

TRANQUILINO BALADIANG, PETITIONER, VS. HON. GREGORIO U. AQUILIZAN, PRESIDING JUDGE, BRANCH XVI, REGIONAL TRIAL COURT, KABACAN, NORTH COTABATO, AND RODOLFO SABADO, ATTORNEY-IN-FA...

G.R. No. 69730. July 11, 1985

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Petition to review the actuations of the respondent judge in Civil Case No. 5, Branch XVI of the Regional Trial Court of North Cotabato.

Civil Case No. 5 (originally Civil Case No. 143) is for the recovery of possession of a piece of land alleged to have been illegally occupied by the defendant, the herein petitioner. The plaintiff is the private respondent.

According to the petitioner the summons were served on May 6, 1968, not to him but to one Joel Bacus who is not a member of his family and by implication not authorized to receive the summons for him. The private respondent does not deny this allegation in his comment and it is therefor to be considered as factual.

On July 26, 1968, the plaintiff filed a motion to declare the defendant in default. The motion was not resolved. Subsequently the case was transferred from Cotabato City where it was originally filed to the Regional Trial Court in Kabacan, North Cotabato, where it is now.

On June 9, 1983, the respondent judge dismissed the case without prejudice for non-appearance of the parties after the case had been calendared for hearing. Parenthetically, the notice of the hearing was not served because the parties could not be contacted.

On November 9, 1984, Rodolfo Sabado (a non-lawyer) acting as attorney-in-fact for the plaintiff moved to reinstate the case. Reason: no notice of hearing had been received which accounts for plaintiff's non-appearance. On the same date, the Court sent notice of hearing to the parties. Hearing was set on November 16, 1984.

The petitioner said he did not receive the notice of hearing which was instead served on one Perfecto Cano. The respondent does not contradict this allegation.

On November 26, 1984, the respondent judge granted the plaintiff's motion to declare the defendant in default and ordered the plaintiff to present his evidence on December 14, 1984.

On December 14, 1984, Atty. Solema P. Jubilan entered her appearance for the defendant and asked that the defendant be given a chance to answer the complaint. She alleged lack of notice to the defendant of previous proceedings. The respondent judge denied the motion for lack of service to the other party.

On the basis of the foregoing, the defendant has come to this Court on a petition for certiorari. He asks that the orders of the respondent judge be annulled.

In his comment the respondent judge states:

"2. That said Certiorari is premature in the sense that there is a pending Motion for Reconsideration filed by the defendant but which was opposed by the plaintiff and the same had not been resolved as said Motion for Reconsideration has not as yet been calendared.

"3. It may be stated in passing that the respondent has no objection to the granting of the Motion for Reconsideration."

What motion for reconsideration is pending? Both the petition and the comment of the private respondent state that the motion for reconsideration has been resolved; it has been denied.

We grant the petition because the record shows lack of notice to the defendant, now the petitioner, throughout the proceedings in the lower court. This is violative of procedural due process and shows poor court management.

WHEREFORE, the petition is granted. The orders issued by the respondent judge are set aside and he is directed to see to it that the petitioner is properly served with summons. Costs against the private respondent.

SO ORDERED.

Makasiar, (Chairman), Concepcion, Jr., Escolin, and Cuevas, JJ., concur.

Aquino, J., concur, the petitioner should be given 15 days from notice to answer the complaint.

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