

CANDIDO GERONILLA, PLAINTIFF AND APPELLEE, VS. EMILIANO GADIA, DEFENDANT AND APPELLANT.

G.R. No. 5505. October 04, 1912

Ponente: CARSON, J.

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CARSON, J.:

This is an application for reconsideration of a minute order of this court declining to reinstate defendant's appeal in this case.

The appeal was regularly perfected in the court below, and the record was brought here on appellant's bill of exceptions; but under the rules of this court the appeal was dismissed on motion of the appellee, because of appellant's failure to prosecute it to effect.

It is not denied, and indeed appellant admits, that at the time when the appeal was dismissed, appellant had failed to file his brief for a period much in excess of the time allowed therefor, and that under the rules of court, the plaintiff and appellee was entitled to have the appeal dismissed on his motion, in the absence of a satisfactory explanation of the negligence and delay on the part of the appellant. But appellant prays the reinstatement of his appeal, on the ground that his failure to prosecute his appeal as required by the rules was due to his excusable negligence, in that he mistakenly believed that his case was in the hands of competent attorneys, and that everything was being done by them on his behalf in conformity with the law and in strict compliance with the rules of court. He declares that, being an ignorant man, with no knowledge as to the mode in which he should proceed, he requested two friends in whom he had confidence to act on his behalf and to employ counsel to look after his case; that for that purpose he gave them over eight hundred pesos to cover their expenses to Manila and to pay the court costs and counsels' fees; that they went to Manila and on their return informed him that in fulfilment of their mission they had employed eminent and competent counsel, who had sent him a message that he need not trouble his head further in the matter as it was now in the hands of his counsel, who would do everything necessary to guard his interests; that not until some time after his case had been dismissed did he discover that his trusted friends had betrayed his trust, had misappropriated the greater part of the money, and had failed to secure the services of counsel; that on discovering the facts as to the dismissal of his appeal, and the reason therefor, he promptly submitted his motion for the reinstatement of his appeal, with a full explanation of his apparent neglect and failure to prosecute it to effect as required by the rules of court.

We are inclined to believe that the truth of his statements is substantially corroborated by the affidavits and other documentary evidence filed with his motion for reinstatement, and we would be strongly inclined to reinstate his appeal, but for the fact that a careful examination of the whole record, including the bill of exceptions and the evidence taken in the court below, satisfies us that the original appeal was without merit; so that even if the appeal were reinstated and thereafter prosecuted to effect, the proceedings would necessarily terminate in a judgment affirming the judgment of the trial court, with the costs against the defendant and appellant.

The whole case in the court below turned upon the validity and true meaning or interpretation of a certain

document, which the trial court held to be a "venta con pacto de retro" (conditional sale). The defendant insisted that this document should be construed as a hipoteca (mortgage instrument) and not as a venta con pacto de retro; and that if its terms do not admit of such a construction, then that it should be declared illegal and invalid on the ground that plaintiff had procured its execution by fraud and deceit.

Examining the instrument itself there can be no question that, in accord with the uniform doctrine laid down by this court in a long line of decisions construing instruments of like tenor and import, the trial court properly construed the terms of the contract therein set forth as a venta con pacto de retro. And examining the evidence of record, we agree with "the trial court that defendant's witnesses failed utterly to establish his allegations of fraud or deceit in the execution of the instrument in question. Whatever may have been the truth in this regard, and whatever may have been the real understanding between the parties, the vague and uncertain testimony of the witnesses for the defendant was wholly insufficient to maintain his charges of fraud and deceit, or to put in doubt the legal execution and validity of the instrument. In the absence of at least a preponderance of proof that the instrument was fraudulently executed and that it does not truthfully set forth the agreement between the parties, the trial court correctly adjudicated the contention of the parties in conformity with the terms of this instrument.

It is clear, therefore, that the reinstatement of defendant's appeal would not result in a reversal or modification of the judgment entered in the court below. We are fully satisfied, therefore, that it would only result in additional delay and expense to the litigants, and could serve no useful purpose.

Where, as in this case, a party seeks relief from the effect of an order or judgment entered against him because of his failure to comply with prescribed rules of procedure, and bases his prayer for relief on the ground that his failure so to do was due to his excusable negligence, such relief may properly be denied him in any case wherein it does not appear that to deny the relief would have the effect of shutting out a meritorious claim or defense, or wherein it appears that to grant the relief would have no other effect than uselessly to prolong the litigation without affecting the final result of the litigation.

The following citations sufficiently illustrate the manner in which this doctrine has been applied in the United States and support the rule just laid down:

"Relief will not be granted upon a motion to vacate an order dismissing an appeal for the nonfiling return to the appeal within the prescribed time, if the appeal is without merits, and the party would not be benefitted by its restoration. (Supt. of the Poor vs. Bostwick, 4 Alb. Law J. (N. Y.),128.)

"Where a default has been regularly taken, and appellant's attorney moves to reinstate the appeal on the ground that the failure to serve the printed case within forty days, as required by the rule of the Court of Appeals, was due to the sickness of his child and the pressure of professional engagements, and respondent files an affidavit setting up that such appeal was taken for delay, and contrary to the wishes of appellant, the case will not be restored where an examination shows that none of the exceptions are worthy of consideration by the court. (Schenck vs. Bengler, 105 N. Y., 630.)

"The Court of Common Pleas may reinstate an appeal dismissed for apparently good cause, on discovering a mistake of law or fact, or where the appellant has a meritorious case. (State vs. Foster, 44 N. J. L. (15 Vroom), 378.)

"Upon a motion made under rule 3 of the Supreme Court to restore an appeal which has been dismissed for failure to file the transcript within the time prescribed by rule 2, it must be shown by affidavit that, in the opinion of counsel at least, there are substantial errors in the record which ought to be corrected by the court. (Dorland vs. McGlynn, 45 Cal., 18.)

"Under Pub. Acts, 1905, No. 15, amending Comp. Laws, sec. 552, so as to provide that, when an appeal is

dismissed for nonpayment of register's fee, the Supreme Court may reinstate it if the appellant shall make it appear that justice requires a revision of the case, an appeal will not be reinstated where an examination of the record satisfies the Supreme Court that justice does not require such revision on the merits. (Collat vs. Ives, 141 Mich., 500.)

"A motion to vacate an order dismissing an appeal will not be granted as a matter of favor unless there is some reason to think that the judgment obtained is not in strict conformity with the merits and equity of the case. (Keuka Navigation Co. vs. Holmes, 98 N. Y., 655.)

"In order to reinstate an appeal once dismissed, the appellant should show such a condition of the record as to indicate that there was apparent error in the proceedings of the lower court." (Jacobs vs. Shennon, 4 Idaho, 341.)

The order heretofore entered denying the application for reinstatement of the appeal originally entered in this case is affirmed, and all orders suspending the execution of the original order dismissing the appeal are hereby definitively revoked. So ordered.

Arellano, C. J., Torres, Mapa, and Trent, JJ. concur.

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