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THIRD DIVISION

[G. R. NO. 160895, October 30, 2006]

JOSE R. MARTINEZ, PETITIONER, VS. REPUBLIC OF THE PHILIPPINES, RESPONDENTS.

D E C I S I O N

TINGA, J.:

The central issue presented in this Petition for Review is whether an order of general default issued by a trial court in a land registration case bars the Republic of the Philippines, through the Office of the Solicitor General, from interposing an appeal from the trial court's subsequent decision in favor of the applicant.

The antecedent facts follow.

On 24 February 1999, petitioner Jose R. Martinez (Martinez) filed a petition for the registration in his name of three (3) parcels of land included in the Cortes, Surigao del Sur Cadastre. The lots, individually identified as Lot No. 464-A, Lot No. 464-B, and Lot No. 370, Cad No. 597, collectively comprised around 3,700 square meters. Martinez alleged that he had purchased lots in 1952 from his uncle, whose predecessors-in-interest were traceable up to the 1870s. It was claimed that Martinez had remained in continuous possession of the lots; that the lots had remained unencumbered; and that they became private property through prescription pursuant to Section 48(b) of Commonwealth Act No. 141. Martinez further claimed that he had been constrained to initiate the proceedings because the Director of the Land Management Services had failed to do so despite the completion of the cadastral survey of Cortes, Surigao del Sur.[1]

The case was docketed as Land Registration Case No. N-30 and raffled to the Regional Trial Court (RTC) of Surigao del Sur, Branch 27. The Office of the Solicitor General (OSG) was furnished a copy of the petition. The trial court set the case for hearing and directed the publication of the corresponding Notice of Hearing in the Official Gazette. On 30 September 1999, the OSG, in behalf of the Republic of the Philippines, opposed the petition on the grounds that appellee's possession was not in accordance with Section 48(b) of Commonwealth Act No. 141; that his muniments of title were insufficient to prove bona-fide acquisition and possession of the subject parcels; and that the properties formed part of the public domain and thus not susceptible to private appropriation.[2]

Despite the opposition filed by the OSG, the RTC issued an order of general default, even against the Republic of the Philippines, on 29 March 2000. This ensued when during the hearing of even date, no party appeared before the Court to oppose Martinez's petition.[3]

Afterwards, the trial court proceeded to receive Martinez's oral and documentary

evidence in support of his petition. On 1 August 2000, the RTC rendered a Decision[4] concluding that Martinez and his predecessors-in-interest had been for over 100 years in possession characterized as continuous, open, public, and in the concept of an owner. The RTC thus decreed the registration of the three (3) lots in the name of Martinez.

From this Decision, the OSG filed a Notice of Appeal dated 28 August 2000,[5] which was approved by the RTC. However, after the records had been transmitted to the Court of Appeals, the RTC received a letter dated 21 February 2001[6] from the Land Registration Authority (LRA) stating that only Lot Nos. 464-A and 464-B were referred to in the Notice of Hearing published in the Official Gazette; and that Lot No. 370, Cad No. 597 had been deliberately omitted due to the lack of an approved survey plan for that property. Accordingly, the LRA manifested that this lot should not have been adjudicated to Martinez for lack of jurisdiction. This letter was referred by the RTC to the Court of Appeals for appropriate action.[7]

On 10 October 2003, the Court of Appeals promulgated the assailed Decision,[8] reversing the RTC and instead ordering the dismissal of the petition for registration. In light of the opposition filed by the OSG, the appellate court found the evidence presented by Martinez as insufficient to support the registration of the subject lots. The Court of Appeals concluded that the oral evidence presented by Martinez merely consisted of general declarations of ownership, without alluding to specific acts of ownership performed by him or his predecessors-in-interest. It likewise debunked the documentary evidence presented by Martinez, adjudging the same as either inadmissible or ineffective to establish proof of ownership.

No motion for reconsideration appears to have been filed with the Court of Appeals by Martinez, who instead directly assailed its Decision before this Court through the present petition.

