

101 Phil. 701

[G. R. No. L-8894. May 31, 1957]

MARIA MATIAS DE BAUTISTA, ASSISTED BY HER HUSBAND LORENZO BAUTISTA, PLAINTIFF AND APPELLANT, VS. JOSE TEODORO, JR. DEFENDANT AND APPELLEE.

D E C I S I O N

PADILLA, J.:

The plaintiff is the lessee of a house owned by the defendant located at 1085 Bilibid Viejo, Quiapo, Manila. On 8 September 1954 the plaintiff brought an action in the Court of First Instance of Manila to recover from the defendant the sum of P10,000 representing expenses claimed to have been incurred in the repair of the house leased by her; to annul a second mortgage on real estate executed by her in favor of the defendant, the same having been executed through undue influence; to collect from the defendant moral and exemplary damages resulting from "moral anguish, mental torture, and social and professional embarrassment suffered" by her due to the filing, by the, defendant against her of a complaint for detainer; to secure a reduction in the monthly rental of the house leased by her from the defendant from P300 to P200; and to obtain such other remedies as justice, law and equity warrant.

On 17 September 1954 the defendant filed a motion praying that the plaintiff be directed to amend her complaint or to submit a bill of particulars specifying with definiteness whether the alleged contract of lease is verbal or written and its precise terms and conditions regarding repairs and the dates when the alleged repairs were made and the cost of each; to furnish the defendant with a copy of the alleged instrument of second mortgage executed by her in his favor; and to specify the nature and amount of damages sought to be recovered by her. On 8 October 1954 the plaintiff filed an opposition to the motion. The Court set the hearing of the motion for 9 October 1954. On 26 October 1954, acting upon the defendant's motion and the plaintiff's objection thereto, the Court granted the motion and ordered the plaintiff to "file third amended pleading or a bill of particulars within ten

(10) days from the receipt of a copy of this order.” Motion for reconsideration filed on 4 November 1954 was denied by the Court on 11 November 1954.

On 17 November 1954 the plaintiff filed a motion praying that she “be allowed an extension of two weeks from date of this motion to file the required bill of particulars.” On 23 November 1954 the Court granted the motion. The plaintiff, however, failed to file the required bill of particulars within the time prayed for by her and granted by the Court.

On 3 December 1954 the defendant moved for the dismissal of the plaintiff’s complaint for her failure to prosecute her action, she having failed to comply with the order of the Court of 26 October 1954, in accordance with section 3, Rule 30. On 13 December 1954 the Court granted the motion and dismissed the plaintiff’s complaint. Motion for reconsideration filed on 5 January 1955 was denied by the Court on 10 January 1955. The plaintiff has appealed.

Section 3, Rule 30, provides that—

When plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court’s own notion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by court. (Italics supplied.)

After the Court had ordered the appellant either to amend her complaint or to file a bill of particulars within ten days from receipt of notice, on 17 November 1955 she moved that she be granted two weeks from that date to file a bill of particulars. This the Court granted. But she failed to file the bill of particulars within that period. If she thought that she could not file it on time, she should have seasonably explained to the Court the reason why she could not do so and prayed that she be granted another extension of time within which to comply with the order of the Court, as she previously had done. Said this Court in *Smith Bell & Co., Ltd. vs. American President Lines Ltd.*, (99 Phil., 879)—

* * * The dismissal of action pursuant to this rule rest upon the sound discretion of the court and will not reversed on appeal in the absence of abuse. The burden of showing abuse of judicial discretion is upon appellant since every

presumption is in favor of the correctness of the court's action.

Section 3, Rule 16, providing that —

If an order of the court to make more definite and certain or for a bill of particulars is not obeyed within ten (10) days after notice of the order or within such other time as the court may fix, the court may strike out the on the pleading to which the motion was directed or make such other order as it deems just.

(Italics supplied)

is not in conflict with the provision of Section 3, Rule 30. On the contrary, it strengthens the authority of the Court to dismiss of the appellant's complain.

AS the appellant claims in her complaint that she made numerous repairs on the houseleased by her from the defendant during a period for twenty years and that she suffered damage due to the filing by the defendant of a complaint for detainer against her, the appelle is intitled to know with certainty the date, nature, extent of each repair the appellant made and the nature and amount of damage she seeks to recover to enable him to prepare his defense. The appelle should be informed as to when the expensesb for repairs incurred to determine whether the action was brought within the statutory period.

The order appealed from is affirmed, with costs against the appellant.

Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes J. B. L., Endencia and Felix, JJ., concur.