

94 Phil. 812

[G.R. No. L-5137. April 27, 1954]

E. E. ELSE, INC., AND ATLANTIC MUTUAL INS. CO., PLAINTIFFS AND APPELLANTS, VS. DE LA RAMA STEAMSHIP CO., INC., AND/OR MANILA TERMINAL CO., INC., DEFENDANTS AND APPELLEES.

D E C I S I O N

PARAS, C.J.:

This is an appeal by the plaintiffs from the following order of the Court of First Instance of Manila:

“When this case was called for trial this morning, plaintiffs’ counsel moved to postpone the trial of the case on the ground that his important witness could nowhere be found, which motion the Court denied, for the reason that this case has been pending since the year 1947, and the setting of the same on the calendar was made by the Court *motu proprio*. In view thereof, plaintiffs submitted the case for decision. The defendants, on the other hand, moved for the dismissal of this case.

“Finding the said motion well-founded, the Court orders, that this case be, as it is hereby, dismissed.

“SO ORDERED.

“Manila, Philippines, August 21, 1951.”

The appellants filed a complaint on September 1, 1947, in the Court of First Instance of Manila, to reefer from either or both of the defendants-appellees the sum of P3,097.34, with legal interest and

costs, it being alleged that this amount was paid by them under an insurance policy to a consignee of goods shipped from New York City to Manila on the “Dña. Aniceta”, a boat owned and operated by appellee De la Rama Steamship Co., and lost in the custody of either of the two appellees. The appellees filed their respective answers, after which nothing was done until July 26, 1951, or almost four years later, when the appellants filed an amended complaint. After the appellees had answered, the court, *motu proprio*, set the hearing of the case for August 21, 1951. At this hearing, the appellants moved for a postponement on the ground that an important witness could not be found and, upon denial, merely submitted the case without presenting any evidence. Upon motion of the appellees, the court issued the order of dismissal hereinbefore quoted.

The lower court obviously dismissed the case,—and correctly—in conformity with section 3, Rule 30, of the Rules of Court, for lack of prosecution on the part of the appellants. They never moved for trial, and filed an amended complaint only after the lapse of some four years, during which they had had ample time to prepare their witnesses or secure their depositions. Appellants’ argument that the trial court had already tolerated the expiration of four years and could have easily continued the case for another short period of two months, is based on the assumption that the court was not yet lenient enough in not dismissing the case sooner. Moreover, the appellants are not shown to have presented any affidavit indicating the materiality of the evidence expected to be obtained, or to have exercised due diligence to procure it, in conformity with section 5 of Rule 31.

As the appellants submitted the case without any evidence in support of their claim, dismissal logically followed from the denial of the motion for postponement.

The order appealed from is hereby affirmed, with costs against appellants. So ordered.

Pablo, Bengzon, Montemayor, Reyes, Jugo, Bautista Angelo, Labrador, and Concepcion, JJ., concur.

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