101 Phil. 44

[G. R. No. L-9962. April 11, 1957]

BENJAMIN MACASA, ET AL., PLAINTIFFS AND APPELLANTS!, VS. CKISTETO HERRERA, DEFENDANT AND APPELLEE.

D E C I S I O N

REYES, J.B.L., J.:
Appeal taken by plaintiffs Benjamin Macasa, et al. from the order of the Court of First Instance of Negros Occidental provisionally dismissing Civil Case No. 406 filed by said plaintiffs against defendant Cristeto Herrera.

It appears that on May 10, 1946, plaintiffs-appellants filed a complaint for forcible entry against defendant-appellee Cristeto Herrera in the Justice of the Peace Court of Manapla, Negros Occidental. After trial, judgment was rendered for the plaintiffs, and the defendant appealed to the Court of First Instance of Occidental Negros (Civil Case No. 406). For some reason or another not disclosed by the records, the case was kept pending up to October', 1954. On October 21 of said year, the hearing of the case was postponed to November 18, 1954, upon motion of defendant's counsel. Then on November 18, 1954, trial was held, during which plaintiffs were able to present part of their evidence. Thereafter, the hearing was transferred by the court to its December calendar, then postponed for January 19, 1955. On January 19, 1955, defendant's counsel again moved for postponement, which was granted. The case was later set for hearing for March 17, 1955, but again, counsel for defendant moved to postpone the same because he had to be present on that date at the meeting of the Board of Trustees of the Silliman University. Plaintiffs, through counsel, opposed the postponement, calling attention to the fact that the case had already been pending for nine years and that the reason advanced by defendant's counsel for the continuance asked for was not a valid ground for postponement. Later, however, plaintiff's counsel was prevailed upon to agree to the postponement and so the court ordered the case postponed for the last time to its April 1955 calendar. Thereafter, the parties received notice that the case was to be heard on May 23, 1955, but at this later date, the court *motu*

pruprio postponed the case to June 29, and 30, 1955.

Finally, on June 29, 1955, the case was called for re-sumption of trial, but plaintiffs and their attorney failed to appear. Whereupon, defendant moved to dismiss the case on the ground that it had been pending since May 10, 1946, and on the same date, the court ordered its provisional dismissal. Notified of the order dismissing their case, plaintiffs moved for reconsideration and new trial claiming that counsel failed to appear at the hearing on June 29, 1955 because he was of the impression that the hearing was to be in the month of July and he did not receive copy of the court's order setting the ease for trial on June 29, 1955; that on said date, June 29, 1955, he had to appear in a case in another sala, the trial of which he could have asked to be postponed had he known earlier of the hearing of this case on June 29; and that he had met defendant's counsel in the office of the clerk of court on the morning of June 29, had acquainted the latter with these facts, and had requested him to ask for postponement in his behalf if he would be late in appearing at the hearing. The motion was supported by the affidavit of merit of one of the plaintiffs. Even then, and despite the lack of denial of the facts alleged, the court found the motion for reconsideration not well-founded and denied the same, hence, this appeal by plaintiffs.

We agree with appellants that the lower court abused its discretion in denying their motion for reconsideration and new trial.

From appellants' verified motion for reconsideration, it is apparent that counsel failed to appear at the hearing of this case on June 29, 1955, due to accidental circumstances beyond his control, since he was of the impression that the verbal setting of the hearing was for July 29, not on June 29; and this impression was; not corrected because he received no written notice.

It likewise appears that on the morning of June 29, 1955, appellants' counsel was asked by the lawyer for the defendant if he was ready for trial in this case, and appellants' counsel replied that he did not know that this case was to be called for trial on that date; that he was there to appear in a ease in another sala; that he would ask for the postponement of the hearing of the present case after his trial in the other case; and that if he could not do so, defendant's lawyer would convey to the presiding judge his request for continuance. While it was negligence to rely on opposing counsel (who in fact took advantage of the absence of plaintiffs and their lawyer and moved for the dismissal of the case on the ground that it had been pending since 1946), such negligence was excusable considering that the trial had been previously postponed several times at the request of the defendant's lawyer, to which

plaintiff's counsel had agreed.

It is true that this case had been pending for many years. It is no less true, however, that this long delay does not appear to be due to any fault of appellants or their counsel, but to the many postponements either asked for by defendant's counsel or made by the court *motu proprio*. There is no indication from the records that the absence of appellants or their counsel at the hearing of June 29, 1955 was due to a desire to further delay this case; as already stated, their nonappearance was the result of accident or excusable mistake, in thinking that the hearing would be for July 29, and in not having received copy of the court's order setting the trial for June 29. On the other hand, we give credence to appellants' claim that they would want this case terminated as soon as possible, not only because they had already won their case in the inferior court, but more so because defendant is still in the possession of the land in question up to this time.

It is no argument against this appeal that the dismissal ordered by the trial court is provisional and that appellants may renew their action against appellee if they want. Appellants had already obtained a favorable judgment in the ¦ justice of the peace court, and had already presented part of their evidence in the court of first instance. In the absence of sufficient reason for the dismissal of their case at this stage, therefore, it is understandable that appellants would not want to start their action anew and incur the expense and trouble of filing" and proving their action against appellee a second time.' Appellants' case is made more meritorious by the fact that their counsel appeared in court barely five minutes after the dismissal of their case.

Inconsiderate dismissals, even if without prejudice, do not constitute a panacea nor a solution to the congestion of court dockets; while they lend a deceptive aura of efficiency to records of individual judges, they merely postpone the ultimate reckoning between the parties. In the absence of clear lack of merit or intention to delay, justice is better served by a brief continuance, trial on the merits, and final disposition of the cases before the court. Wherefore, the order appealed from is set aside, and the trial court is ordered to set this case for hearing for the continuation of the reception of evidence for the parties. Costs against appellee Cristeto Herrera.

So ordered.

Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Endencia, and *Felix, JJ*,, concur.

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