

GABRIEL ZARI, PLAINTIFF AND APPELLANT VS. JOSE R. SANTOS, DEFENDANT AND APPELLEE.

G. R. No. 5608-R. September 29, 1951

Ponente: FERIA, J.

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FERIA, J.:

-This case was appealed from the "Court of First Instance to the Court of Appeals, in which the plaintiff-appellant specified as a second assignment of error, that the trial court erred in denying the petition of the attorney for the appellant to set aside the order dismissing plaintiff's complaint and declaring plaintiff in default on defendant's counterclaim, filed under section 2, Rule 38, of the Rules of Court, which provides for relief against judgment entered into against a party through fraud, accident; mistake and excusable negligence.

We said that it is the principal question raised in the appeal because, the plaintiff's action having been dismissed for his failure to appear at the trial and to produce evidence in support of the facts alleged in the complaint, the plaintiff can not obtain a positive relief from the defendant in the appeal unless and until the order of September 17, denying his petition for relief from the order of September 13 that dismissed his claim or action for failure to appear at the trial, is set aside and the principal case tried upon its merits under section .6 of Rule 38.

In his petition for relief, the attorney for, the plaintiffappellant alleged that the latter's failure to appear and prove appellant's complaint and defense to the counterclaim was due to a slight stroke of influenza which prevented him from appearing on the date of the trial, upon the advice of his physician. This motion for relief was accompanied by the affidavits of Dr. Francisco F. Tangco, the appellant and his attorney tending to show the truth of said allegation, and that the plaintiff has a good cause of action against the defendant and a good defense against the latter's counterclaim.

The. attorney for the defendant-appellee filed, under section 4 of Rule 38, his answer opposing the plaintiff's petition for relief on the ground that "the non-appearance of the counsel for the plaintiff-appellant was premeditated," because it was the second time he failed to appear at the date of the trial, and that "during the second nonappearance of the counsel for. the plaintiff, the plaintiff himself and the representative of the law office of the plaintiff's counsel were present."

The court in its order of September 17, denied the plaintiff's petition for relief stating that "Finding the motion of the plaintiff, dated September 13, 1949, to be without merit, the same' is hereby denied. It is so ordered." Although the trial court did not specify in its order the reasons or grounds for the dismissal, but simply stated that the; motion was without merits, ifc is obvious that the dismissal was based on the fact that the court found that the allegations of the petition are not true according to section 6 of Rule 38.

In all judicial cases the question for the courts to decide must be, either of fact and law, or of law only if the ultimate facts on which the law is to be predicated are admitted or not in issue; but it. can never be a question of fact only, because the administration of justice consists in the application of the law to the ultimate fact admitted by the adverse party, or proven by the evidence according to the findings of fact of the court.

It is obvious that the principal question submitted to the trial court for decision involved both questions of fact and law. The question of fact was whether or not the dismissal of the plaintiff's action for failure of the plaintiff to appear at the time of the trial, "was due to accident, namely, that one of his attorneys was sick of influenza and the other was busy attending to other legal matters; and that question was decided by the trial court against the contention or allegation of the plaintiff. And the question of law was whether the failure of the plaintiff to appear at the time of the trial not being due to accident, plaintiff's petition for relief should be granted or denied by the court; and the trial court, applying the provision of section 6, Rule 38, of Rules of Court, decided that legal questions denying the plaintiff's petition for relief.

The argument in the dissenting opinion that the trial court denied the plaintiff's motion or petition for relief on the grounds stated in its decision on the merits of September 22, 1949, is untenable. The grounds set forth therein are in support of the denial of the motion to postpone the trial on September 9, 1949, as expressly stated in said decision of September 22, and not in support of its order of September 17 denying the plaintiff's petition for relief. But if the facts and circumstances set forth therein were considered by the trial court in finding without merit the motion of the plaintiff, a fortiori they were taken into consideration by the trial court to decide against the plaintiff the question of fact whether or not there was such accident alleged in the petition that prevented the plaintiff from appearing at the time of the trial, before passing upon the question of law whether or not, there being no such accident, plaintiff's petition for relief should be denied.

