidence, and, in view thereof, amend its original decision by substantially changing it, all in the absence of the parties. The foregoing was the procedure followed by the court a quo in, this case, for in its order of June 14, 1937, it said:

"Finding the motion for reconsideration of April 21 last to be justified, the court, after admitting annexes A, B, C and D which are attached to said motion for reconsideration, reconsiders its decision rendered on March 16 last and amends the same to read as follows:"

Such a procedure, besides being anomalous, is unconstitutional because it violates the right of the defendant not to be deprived of his property without due process of law as guaranteed by the Constitution of the Philippines in Article III, section 1, subdivision (1), thereof. By the mere fact that said court granted the motion for new trial, the original decision rendered by it was set aside so that there was no judgment to execute and, consequently, none to amend. The amendatory decision rendered by the court a quo dated June 14, 1937, which is the one appealed from, became a new judgment, rendered without hearing the parties and without previous trial, which all amounts to an excess of jurisdiction, and the judgment pronounced in such circumstances is illegal and void.

In view of the foregoing, we are of the opinion and so hold that a judge who, after granting a motion for new trial filed in accordance with the provisions of section 113 of the Code of Civil Procedure, does not set aside his decision or order the reopening of the case or the holding of a new trial thereof, but proceeds to consider the documentary evidence attached to the motion without previous hearing of the parties, and amends his decision in accordance with said evidence, sentencing defendant to pay an amount greater than that which he had been sentenced to pay in the original decision, violates the constitutional right of the defendant not to be deprived of his property without due process of law, and the amendatory judgment thus rendered is void because in excess of his jurisdictional powers.

Wherefore, the judgment appealed from is reversed and it is ordered that the case be remanded to the court of origin to the end that the latter may order the reopening of the case and the holding of a new trial, rendering thereafter the proper judgment, with costs against the appellee.

Avanceña, C. J., Imperial, Diaz, Laurel, Concepcion, and Moran, JJ., concur.

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