

LUCIO PIELAGO, PLAINTIFF AND APPELLEE, VS. PEDRO GENEROSA AND FAUSTINO GENEROSA, DEFENDANTS AND APPELLANTS.*G.R. No. 47879. August 24, 1942*

Ponente: PARAS, J.

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In this ejectment case the justice of the peace court of Guijulan, Negros Oriental, after trial in the absence of the defendants, rendered judgment in favor of the plaintiff from which the defendants appealed. In due time the clerk of the Court of First Instance of Negros Oriental addressed to the defendants, by registered mail, posted on September 8, 1939, the routine notice regarding the receipt of the appealed case and the period for pleading. This notice, however, failed to reach the hands of the defendants because they did not claim the same from the post office of Guijulan notwithstanding the fact that they were thrice informed thereof by the postmaster. By reason of the consequent failure of the defendants to appear and plead, the Court of First Instance of Negros Oriental, upon motion of the plaintiff, entered on November 21, 1939 an order of default and on November 25, 1939, after the plaintiff had presented his evidence, rendered judgment requiring the defendants to vacate the land in question and to pay, jointly and severally, to the plaintiff the sum of P18 as damages, plus the costs. In an amended motion filed on June 15, 1940, the defendants prayed that this judgment, as well as the interlocutory order of default, be set aside on the principal grounds that the defendants' failure to get the notice from the post office was excusable in view of their ignorance and that they were not served with copy of the plaintiff's motion for default. This motion was denied by the Court of First Instance of Negros Oriental in its order of June 19, 1940, from which the defendants appealed.

Contrary to appellants' contention, they are not entitled to service of copy of the motion asking that they be declared in default. This rule, heretofore followed by virtue of judicial pronouncements, is now expressly covered by section 9, Rule 27, of the Rules of Court, which provides that "No service of papers shall be necessary on a party in default except when he files a motion to set aside the order of default, in which event he is entitled to notice of all further proceedings." We cannot also accept the contention that appellants' failure to claim the registered notice merely amounted to an excusable neglect which will warrant the reopening of this case. It is such kind of neglect or inaction that gave life to the provision that service by registered mail is complete and effective, if the addressee fails to claim his mail from the post office within five days from the date of first notice of the postmaster, at the expiration of such time (Rule 21, old Rules of Courts of First Instance, now section 8, Rule 27, of the Rules of Court. Another reason why the lower court has not committed reversible error is that the appellants' motion of June 15, 1940 was not accompanied by any affidavit of merit, the bare statement in said motion that "the defendants have a just and valid defense" being nothing more than a conclusion of law.

The appealed order is affirmed, without costs.

Yulo, C. J., Moran, Ozaeta, and Bocobo, JJ., concur.

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