NEMESIO MONTEVERDE, SANTIAGO MATUTE, IN HIS CAPACITY AS GUARDIAN OF THE MINOR CANDELARIA MONTEVERDE, THE SPOUSES MILAGROS MONTEVERDE AND LEON A. GARCIA, AND THE SPOUSES VICENTA ...

G. R. Nos. 41984, 42051. August 09, 1934

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

These are two original actions, one for mandamus and the other for certiorari, instituted by Nemesio Monteverde and others against the Honorables Delfin Jaranilla and Sabino Padilla, Judges of the Court of First Instance of Manila, and others, wherein it is prayed, in the first, that an order be issued directing the respondent Judge Delfln Jaranilla to immediately act upon the bill of exceptions filed by the petitioners on May 24, 1934, and submitted for approval in the same case on June 9, 1934, and to approve and certify the same to this court; and, in the second, it is prayed that, after proper proceedings, an order be issued declaring the judgment by default of January 6, 1934, entered by Judge Delfin Jaranilla in civil case No. 45629 of the Court of First Instance of Manila, as well as the writs of execution on said judgment dated May 17 and June 6, 1934, null and of no effect, in the meantime issuing the corresponding writ of preliminary injunction.

The facts pertinent to and necessary for the solution of the questions raised in these actions are as follows:

On December 5, 1933, the respondent Lourdes Catala brought an action in the Court of First Instance of Manila against the herein petitioners Nemesio Monteverde and others, for the recovery of the sum of P20,000, plus damages, said action being civil case No. 45629.

On December 8, 1933, upon motion ex parte and the filing of a bond in the amount of P2,000 by the plaintiff and respondent, the Court of First Instance of Manila issued a writ of attachment against the property of the defendants in said case and the herein petitioners Nemesio Monteverde and others.

On December 23, 1933, said defendants and petitioners filed with the Court of First Instance of Manila a pleading entitled "Special Appearance and Motion to Dissolve Writ of Attachment", in which, without waiving their right to enter a general appearance and answer the complaint, they made of record their special appearance for the purpose of praying, as they in fact prayed, for the dissolution of the attachment issued by said court, without expressly impugning its jurisdiction over their persons, and, to this end, they offered to file a bond with sufficient sureties.

On December 29, 1933, the Honorable Judge Delfin Jaranilla entered an order granting the motion of the defendants and petitioners, and fixing the amount of the bond for the dissolution of the attachment at P20,000.

Under date of January 3, 1934, the plaintiff therein and the herein respondent Lourdes Catala, through her attorney, filed a motion ex parte wherein it was prayed that the defendant petitioners be declared in default for failure to interpose either a demurrer or an answer to the complaint within the reglementary period of ten days

from the date of their appearance.

On January 5, 1934, the respondent Judge, Hon. Delfin Jaranilla, granting said motion ex parte, issued an order declaring the defendants and petitioners in default and authorizing said plaintiff and respondent to 'present her proof in support of her complaint.

On January 6, 1934, the defendants-petitioners filed a verified motion in which it was prayed that they be relieved from the effects of the order of default of January 5, 1934, and that they be allowed to file their answer and counterclaim within a just and reasonable period which the court might fix, the grounds being the following: (1) Their appearance being special, it did not have the effect of a general appearance and, consequently, they had forty days within which to enter a general appearance; (2) that they were not able to file either a demurrer or an answer to the complaint, because their attorneys, who were in Manila, received from them from Davao the copy of said complaint and other papers pertinent to the case only on January 3, 1934; (3) that they had a good defense, in that their delay in complying with what was agreed in the contract, which is the basis of the complaint, was due to the delay of the Bureau of Lands and the General Land Registration Office and to other circumstances not subject to their will; (4) that their liability has been wiped out by the letter of Jose Martinez, one of the contracting parties; (5) that the deed of transfer has already been executed by the defendants-petitioners; and (6) that the plaintiff-respondent has been and is in possession of the land from the time the contract was executed and has enjoyed the fruits thereof.