The order or ruling of the trial court denying the motion of plaintiff's petition for relief having been appealed by the plaintiff-appellant the same questions of fact and law are being raised and submitted to the Court of Appeals for decision by the appellant who assigns as errors said ruling in his second assignment of errors above quoted.

As Professor P. W. Viesselman says in his preface to the Fifth Edition of the well known "Abbot on Facts," edited by said Professor, "The proof of facts is one of the most important fields of practice. The ultimate facts upon which the rights of the parties rest are usually in dispute. In such cases it becomes necessary to introduce evidentiary matters to prove them." It is obvious that the question whether or not taken in consideration the evidentiary matter or the affidavits of the plaintiff-appellant, or his attorney, and of Dr. Francisco F. Tangco with the other facts and circumstances of the case found in the record, they are sufficient to establish the alleged ultimate fact of accident within the meaning of, section 2, Rule 38, contrary to the lower court's resolution, is clearly a question of fact for the Court of Appeals to decide.

It is true that the question for a court to decide is only of law if the ultimate facts alleged by one party are admitted or not denied by the other. But it is not less true that the fact that evidentiary matters have been introduced without contradiction does not make said ultimate facts undisputed and the question for the appellate courts to decide one only of law, for the court may not give any credit or weight to the evidence presented. The appellate courts in such case cannot just assume the ultimate facts as proven or admitted, and decide only the question of law and state in its judgment its conclusion derived from the law applicable as major premise, and the ultimate facts as minor premise of the syllogism. For section 1 of Rule 85 requires that a judgment should state clearly the findings of fact and of law on which it is based. The court should first decide or make its findings of fact or conclusion whether or not the ultimate facts in issue have been established. And such conclusion is drawn from a syllogism the minor premise of which is the direct and indirect or circumstantial evidence, presented, and the major premise is reason or logic and every day experience according to which the truth or existence of a fact in issue may be or may not be logically inferred from the evidence presented.[1]

In view of the foregoing, the case is remanded to the Court of Appeals for further proceedings,

Pablo, Bengzon, Padilla, Reyes, Jugo, and Bautista Angelo, JJ., concur.

[1] (See Wigniore on Evidence, 3rd edition, vol. 1, section 25.)

DISSENTING

PARAS, C. J.,

The plaintiff-appellant filed an action in the Court of First Instance of Rizal in which it is prayed that judgment be rendered ordering the defendant "(a) to respect and recognize the rights acquired by the plaintiff over the portion of the land in question; (b) to accept the installments due the defendant by the plaintiff, who is ready and willing at any time to tender him said installments; (c) to execute in favor of the plaintiff the corresponding certificate of sale of said portion of the land in question upon full payment of balance of the purchase price thereof; (d) to pay unto the plaintiff the sum of P958.33 corresponding to his share in the rentals collected by the defendant from the U. S. Army, with legal interest from the time of the filing of this complaint; and (e) to pay the costs of this suit."

After several postponements, the case was set for trial on September 9, 1949, on which date counsel for the plaintiff did not appear. However, the plaintiff, accompanied by his brother (Eliseo Zari), came to the court and informed the latter that plaintiff's counsel, Atty. Kodolfo E. Medina, was sick, and accordingly suggested the postponement of the trial. Asked by the Court about his stand in the matter, Atty. N. U. Gatchalian, counsel for defendant-appellee, replied: "We are not in anyway trying to take advantage of the absence of counsel for the plaintiff. I leave it to the discretion of this Honorable Court with regard to this motion for continuance." Whereupon the trial court denied the petition for transfer, dismissed plaintiff's complaint, and allowed the defendant to present his evidence in support of his counter-claim.

On September 22, 1949, the trial court rendered a written decision dismissing plaintiff's complaint and defendant's counter-claim, without pronouncement as to costs. In the meantime, the plaintiff filed a motion to set aside the verbal order of the trial court dismissing plaintiff's complaint and declaring the plaintiff in default on defendant's counterclaim, supported by affidavits of merit to the effect (1) that Atty. Rodolfo E. Medina was sick on September 9, 1949; (2) that Atty. Angel N. Castafio, who knew the case and could handle the trial, was attending to other legal matters requiring his personal attention; and (3) that the plaintiff had a good cause of action against the defendant as well as a good defense against defendant's counter-claim. This motion was denied by the trial court in its order of September 17, 1949.

On October 10, 1949, the plaintiff filed a motion for reconsideration and new trial, which was denied by the trial court in its order of October 18, 1949.

The plaintiff has appealed and assigned the following errors:

"I.—El Juzgado originario incurrió en error al denegar la petición de posposición de vista de esta causa en la tarde del día 9 de septiembre de 1949.

"II.—El juzgado originario incurrió en error al denegar la moción del demandante para dejar sin efecto la orden que sobresee la demanda del demandante, y le declara a este en rebeldía en relación con el 'counter-claim' del demandado.

"III.—El juzgado originario incurrió en error al no oír las ruelas del demandante que advernan las alegaciones de su demanda antes de sobreseer esta.

"IV.—El juzgado originario incurrió en error al sobreseer la demanda del demandante en su decisión dictada en esta causa.

"V.—El juzgado originario incurrió en error al denegar la mocidn de reconsideration de la decision que sobresee la demanda del demandante, y la nueva vista de la causa."

The Court of Appeals, to which the case was elevated, has certified the same to this Court on the ground that the issues are purely legal, namely, "whether or not, upon the undisputed facts stated heretofore, the trial court erred firstly, in denying 'appellant's motion for postponement of the trial; secondly, in rendering judgment dismissing appellant's complaint and declaring him in default on the counterclaim, and thirdly, in denying the motion to set aside the order of dismissal of the complaint and the motion for reconsideration and new trial: mentioned heretofore."

The majority are of the opinion that the case involves qnsstion of fact and of law, and that the question of fact is ' whether or not the dismissal. of the plaintiff's action for his failure to appear at the time of the trial was due to the circumstance that one of his attorneys was sick of influenza and the other was busy attending to other legal matters, said question of fact having been decided by the trial court against the contention or allegation of the plaintiff. It is true that, in the opposition to appellant's motion for relief, counsel for appellee alleged that "the non-appearance of the counsel for the plaintiff is deliberate and premeditated". But it is very significant that the trial court had refused to lift the order of default, not on the ground that counsel for the plaintiff-appellant was not in fact sick, but on the grounds stated in its decision of September 22, 1949. Said decision ruled: "It appearing that the trial was set upon mutual petition of the parties and their counsel; th'at said petition for continuance has not been made in the form and with the requisites prescribed by law; that the plaintiff is represented by a firm of;attorneys any member of which could have appeared and prosecuted the case in lieu of Atty. Medina, and that Atty. Angel M. Castano is the one personally in charge of the case (see sworn petition ..for postponement of Atty. Castano dated August 5, 1949); the Court denied the postponement of the trial sought by the plaintiff and forthwith ordered the defendant to present his evidence on his counter-claim."

That the trial court did not and never intended to base its refusal to reconsider the order of default on the ground that appellant's counsel was not really sick on the date of the trial, is clearly negated by the grounds specified in its decision and plainly shown by the further fact that said court did not deem it necessary to require evidence to be presented by the parties on the matter. The trial court considered the facts appearing on the record sufficient for drawing a legal conclusion as to whether, or not counsel for appellant could be excused for his absence during the trial on September 9, 1949. To say the least, it would have been unfair for the trial court to rule out the appellant on a question of fact without giving him ample opportunity to present necessary evidence. And certainly it could not have accepted as true the bare allegation of attorney for appellee that the non-appearance of counsel for appellant was premeditated.

It may be contended that the trial court ruled that" Atty. Angel M. Castano was the one personally in charge of the case and could have appeared in lieu of Atty. Medina, and that this is a finding of fact. Even so, it is also beyond question that Atty. Castano was busy attending to other matters requiring his personal attention on September 9, 1949.

It is my opinion, therefore, upon the undisputed 'facts" appearing in the record, the main point to be determined is whether or not counsel for the appellant can be legally excused for his failure to appear on the date of the trial in question, and this is a purely legal issue.

Wherefore, I vote to give due course to the plaintiff's appeal in this Court.

Tuason, J., concurs.

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