We cannot help but observe that the petition, eight (8) pages in all, was apparently prepared with all deliberate effort to attain nothing more but the perfunctory. The arguments raised center almost exclusively on the claim that the OSG no longer had personality to oppose the petition, or appeal its allowance by the RTC, following the order of general default. Starkly put, "the [OSG] has no personality to raise any issue at all under the circumstances pointed out hereinabove."[9] Otherwise, it is content in alleging that "[Martinez] presented sufficient and persuasive proof to substantiate the fact that his title to Lot Nos. 464-A and 464-B is worth the confirmation he seeks to be done in this registration case";[10] and that the RTC had since issued a new Order dated 1 September 2003, confirming Martinez's title over Lot No. 370.

In its Comment dated 24 May 2004,[11] the OSG raises several substantial points, including the fact that it had duly opposed Martinez's application for registration before the RTC; that jurisprudence and the Rules of Court acknowledge that a party in default is not precluded from appealing the unfavorable judgment; that the RTC had no jurisdiction over Lot No. 370 since its technical description was not published in the Official Gazette; and that as found by the Court of Appeals the evidence presented by Martinez is insufficient for registering the lots in his name.[12] Despite an order from the Court requiring him to file a Reply to the Comment, counsel for

Martinez declined to do so, explaining, among others, that "he felt he would only be taxing the collective patience of this [Court] if he merely repeats x x x what petitioner had succinctly stated x x x on pages four (4) to seven (7) of his said petition." Counsel for petitioner was accordingly fined by the Court.[13]

The Court's patience is taxed less by redundant pleadings than by insubstantial arguments. The inability of Martinez to offer an effective rebuttal to the arguments of the OSG further debilitates what is an already weak petition.

The central question, as posed by Martinez, is whether the OSG could have still appealed the RTC decision after it had been declared in default. The OSG argues that a party in default is not precluded from filing an appeal, citing *Metropolitan Bank & Trust Co. v. Court of Appeals*,[14] and asserts that "[t]he Rules of Court expressly provides that a party who has been declared in default may appeal from the judgment rendered against him."[15]

There is error in that latter, unequivocal averment, though one which does not deter from the ultimate correctness of the general postulate that a party declared in default is allowed to pose an appeal. Elaboration is in order.

We note at the onset that the OSG does not impute before this Court that the RTC acted improperly in declaring public respondent in default, even though an opposition had been filed to Martinez's petition. Under Section 26 of Presidential Decree No. 1529, as amended, the order of default may be issued "[i]f no person appears and answers within the time allowed." The RTC appears to have issued the order of general default simply on the premise that no oppositor appeared before it on the hearing of 29 March 2000. But it cannot be denied that the OSG had already duly filed its Opposition to Martinez's petition long before the said hearing. As we held in *Director of Lands v. Santiago*:[16]

> [The] opposition or answer, which is based on substantial grounds, having been formally filed, it was improper for the respondent Judge taking cognizance of such registration case to declare the oppositor in default simply because he failed to appear on the day set for the initial healing. The pertinent provision of law which states: "If no person appears and answers within the time allowed, the court may at once upon motion of the applicant, no reason to the contrary appearing, order a general default to be recorded . . . ," cannot be interpreted to mean that the court can just disregard the answer before it, which has long been filed, for such an interpretation would be nothing less than illogical, unwarranted, and unjust. Had the law intended that failure of the oppositor to appear on the date of the initial hearing would be a ground for default despite his having filed an answer, it would have been so stated in unmistakable terms, considering the serious consequences of an order of default. Especially in this case where the greater public interest is involved as the land sought to be registered is alleged to be public land, the respondent Judge should have received the applicant's evidence and set another date for the reception of the oppositor's evidence. The oppositor in the Court below and petitioner herein should have been accorded ample opportunity to establish the government's claim.[17]

Strangely, the OSG did not challenge the propriety of the default order, whether in its appeal before the Court of Appeals or in its petition before this Court. It would thus be improper for the Court to make a pronouncement on the validity of the default order since the same has not been put into issue. Nonetheless, we can, with comfort, proceed from same apparent premise of the OSG that the default order was proper or regular.