On the same date, January 6,1934, the respondent Judge, Hon. Delfin Jaranilla, without previous notice to the defendants-petitioners, proceeded to the trial of the case and entered judgment by default, the dispositive part of which is as follows:

"Therefore, judgment is entered sentencing the defendants Nemesio Monteverde, Santiago Matute, in his capacity as guardian of Candelaria Monteverde, Milagros Monteverde, Leon A. Garcia, Vicenta Monteverde and Vicente A. Tiongko to pay jointly and severally to the plaintiff the sum of P20,000, with legal interest from the date of the filing of the complaint, or from December 8, 1933, until fully paid, and the costs of the action. So ordered."

On January 10, 1934, the defendants-petitioners, through their attorneys, were notified of said judgment by default, and, on January 11, 1934, they filed an urgent verified motion praying that they be relieved from the effects of said judgment by default of January 6, 1934, and that the case be reopened,, allowing them to file a demurrer or an answer and counterclaim within a just and reasonable period to be fixed by the court.

On January 25, 1934, before the expiration of the forty days from December 6, 1933, the date the defendants were summoned in Davao, Davao, the defendants-petitioners Leon A. Garcia and Nemesio Monteverde, through their attorneys, filed an answer and counterclaim, and the other defendants-petitioners Milagros Monteverde, Vicenta Monteverde, Vicente A. Tiongko and Santiago Matute, the latter as guardian of the minor Candelaria Monteverde, interposed a demurrer to the complaint.

The respondent Judge, Hon. Delfin Jaranilla, on April 21, 1934, entered an order denying the motion of the defendants-petitioners in which it wa3 prayed that the judgment by default of January 6, 1934, be vacated.

On May 8, 1934, the defendants-petitioners filed a motion for reconsideration of the order of the respondent Judge, Hon. Delfin Jaranilla, of April 21, 1934, copy of which was received by them on April 25, 1934, denying their motion in which they asked to be relieved from the judgment by default and ordering that their demurrer, answer and counterclaim be stricken out.

On May 12,1934, the plaintiff-respondent Lourdes Catala, through her attorneys, objected to the motion for reconsideration filed by the defendants-petitioners and prayed for its dismissal and the issuance of a writ of

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execution.

On May 12, 1934, the respondent Judge, Hon. Sabino Padilla, denied the motion for reconsideration filed by the defendants-petitioners, as well as the motion filed by the plaintiff-respondent for the issuance of a writ of execution of the judgment by default.

On May 16,1934, the defendants and petitioners excepted to said order of April 21, 1934, denying the two verified motions wherein it was prayed that they be relieved from the effects of the order of default and judgment by default dated January 5 and 6, 1934, respectively, and at the same time they announced their intention to appeal to this court from said orders of April 21, and May 12,1934.

Without previous notice, the respondent Judge, Hon. Sabino Padilla, on May 17, 1934, granted the motion for the issuance of a writ of execution which had already been denied by order of May 12, 1934.

On May 24, 1934, the defendants and petitioners submitted to the trial court, then presided over by the respondent Judge, Hon. Sabino Padilla, the corresponding bill of exceptions for his approval.

On May 29, 1934, the respondent Judge, Hon. Sabino Padilla, denied the motion of the defendants-petitioners in which they asked for the stay of execution of the order of May 17, 1934, notwithstanding the pendency of the appeal from the orders of April 21 and May 12, 1934, and the failure to allege or prove the existence of any special ground for the execution of the judgment.

On June 6, 1934, without previous notice to the parties, another writ of execution addressed to special sheriff S. H. Soriano was issued in substitution for the writ of execution issued on May 17, 1934.

On June 19, 1934, pending the approval of the bill of exceptions presented by the defendants and petitioners, the latter instituted in this court the present petition for certiorari with preliminary injunction, which was allowed, and on June 20, 1934, the following order was entered:

> "Upon consideration of the petition for a writ of certiorari with preliminary injunction filed in the above entitled case, praying that the order of May 17, 1934, of the respondent judge as well as the writs of execution issued in accordance therewith be declared null and void for lack of jurisdiction, and that pending these proceedings, a writ of preliminary injunction be issued restraining the respondents from executing the judgment rendered in civil case No. 45629 of the Court of First Instance of Manila (Lourdes Catala vs. Monteverde et al.), the respondents are hereby required to answer (not to demur to) said petition within ten days from receipt of a copy thereof; and upon the filing of a bond in the sum of P200, let a writ of preliminary injunction be issued restraining the respondents from executing said judgment."

