

MELISANDE MIRAFLOR, PETITIONER, VS. HON. CONCHITA CARPIO-MORALES, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH CX, PASAY CITY, METRO MANILA, AND SPS. CRISOSTOMO RAGURO & DEMETR...

G.R. No. 77568. December 14, 1988

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for:

- Certiorari, seeking to annul the following:

a)

Order dated September 3, 1986[1] of the Honorable Respondent Judge setting aside its final and partially executed decision dated June 30, 1986 and at the same time granting due course to private respondents' petition for relief from Judgment.

b)

Order dated January 22, 1987[2] of public respondent Judge Conchita Carpio-Morales granting private respondents' "Manifestation with Urgent Ex-Parte Motion To Order Pasay City Sheriff and Petitioner (Plaintiff) to return to private respondents the proceeds of the sale of the levied upon personal properties which had been sold already at public auction."

- Prohibition, seeking to command respondents to desist from further proceeding in the petition for relief from judgment, against petitioner (plaintiff);

- Preliminary injunction:

To enjoin respondents from further proceeding with Order (Annex "B" hereof) requiring plaintiff (petitioner) to turn over to defendants Two Thousand Five Hundred Pesos (P2,500.00) representing the proceeds of the sale of levied upon properties sold at public auction.

- A restraining order, to restrain respondents from further proceeding with this case against petitioner (plaintiff) preparatory to the determination of the propriety of the Writ of Preliminary Injunction is sought in this petition.

The antecedent facts giving rise to this Petition are briefly narrated by petitioner as follows:

- On March 20, 1986, petitioner-plaintiff filed a Complaint against private respondents and Carmelita Visaya and her spouse in Civil Case No. 5855-P before the Regional Trial Court, Branch CX, Pasay City, Metro Manila for Acquisition of Possession with Damages.

- On April 15, 1986, copies of the Complaint together with corresponding summonses were served upon

respondents-defendants.

- On June 2, 1986, an Order was issued, declaring defendants (respondents) in default for failure to answer the complaint within the reglementary period provided for by law.

- On June 23, 1986, petitioner-plaintiff was allowed to present his evidence ex parte.

- On June 30, 1986, a decision was rendered by the Honorable Court in favor of petitioner-plaintiff.

- On July 3, 1986, upon motion of petitioner-plaintiff, an Order was issued granting the issuance of a Writ of Execution pending appeal.

- On July 7, 1986, respondents-defendants filed a "Manifestation with Urgent Motion to Set Aside Decision and Writ of Execution" which was denied by the Court on the same day it was filed.

- On July 10, 1986, the levied upon properties of defendants-respondents were sold at public auction; and a Certificate of Sale was issued to the highest bidder.

- On July 21, 1986, respondents-defendants filed an "Urgent Motion for Relief from Judgment" pursuant to Rule 38, of the Rules of Court without being accompanied by affidavits showing fraud, or accident, or mistake or excusable negligence relied on as grounds for Petition for Relief as mandated by Section 3, Rule 38 of the Rules of Court.

- On July 23, 1986, despite insufficiency in form and substance of the Petition to justify the reliefs prayed for, an Order was issued requiring petitioner-plaintiff to file an answer to said petition.

- On August 4, 1986, petitioner-plaintiff filed her answer in compliance with the aforesaid Order.

- On September 3, 1986, without conducting the necessary hearing as required under Section 6, Rule 38, of the Revised Rules of Court, the respondent court issued its assailed Order (Annex "A") granting respondents-defendants' Urgent Motion for Relief from Judgment and at the same time set aside its decision dated June 30, 1986.

- On September 18, 1986, Atty. Enrique Almario, former counsel of plaintiff-petitioner filed a Notice for Relief as counsel which was approved on September 22, 1986.

- On December 15, 1986, the services of Atty. Wenceslao C. Barcelona were engaged. He immediately filed a Motion for Reconsideration and/or to set aside Court's Order dated September 3, 1986.

- On January 22, 1986, an Order (Annex "B") was issued denying the said Motion to Set Aside the Order of September 3, 1986, and in the same breath ordering plaintiff-petitioner to turn over the proceeds of the auction sale to defendants respondents, hence, this petition.

The issues now raised before Us are the following:

I

Whether or not a Judge can set aside his own decision which has already been final and partially executed.

II

Whether or not a Petition for Relief from Judgment filed under Rule 38, of the Rules of Court, can be granted motu proprio without the necessity of a proper hearing as mandated by Section 6, Rule 38 of the same Rule.

III

Whether or not Respondent Judge can legally order outright plaintiff-petitioner to turn over the proceeds of the sale of the levied upon property sold at public auction to the defendants-respondents without the necessity of a proper hearing on the merits.

The issues revolve on the question of finality of the Judgment of the trial court. A careful perusal of the records of the case shows that private respondents received a copy of the decision, dated June 30, 1986 on July 2, 1986. On July 7, 1986, or five (5) days later, respondents filed their "Urgent Motion To Set Aside the Order of Default on July 7, 1986, (instead of filing a Motion for Reconsideration or a Notice of Appeal) which was denied outright on the same day by the respondent court. The last day therefore for perfecting their appeal fell on July 17, 1986. That private respondents were fully aware of the fact that the decision had already become final and executory on July 17, 1986, was manifested by the fact of their filing on July 21, 1986 a Petition for Relief from Judgment, a remedy resorted to by party litigants under Rule 38 of the Rules of Court, when an appeal is no longer available because the decision has already become final and executory. Thus the court may set aside its own judgment which had become final, when it can be sufficiently shown after due process that such judgment was entered against a party through fraud, accident, mistake or excusable negligence, by the filing by a party of a petition in such court and in the same cause praying that the judgment, order or proceeding be set aside (Sec. 2, Rule 30, Rules of Court). Said petition must be filed within sixty (60) days after the petitioner learns of the said judgment or Order but not more than six (6) months after such judgment was entered; and must be accompanied with affidavits showing the fraud, accident, mistake or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be (Sec. 3, Rule 38).

The Petition for Relief was definitely filed within the reglementary period but it was wanting in form and substance, as it lacked the required affidavit or affidavits of merit showing fraud, accident, mistake or excusable negligence. This fact is clearly confirmed by the respondent court in its Order (Annex "A") granting said petition, when it miserably tried to justify the same by invoking justice, fairness and trial on the merits instead on account of fraud, accident, mistake or excusable negligence. But even assuming that the Petition for Relief was sufficient in form and substance, the respondent Judge should have conducted the necessary hearing to determine the truth of the allegation contained in the petition as required by Sec. 6 of Rule 38 which reads:

"Sec. 6. Proceedings after the answer is filed. - Once the answer is filed, or the time for its filing has expired, the court shall hear the petition and if after such hearing, the court finds that the allegations thereof are not true, the petition shall be dismissed; but if it finds said allegations to be true, it shall order the judgment, order or other proceeding complained of to be set aside, upon such terms as may be just, and thereafter the case shall stand as if the judgment, order or other proceeding set aside had never been issued or taken."

The respondent Judge therefore committed an error in motu proprio, granting the Petition for Relief of private respondents and outrightly setting aside her decision and ordering plaintiff to turn over the proceeds of the sale at public auction of the levied upon property to the private respondents on the basis of said petition alone without the benefit of hearing as mandated by the Rules.

WHEREFORE, premises considered, finding the petition meritorious, We hereby GRANT the same, and declare the assailed Orders of respondent Judge, dated September 3, 1986 and January 22, 1987 as NULL and VOID.

SO ORDERED.

Melencio-Herrera, (Chairperson), Padilla, Sarmiento, and Regalado, JJ., concur.

[1] Annex "A"

[2] Annex "B"

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