

**ADALIA B. FRANCISCO, ZENAIDA FRANCISCO, ESTER FRANCISCO,
ADELUIA FRANCISCO AND ELIZABETH FRANCISCO, PETITIONERS,
VS. HON. BENIGNO M. PUNO, AS PRESIDING JUDGE, COURT OF FIRST
IN...**

G.R. No. 55694. October 23, 1981

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for certiorari impugning the resolution of respondent judge of October 8, 1980 granting private respondent's petition for relief from the judgment rendered by the same respondent judge on January 8, 1980 in Civil Case No. 8480 of the Court of First Instance of Quezon which dismissed private respondent's complaint for reconveyance of a parcel of land and damages. That decision was rendered notwithstanding the absence of petitioners at the pre-trial by reason of which they were declared in default. It was based alone on the testimony of private respondent Josefina D. Lagar and the documents she presented.

On August 29, 1979, private respondent filed with respondent judge a complaint for reconveyance of a parcel of land and damages alleging inter alia that respondent's father caused the land in question titled in his name alone as "widower", after her mother's death, in spite of the property being conjugal, and then sold it to the predecessor in interest of petitioners from whom they bought the same.

After the defendants, herein petitioners had filed their answer, wherein they alleged lack of personality of plaintiff to sue, prescription and that they are buyers in good faith, the case was set for pre-trial, but petitioners failed to appear thereat. Taking advantage of such absence, private respondent's counsel moved that they be declared in default and that private respondent, with the assistance of her counsel, Atty. Pacifico M. Monje, be allowed to present their evidence. The motion was granted and after presenting her evidence, counsel rested her case. On the same date, respondent judge rendered judgment finding the evidence insufficient to sustain the cause of action alleged and therefore dismissing the complaint. That was on January 8, 1980. On February 15, 1980, respondent's counsel was served with copy of the decision. (See Annex G of the petition.)

On February 16, 1980, private respondent filed, thru a new counsel, Atty. Bienvenido A. Mapaye, a motion for new trial and/or reconsideration alleging that the insufficiency of her evidence was due to the fault of her counsel who presented the same without her being fully prepared. In other words, she claimed, she had newly discovered evidence that could prove her cause of action. It is relevant to note that said motion was signed and sworn to by private respondent herself together with her counsel.

Acting on the said motion for new trial and/or reconsideration, on April 28, 1980, respondent judge denied the same for having been filed out of time. Indeed, from January 15, 1980, when respondent's counsel was served with the decision, to February 16, 1980, when the motion was filed, more than 30 days had already elapsed (32 days to be exact).

Persisting in her effort to pursue her claim, under date of May 7, 1980, private respondent filed, thru another new counsel, Atty. Ricardo Rosales, Jr., a petition for relief, purportedly under Rule 38, claiming:

"1. She filed civil case 8480 for Reconveyance and Damages against defendants Luis Francisco, et al., on August 29, 1979.

"2. The main trust in petitioner's action against defendant was her unlawful deprivation of one-half of the property covered by TCT No. 2720 and denominated as Lot 4864 of the cadastral survey of Lucena, as said parcel belongs to the conjugal partnership of Dionisio Lagar and Gaudencia Daelo, plaintiff-petitioner's immediate predecessor-in-interest.

"3. Gaudencia Daelo having predeceased her husband, petitioner contends that one-half of the property belongs to her mother and therefore should rightfully be inherited by her after her mother's death, but failed however, to inherit any part thereof, because her father sold the entire parcel to the defendant Luis Francisco.

"4. On January 8, 1980, a pre-trial hearing was scheduled, where defendants were declared as if in default thereafter an order of default was issued and plaintiff adduced evidence ex-parte.

"5. On the same date, January 8, 1980, a decision was rendered dismissing the case after plaintiff took the witness stand, who through excusable neglect was not able to expound on very vital points and inadvertently failed to introduce in support of her theory.

"6. Because plaintiff-petitioner was under the belief that the scheduled hearing was one where no testimony is yet to be taken, coupled by the fact that she was not prepared to testify, and that it was her first time to take the witness stand, she did not fully comprehend the questions propounded to her.