In compliance with the foregoing order, the respondent Judge, Hon. Delfin Jaranilla, on June 21, 1934, issued the following order:

> "In view of the order entered by the Supreme Court in the case G. R. No. 41984, entitled Nemesio Monteverde et al. vs. The Hon. Delfin Jaranilla et al., which order affects the approval or disapproval of the bill of exceptions submitted in this case on June 9, 1934, the clerk of this court is instructed to resubmit said bill to the undersigned after the above entitled case has been finally disposed of by the Supreme Court."

In view of the proceedings above set forth, we shall first consider the petition for mandamus filed by the petitioners.

We have seen that the defendants in the civil case referred to, and the petitioners herein, filed on May 8, 1934, a motion for reconsideration of the order of April 21, 1934. denying their petition to set aside the judgment by default dated January 6, 1934, of which order of denial they were notified on April 25, 1934, that is, thirteen days

after notification. Inasmuch as said order of denial is final and appealable (Philippine Manufacturing Co. vs. Imperial, 47 Phil., 810; Riera vs. Palmaroli, 40 Phil., 105; Manila Railroad Co. vs. Arzadon, 20 Phil., 452; Mejia vs. Alimorong, 4 Phil., 572), the defendants and petitioners had thirty days within which to file a motion for new trial. Although said motion for reconsideration cannot legally be considered as a motion for new trial, not being based upon any of the grounds enumerated in section 145 of Act No. 190, and, therefore, did not suspend the running of the thirty days (Pascua vs. Ocampo, 59 Phil., 48), the exception and notice of appeal filed by them on May 16, J.934, or twenty-one days after having received, on April 25, 1934, notice of said order denying the motion in which it was prayed that they be relieved from the effects of the judgment by default of January 6,1934, was within the period of thirty days and supplied the motion for new trial based on the ground that the judgment was against the law, and the bill of exceptions having been filed on May 24, 1934, or after eight days, its filing was within the ten days fixed by the decisions of this court, beginning from the date of notice of intention to appeal. (Layda vs. Legazpi, 39 Phil., 83; Santiago vs. Manuel and Tumale, 39 Phil., 869; Behn, Meyer & Co. vs. Antholtz, 51 Phil., 796; Lim vs. Singian and Soler, 37 Phil., 817.)

Passing now to the petition for certiorari, the first step in which the respondent Judge, Hon. Delfin Jaranilla, is alleged by the petitioners to have acted without jurisdiction, is the holding of the trial upon the merits of civil case No. 45629, in which the herein respondent Lourdes Catala was plaintiff and the herein petitioners Nemesio Monteverde and others were defendants, for failure of said defendants to be notified of the trial referred to or to have an opportunity to cross-examine the witnesses for the plaintiff, reliance being placed upon the rule enunciated by this court in the case of De Castro vs. Director of Lands (31 Phil., 461), which holds as follows:

> "1. APPEARANCE; RIGHT TO NOTICE OP SUBSEQUENT PROCEEDINGS.—It is a well established rule in ordinary actions that, when the defendant has once appeared and answered, he has a right to be notified of every subsequent motion or step taken by the parties and every order or decree made by the court. The defendant having once appeared has an absolute right to be present, if he so desires, whenever any action is taken affecting his rights."

It is to be noted that the doctrine above cited holds that the defendant has a right to be notified of all subsequent motions or all steps taken by the parties, and of all orders entered by the court, and to be present, if he so desires, in any action taken which may affect his rights, so long as said defendant has appeared and answered.

In the case before us, while the defendants entered a special appearance, which amounted to a general appearance (Marquez Lim Cay vs. Del Rosario, 55 Phil., 962), nevertheless they did not file an answer within the reglementary period, and having been declared in default for failure to comply with the last mentioned legal requirement, in accordance with the provisions of section 128 of the Code of Civil Procedure, they had no right to be notified of the motion asking that they be declared in default or, consequently, of the trial on default. (34 Corpus Juris, sec. 390; 189, sec. 409; Duran vs. Arboleda, 20 Phil., 253; Inchausti & Co, vs. De Leon, 24 Phil., 224; Dougherty vs. Evangelista, 7 Phil., 37.)

It may therefore be seen that, by provision of law and jurisprudence, the defendants in that case, and the petitioners in the present action, were not entitled to be notified of the plaintiff's motion in said case praying that they be declared in default or of the trial upon the merits after default.

The second action in which the respondent Judge, Hon. Sabino Padilla, is claimed by the petitioners to have exceeded his jurisdiction, is in ordering the execution of the judgment by default pending the perfecting of the appeal against the order denying the motion for annulling the judgment by default referred to, and without any showing that there were special grounds therefor. Said order being on appeal, and the propriety or impropriety of the judgment by default being in question, the respondent Judge, Hon. Sabino Padilla, committed an abuse of discretion in ordering the issuance of the writ of execution without previous notice to the parties and without any

showing that there existed a special reason therefor, in conformity with the provisions of section 144 of the Code of Civil Procedure (Gamay vs. Gutierrez David, 48 Phil., 768), and, inasmuch as there is no other remedy, more speedy and effective, nor even an appeal, to prevent the immediate execution of the judgment which is sought to be annulled, certiorari is the proper remedy (sec. 217, Code of Civ. Proc.).

In short, therefore, it is proper to vacate the order of the respondent Judge, Hon. Sabino Padilla, in which the execution is ordered of the judgment by default, which the defendants-petitioners sought to annul.

In view of the foregoing considerations, we are of the Opinion and so hold: (1) That a special appearance in which the jurisdiction of the court over the person of the defendant is not expressly impugned, and in which the dissolution of an order of attachment is asked upon the filing of a bond, Is equivalent to a general appearance (4 Corpus Juris, 1331; Vergel de Dios vs. Abucay Plantation Co., G. R. No. 39830, 59 Phil., 924; Marquez Lim Cay vs. Del Rosario, 55 Phil., 962); (2) that the defendant who, after entering his appearance in the action, does not interpose either a demurrer or an answer within the reglementary period, is declared in default and is not entitled to notification of a motion praying that he be declared in default, in conformity with the provisions of section 128 of the Code of Civil Procedure, or of the trial of the case upon the merits after default (34 Corpus Juris, 176; Duran vs. Arboleda, 20 Phil., 253; Inchausti & Co. vs. De Leon, 24 Phil., 224; Dougherty vs. Evangelista, 7 Phil., 37); (3) that the court which orders the execution of a judgment by default during the pendency of the perfecting of the appeal taken against the order denying the motion in which it is prayed that said judgment by default be annulled, acts in excess of jurisdiction; (4) that the court abuses its discretion in ordering the execution of a judgment from which an appeal is pending, without previous notice to the adverse party and there being no special ground therefor; and, (5) that an order denying a motion for the annulment of a judgment by default in accordance with the provision of section 113 of the Code of Civil Procedure, is final and appealable. (Philippine Manufacturing Co. vs. Imperial, 47 Phil., 810; Riera vs. Palmaroli, 40 Phil., 105; Manila Railroad Co. vs. Arzadon, 20 Phil., 452; Mejia vs. Alimorong, 4 Phil., 572.)

Wherefore, both petitions are granted, and any of the respondent judges who may act in the Court of First Instance of Manila is ordered to act upon the bill of exceptions filed in civil case No. 45629, and the orders of Judge Sabino Padilla of May 17, 1934, and June 6, 1934, ordering the execution of the judgment by default of January 6, 1934, entered by the respondent Judge, Hon. Delfin Jaranilla, are declared null and void, with costs in both actions against the respondent Lourdes Catala.[1] So ordered.

Malcolm, Imperial, Butte, and Goddard, JJ., concur.

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[1] Resolution of the Supreme Court of September 18, 1934.

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