

PEDRO CRISOLOGO AND EUFRASIA CAPIAO, PLAINTIFFS AND APPELLANTS, VS. ALFREDO L. DURAL, DEFENDANT AND APPELLEE.*G.R. No. L-19885. July 31, 1965*

Ponente: PAREDES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/06b3132a7da9/>**PAREDES, J.:**

On November 8, 1951, the appellants herein mortgaged with the Rehabilitation Finance Corporation (RFC) now the Development Bank of the Philippines (DBP), a house and lot, situated in the municipality of Cauayan, Isabela, consisting of 2,364 square meters, to secure a loan in the amount of P25,000.00. For failure to pay the debt, the mortgage was foreclosed and the property was extrajudicially sold at public auction. The DBP being the highest bidder in the amount of P25,515.94, the Provincial Sheriff of Isabela, issued to said Bank a "Certificate of Sale," later confirmed by the Court. A week prior to the expiration of the one (1) year period for redemption, appellants approached the appellee Dural, asking his help in order that they might be able to exercise their right to redeem. Thereafter, arrangements were made which culminated in the execution by appellants herein, in favor of appellee, a Deed of Assignment of Rights of Redemption on July 2, 1956, and a Supplementary Agreement to Deed of Assignment of Rights of Redemption. In the latter agreement, it appears that appellants sold their rights of redemption to appellee for P3,000.00. Pursuant to the above covenants, appellee bought the property from the DBP, and on August 15, 1956, the said Bank executed a "Deed of Conditional Sale" in favor of appellee Dural. Thenceforth, Dural took possession of the property and had since then up to now, collected rents amounting to P265.00, monthly.

Claiming that the verbal understanding of the parties prior to the execution of the agreements was that appellants could redeem the property from appellee at any time they have the money, the said appellants-spouses asked Dural that they be allowed to do so. When appellee refused to allow the redemption, appellant presented with the CFI of Isabela, Civil Case No. B-II-416, for Reconveyance and Damages.

On October 28, 1958, the appellee presented a Motion to Dismiss the complaint, claiming that plaintiffs' cause of action is barred by prior judgment; that the complaint states no cause of action; and that even if there was such a promise to allow redemption, the same is unenforceable under existing laws. The lower court deferred action on said motion until after the trial, but without prejudice on the part of the defendant to reproduce said grounds as special defenses in his Answer. The Answer of the defendant, after the customary Admissions and Denials, reproduced the grounds stated in his Motion to Dismiss and interposed a Counter-Claim for actual damages (P2,000.00); moral damages (P50,000.00) and P5,000.00 as counsel fees.

The case was heard on January 19, 1958, and plain tiffs presented one witness, Atty. Floro Crisologo. Other dates were set for the continuation of the hearing, but were postponed by motion of either one of the par ties or by both parties. The Court thereafter set the hearing for June 28, 1961, at which date Atty. Mauro Verzosa, counsel for the plaintiffs and then residing in Quezon City, failed to appear. Because of this failure, the trial court issued an Order on July 12, 1961, the pertinent portions of which read:

"When this case was called for the continuance of the hearing today June 28, 1961, plaintiff Eufrasia Capiao appeared and delivered to the Court a telegram of her counsel Atty. Mauro Verzosa dated June 26, 1961, posted in Manila, at 10:00 o'clock in the morning of the day asking for postponement, as follows:

"DEVIDO MAL TIEMPO INDISPOSICION SALUD PIDA TRANSFERENCIA VISTA".

"Counsel for the defendant objected to the postponement on the following grounds as taken and transcribed by court stenographer;

* * * * *

"This case had been previously set for hearing seven (7) times; January 19, 1958, one witness testified: March 10, 1958, and postponed upon motion of the parties: June 16, 1959, counsel for the plaintiffs failed to appear allegedly for being misinformed of the date of the hearing, postponed: December 10, 1960, postponed upon defendant's counsel motion; and February 7, 1961, March 21, 1961 and April 18, 1961, all postponed upon joint motion of the parties on the ground that an amicable settlement was being finalized.

"Plaintiff Eufrasia Capiao could not present any other witness or evidence, neither she testified. The evidence already presented by the plaintiffs or the testimony of Atty. Floro Crisologo is in sufficient to substantiate the allegations of the complaint.

"WHEREFORE, as prayed for by the defense counsel, the court hereby denies the motion for postponement and orders the dismissal of the complaint, with costs against the plaintiffs."

Under date of July 19, 1961, counsel for the appellants presented a verified Motion for Reconsideration of the above Order, claiming that he and his wife had been suffering from influenza which prevented him from attending the June 28, 1961 hearing; that considering the importance of the case, and the value of the property subject of the litigation, the dismissal of their complaint is not warranted. On August 4, 1961, medical certificates were presented with the court attesting the claim of illness of counsel.

Appellee, thru counsel opposed the Motion, decrying the failure of Atty. Verzosa, to inform him of his inability to attend the trial, although he could have just called him by phone before the scheduled date, and claiming that the telegram did not comply with the rules. (*De los Reyes vs. Capule, et al.*, 102 Phil., 464.) After hearing, the trial court denied the motion for reconsideration. Hence, this appeal.

It would seem that the only issue for determination is whether the lower court erred in dismissing the complaint of the appellants, simply on the ground of counsel's failure to appear, during the scheduled continuation of the hearing on June 28, 1961.

There seems to be no question that motions for continuance are addressed to the sound discretion of the court. However, it has been repeatedly held that the said discretion must be exercised wisely (*Capital Subdivision vs. Prov. of Neg. Occ.*, 99 Phil., 633). It is evident from the records, that the appellants were not neglectful of their duties and obligations towards the court. One of the plaintiffs (Eufrasia Capiao) was present during the hearing (of June 28, 1961,) and she was the one who presented the telegram of their counsel to the court. A delay in the adjudication of a case occasioned by a reasonably justified continuance of the hearing, to afford a party (here the plaintiffs) the opportunity to present his evidence would not materially prejudice the defendant. On the contrary, one more postponement in the instant case, would be in consonance with fair play and justice (*Ty vs. Fil. Cia. de Seguros, et al.*, 109 Phil., 730). In a case of recent vintage, we have made the following pronouncements:

"Viewed from the strictly legal perspective, it appears that the petition was presented outside the reglementary period of sixty (60) days from notice of the judgment. Nevertheless, due to the very peculiar circumstances obtaining in the premises, We consider that the rule was substantially complied with and the petition for relief

from judgment was seasonably filed. The rules should receive liberal interpretation in order to promote their object and to assist the parties in obtaining a just, speedy and inexpensive determination of every action. Procedural technicality, should not be made a bar to the vindication of a legitimate grievance. When such technicality 'deserts from being an aid to justice,' the Courts are justified in excepting from its operation a particular case. ***." (PHHC vs. Tiongco, et al., L-18891, Nov. 28, 1964.)

We find the above holding applicable to the case under consideration. There was substantial compliance with the rules. It has not been shown that counsel was neglectful. His fault, if ever it was one, is merely an excusable lapsus. And considering further the fact that the litigation involves the sum of around P70,000.00; that a witness was already presented by the plaintiffs and that if the allegations of the complaint were substantiated, a dismissal of the case may not be altogether warranted, the order of dismissal of July 12, 1961, appealed from, it set aside and the case is remanded to the court of origin for further proceedings. No special pronouncement as to costs.

Bengzon, C. J., Bautista Angelo, Reyes, J. B. L., Dizon, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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