"7. Plaintiff-petitioner filed a Motion for Reconsideration and/or new trial but was denied in its order dated April 28, 1980, which petitioner received on May 5, 1980.

"8. If plaintiff-petitioner will be allowed to introduce evidence in her possession, which by excusable neglect and/or mistake were not introduced, the same will necessarily alter and/or change the decision in her favor, attached is her affidavit of merits.

"9. Evidence in support of her claim that it is a conjugal property consist of a deed of sale executed by Manuel Zaballero and Germana Ona in favor of the conjugal partnership of Dionisio Lagar and Gaudencia Daelo (Doc. No. 412; Page No. 55; Book No. II; Series of 1948 of Notary Public Francisco Mendioro), xerox copy thereof is attached herewith as Annex 'A'.

"10. The deed of sale ratified by Notary Public Ramon Ingente (Doc. No. 68; Page No. 7; Book No. VI; Series of 1955) executed by Dionisio Lagar should refer only to one-half (1/2) and therefore is annulable in so far as the other half of the property is concerned.

"11. That the petition wherein Dionisio Lagar sought to change his civil status was not known personally to the plaintiff-petitioner and/or not understood by her, otherwise she could have made reservations in that petition eventually protecting her right insofar as one-half (1/2) of the property is concerned.

"12. Plaintiff-petitioner has a valid substantial cause of action consisting of evidence enumerated above, which by excusable negligence or error was not presented otherwise, the decision will be in favor of the plaintiff herein petitioner." (Petition for Relief of Judgment, pp. 50-52, Record)

Answering the petition for relief, petitioners maintained that aside from the fact that no excusable negligence has been alleged, for, on the contrary, there was an evident effort on respondent's part to take advantage of the absence and default of petitioners when respondent presented her evidence, the petition for relief was filed out of time in the light of Section 3 of Rule 38, which provides that such a petition should be "filed within sixty (60)

days after the petitioner learns of the judgment, order or proceeding to be set aside, and not more than six (6) months after such judgment or order was entered or such proceeding was taken."

In his resolution of October 8, 1980 now under question, respondent judge ruled that:

"Defendants' claim that plaintiff is presumed to have learned of the judgment of January 8, 1980, either on January 15, 1980 when Atty. Monje received a copy thereof or on February 15, 1980, when plaintiff signed the Motion for Reconsideration and/or New Trial prepared by Atty. Mapaye, in either case, the petition for relief of May 8, 1980 by Atty. Rosales was resorted to beyond the 60-day period prescribed under Section 3, Rule 38 of the Rules of Court; from January 15 to May 8 is a period of 114 days and from February 15 to May 8 is a period of 84 days; in either case, the filing of the petition for relief is beyond 60 days from the time plaintiff is presumed to have learned of said decision of January 8, although, in either or both events, the filing thereof is admittedly within 6 months from the issuance of said decision; on the other hand, the plaintiff stated that she did not actually learn of the decision of January 8 until she received a copy thereof on March 17, 1980 (p. 67 of Record or 'G') and that she was not informed of the contents of the motion for new trial and/or re-consideration on February 15, 1980 when she was made to sign it (TSN, pp. 20-21, July 28, 1980).

" 'Q - From where did you secure that copy of the decision?

A - I went to the court myself and secured a copy of the decision.' (TSN, p. 16-id).

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Q - And you are sure of the fact that you only became aware of the decision in the month of March, 1980?

A - Yes, sir,' (TSN, p. 20, id).

"In the light of the circumstances obtaining in this case, it is the opinion of the Court that it is the date when plaintiff actually learned of the decision from which she seeks relief that should be considered in computing the period of 60 days prescribed under Sec. 3, Rule 38 of the Rules of Court for purposes of determining the timeliness of the said petition for relief; this opinion finds support in *Cayetano vs. Ceguerra, et al.*, No. L-18831, 13 SCRA, where the Supreme Court, in effect, held that the date of 'actual knowledge' (and not the presumed date of receipt or knowledge) of the decision, order or judgment from which relief is sought shall be the date which should be considered in determining the timeliness of the filing of a petition for relief; in that case, the Supreme Court said:

" 'It is conceded that defendants re-ceived a first registry notice on January 13, 1961, but they did not claim the letter, thereby giving rise to the presumption that five (5) days after receipt of the first notice, the defendants were deemed to have received the letter. This Court, however, cannot justly attribute upon defendants actual know-ledge of the decision, because there is no showing that the registry notice itself contained any indication that the registered letter was a copy of the decision, or that the registry notice referred to the case being ventilated. We cannot exact a strict accounting of the rules from ordinary mortals, like the defendants.' " (Resolution, pp. 67-68, Record.)

We cannot agree, for two reasons. First, according to Chief Justice Moran:

"The relief provided for by this rule is not regarded with favor and the judgment would not be avoided where the party complaining 'has, or by exercising proper diligence would have had, an adequate remedy at law, or by proceedings in the original action, by motion, petition, or the like to open, vacate, modify, or otherwise obtain relief against, the judgment.' (*Fajardo v. Judge Bayona, etc., et al.*, 52 O.G. 1937; See *Alquesa v. Cavoda*, L-16735, Oct. 31, 1961, citing 49 C.J.S. 695.) The remedy allowed by this rule is an act of grace, as it were, designed to give the aggrieved party another and last chance. Being in the position of one who begs, such party's privilege is not to impose conditions, haggle or dillydally, but to grab what is offered him. (Palomares,

et al. v. Jimenez, et al., L-4513, Jan. 31, 1952.)" (Page 226, Moran, Comments on the Rules of Court, Vol. 2, 1979 Edition.)

In other words, where, as in this case, another remedy is available, as, in fact, private respondent had filed a motion for new trial and/or reconsideration alleging practically the same main ground of the petition for relief under discussion, which was denied, what respondent should have done was to take to a higher court such denial. A party who has filed a timely motion for new trial cannot file a petition for relief after his motion has been denied. These two remedies are exclusive of each other. It is only in appropriate cases where a party aggrieved by a judgment has not been able to file a motion for new trial that a petition for relief can be filed.

Second, it is beyond doubt that the petition for relief of private respondent was filed out of time. We cannot sanction respondent court's view that the period should be computed only from March 17, 1980 when she claims self-servingly that she first knew of the judgment because, as stated above, she signed and even swore to the truth of the allegations in her motion for new trial filed by Atty. Mapaye on February 16, 1980 or a month earlier. To give way to her accusations of incompetency against the lawyer who handled her case at the pre-trial, which resulted in a decision adverse to her despite the absence of petitioners, and charge again later that her new counsel did not inform her properly of the import of her motion for new trial and/or reconsideration is to strain the quality of mercy beyond the breaking point and could be an unwarranted slur on the members of the bar. That, however, Atty. Mapaye did not pursue the proper course after his motion for new trial was denied is, of course, unfortunate, but We are unaware of the circumstances of such failure and how much of it could be attributed to respondent herself, hence We cannot say definitely that it was counsel's fault.

In any event, We hold that notice to counsel of the decision is notice to the party for purposes of Section 3 of Rule 38. The principle that notice to the party, when he is represented by a counsel of record, is not valid is applicable here in the reverse for the very same reason that it is the lawyer who is supposed to know the next procedural steps or what ought to be done in law henceforth for the protection of the rights of the client, and not the latter.

Under the circumstances, We hold that respondent judge acted beyond his jurisdiction in taking cognizance of private respondent's petition for relief and, therefore, all his actuations in connection therewith are null and void, with the result that his decision of January 8, 1980 should be allowed to stand, the same having become final and executory.

ACCORDINGLY, judgment is hereby rendered setting aside the resolution of respondent judge of October 8, 1980 and reinstating his decision of January 8, 1980 in Civil Case No. 8480 of his court, which latter decision may now be executed, the same being already final and executory. No costs.

Aquino, Concepcion, Jr., Abad Santos, and De Castro, JJ., concur.

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