Supreme Court E-Library

SECOND DIVISION

[G.R. No. L-39094. April 18, 1975]

RUFINA LIM and TIAMSENG, *petitioners, vs.* **HON. PEDRO SAMSON C. ANIMAS, in his capacity as Presiding Judge, Branch I, Court of First Instance of South Cotabato; and HEIRS OF TAN WAHAB, represented by TAN BATACAN,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE, PRE-TRIAL; NOTICE MUST BE SERVED SEPARATELY UPON THE PARTY AFFECTED THEREBY AND HIS COUNSEL OF RECORD.— The Court recognizes the importance of pre-trial procedure as a means of facilitating the disposal of cases by simplifying or limiting the issues and avoiding unnecessary proof of facts at the trial, and generally to do whatever may reasonably be necessary to facilitate and shorten the formal trial. Considering, however, the adverse effects of a party's failure to appear at the pre-trial conference, We hold that before the party is non-suited or considered in default, it must be shown that the party and his counsel were duly served with notice of such pre-trial conference. For this purpose, notice of the pre-trial must be served separately upon the party affected thereby and his counsel of record, stating therein the purpose, time and place of the pretrial conference and requiring said party and his counsel to appear thereat. The service to the party may be made directly to him or through his counsel who shall be required to serve the notice upon the party.

APPEARANCES OF COUNSEL

Marciano V. Guevarra for petitioners.

Mirabueno & Orlino and *Maduramente* for private respondents.

Supreme Court E-Library

DECISION

ANTONIO, *J.*:

Petition for *certiorari*, prohibition and *mandamus* predicated on the following facts:

On April 21, 1971, the Heirs of Tan Wahab filed a complaint for recovery of possession of a parcel of land and damages against Rufina Lim and Tiamseng. Said complaint was docketed in the Court of First Instance of South Cotabato, presided over by respondent Judge, the Hon. Pedro Samson C. Animas, as Civil Case No. 1229. The complaint was subsequently amended on February 14, 1973, and in due time answered by petitioners.

Upon motion of private respondents (plaintiffs in the lower court), respondent Judge set the case for pre-trial on January 4, 1974.

Notice of pre-trial was addressed to Atty. Marciano V. Guevarra, counsel for petitioners, and brought to his residence where he also holds office, to be served on him. However, at that time, he was in Manila attending his daughter's graduation. The notice was served on one Marfla Guevarra, his married daughter who was then a visitor in his house. Said Marfla Guevarra misplaced the notice and forgot to tell her father about it, and as a result, when the case was called for pre-trial as scheduled, neither petitioners nor their counsel was present. Respondent Judge issued an order declaring them in default and authorizing the clerk of court to receive the evidence of private respondents (plaintiffs therein), *ex parte*. Petitioners filed a motion to lift the order of default but the same was denied. A motion for reconsideration of said denial was likewise denied, followed by a second motion for reconsideration, which was disposed of in the same manner.

Petitioners claim that respondent Judge committed a grave abuse of discretion amounting to lack of jurisdiction in having (a) issued a notice of pre-trial addressed to counsel of petitioners, without a separate notice to petitioners themselves; (b) declared petitioners in default despite the fact that notice to their attorney

Supreme Court E-Library

was served upon an unauthorized person not a member of his household nor an employee of his; and (c) authorized the clerk of court to receive the evidence of private respondents *ex parte*, thereby denying petitioners their right to confront and cross-examine respondents' witnesses and to prove their defense and counterclaims, despite their being meritorious.

Petitioners therefore ask for a writ of *certiorari* and for an order prohibiting respondent Judge from rendering a decision based on the evidence received *ex parte*, or from executing the decision if already rendered. In addition, they pray for a writ of *mandamus* ordering respondent Judge to set the case for trial on the merits and to give petitioners a chance to present their case and to confront the witnesses against them.

At issue is whether or not respondent Judge acted with grave abuse of discretion in declaring petitioners in default, although no notice of pre-trial was served upon them, but only on their counsel.

Pursuant to Section 1 of Rule 20 of the Rules of Court, which makes pre-trial mandatory, the parties, as well as their counsel, are required to appear during the pre-trial conference[1] and "a party who fails to appear at the pre-trial conference may be non-suited or considered as in default."[2]

The Court recognizes the importance of pre-trial procedure as a means of facilitating the disposal of cases by simplifying or limiting the issues and avoiding unnecessary proof of facts at the trial, and generally to do whatever may reasonably be necessary to facilitate and shorten the formal trial.[3] Considering, however, the adverse effects of a party's failure to appear at the pre-trial conference, We hold that before the party is non-suited

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[1] *American Insurance Co. v. Manila Port Service*, 22 SCRA 482, citing *Home Insurance Co. vs. United States Lines Co.*, 21 SCRA 863, 866; *American Insurance Co. v. Republic*, 21 SCRA 464, 466.

[2] Sec. 2, Rule 20, Revised Rules of Court; *Saulog v. Custombuilt Manufacturing Corporation*, 26 SCRA 1.

[3] 88 C.J.S. Sec. 17, page 45; 62 Am. Jur. 2nd Sec. 2, p. 638.

Supreme Court E-Library

or considered in default, it must be shown that the party and his counsel were duly served with notice of such pre-trial conference.[4]

For this purpose, notice of the pre-trial must be served separately upon the party affected thereby and his counsel of record, stating therein the purpose, time and place of the pre-trial conference and requiring said party and his counsel to appear thereat. The service to the party may be made directly to him or through his counsel who shall be required to serve the notice upon the party.

WHEREFORE, the petition is granted and the questioned Order of January 4, 1974 is hereby declared null and void, with costs against the private respondents.

Fernando (Chairman), Barredo, Aquino, and *Concepcion, Jr., JJ.,* concur.

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[4] The trial court abused its discretion in dismissing defendant's absence from the pre-trial conference although defendant's attorney was present, where the order for pre-trial conference did not specifically require that defendant be present in person (*Booth v. Sutton*, 100 Ill. App. 2d. 410, 241 NE 2d. 488).