The juridical utility of a declaration of default cannot be disputed. By forgoing the need for adversarial proceedings, it affords the opportunity for the speedy resolution of cases even as it penalizes parties who fail to give regard or obedience to the judicial processes.

The extent to which a party in default loses standing in court has been the subject of considerable jurisprudential debate. Way back in 1920, in *Velez v. Ramas*,[18] we declared that the defaulting defendant "loses his standing in court, he not being entitled to the service of notices in the case, nor to appear in the suit in any way. He cannot adduce evidence; nor can he be heard at the final hearing."[19] These restrictions were controversially expanded in *Lim Toco v. Go Fay*,[20] decided in 1948, where a divided Court pronounced that a defendant in default had no right to appeal the judgment rendered by the trial court, except where a motion to set aside the order of default had been filed. This, despite the point raised by Justice Perfecto in dissent that there was no provision in the then Rules of Court or any law "depriving a defaulted defendant of the right to be heard on appeal."[21]

The enactment of the 1964 Rules of Court incontestably countermanded the *Lim Toco* ruling. Section 2, Rule 41 therein expressly stated that "[a] party who has been declared in default may likewise appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition for relief to set aside the order of default has been presented by him in accordance with Rule 38."[22] By clearly specifying that the right to appeal was available even if no petition for relief to set aside the order of default had been filed, the then fresh Rules clearly rendered the *Lim Toco* ruling as moot.

Another provision in the 1964 Rules concerning the effect of an order of default acknowledged that "a party declared in default shall not be entitled to notice of subsequent proceedings, nor to take part in the trial."[23] Though it might be argued that appellate proceedings fall part of "the trial" since there is no final termination of the case as of then, the clear intent of the 1964 Rules was to nonetheless allow the defaulted defendant to file an appeal from the trial court decision. Indeed, jurisprudence applying the 1964 Rules was unhesitant to affirm a defaulted defendant's right to appeal, as guaranteed under Section 2 of Rule 41, even as *Lim Toco* was not explicitly abandoned.

In the 1965 case of *Antonio, et al. v. Jacinto*,[24] the Court acknowledged that the prior necessity of a ruling setting aside the order of default "however, was changed by the Revised Rules of Court. Under Rule 41, section 2, paragraph 3, a party who has been declared in default may likewise appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition for relief to set aside the order of default has been presented by him in accordance with Rule 38."[25] It was further qualified in *Matute v. Court of Appeals*[26] that the new

availability of a defaulted defendant's right to appeal did not preclude "a defendant who has been illegally declared in default from pursuing a more speedy and efficacious remedy, like a petition for certiorari to have the judgment by default set aside as a nullity."[27]

In *Tanhu v. Ramolete*,[28] the Court cited with approval the commentaries of Chief Justice Moran, expressing the reformulated doctrine that following *Lim Toco*, a defaulted defendant "cannot adduce evidence; nor can he be heard at the final hearing, although [under Section 2, Rule 41,] he may appeal the judgment rendered against him on the merits."[29]

Thus, for around thirty-odd years, there was no cause to doubt that a defaulted defendant had the right to appeal the adverse decision of the trial court even without seeking to set aside the order of default. Then, in 1997, the Rules of Civil Procedure were amended, providing for a new Section 2, Rule 41. The new provision reads:

> SECTION 1. *Subject of appeal*.-An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.
>
> No appeal may be taken from:
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> (a) An order denying a motion for new trial or reconsideration;
>
> (b) An order denying a petition for relief or any similar motion seeking relief from judgment;
>
> (c) An interlocutory order;
>
> (d) An order disallowing or dismissing an appeal;
>
> (e) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;
>
> (f) An order of execution;
>
> (g) A judgment or final order for or against or one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and
>
> (h) An order dismissing an action without prejudice.
>
> In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

Evidently, the prior warrant that a defaulted defendant had the right to appeal was removed from Section 2, Rule 41. On the other hand, Section 3 of Rule 9 of the 1997 Rules incorporated the particular effects on the parties of an order of default: