

JOSEFINA MORTEL, PLAINTIFF AND APPELLANT, VS. ANACLETO F. ASPIRAS, AND CESAR ASPIRAS, DEFENDANTS AND APPELLEES.

G.R. No. L-9152. December 28, 1956

Ponente: BENGZON, J.

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BENGZON, J.:

In October 1954 Josefina Mortel filed in the Manila court of first instance a complaint against Anacleto F. Aspiras and Cesar Aspiras (Civil Case No. 24414) alleging substantially:

That posing as a bachelor Anacleto courted her in 1952 in Romblon province, and persuaded her to come to Manila for their wedding; that for such purpose she arrived in the city, and stayed in the house of her sister in Pasay, where Anacleto, repeating his assurances of marriage lived with her as her husband; that subsequently, heeding plaintiff's insistence on the wedding, Anacleto accompanied her to the City Hall to obtain a marriage license; that there he introduced his son Cesar to her as a nephew, and then left them both in the building, after saying that Cesar already knew what to do; that with the help of Atty. Moises Espino both obtained a marriage license; that several days later plaintiff was made to marry Cesar Aspiras in the presence of Anacleto, who led her to believe she was really marrying him thru Cesar Aspiras as a proxy; that after such marriage ceremony she continued to live with Anacleto as his wife—never with Cesar, with whom she never had amorous relations; and that she had a baby born January 24, 1954 of defendant Anacleto Aspiras, who turned out to be married to another woman. She asked for annulment of her marriage to Cesar Aspiras, and for judgment requiring defendants to pay her, jointly and severally, a monthly allowance of P150.00 and damages in the total sum of P72,580.00.

On November 9, 1954 defendants filed a motion to dismiss on two grounds: no cause of action, and prior judgment in Civil Case No. 19115 of the same court.

On February 11, 1955, the court issued an order saying,

"Upon motion of the defendants this case is dismissed it being a repetition of Civil Case No. 19115 (Josefina Mortel vs Anacleto Aspiras and Cesar Aspiras) which was dismissed upon separate motions of the parties in the order of this Court of April 11, 1953."

The plaintiff moved for reconsideration, but her motion was denied in a court resolution explaining that this case "is a reiteration substantially of the old case No. 19115" * * * which was "dismissed upon separate motions of both parties" and such "dismissal operates as an adjudication on the merits in accordance with the provisions of Sec- 4, Rule 30 of the Rules of Court".

Consequently the plaintiff appealed to this Court alleging error in the application of Rule 30 section 4, inasmuch as the matter was governed by sec. 1 of same Rule 30.

Civil Case No. 19115 was admittedly filed March 1953. The allegations of the complaint therein were practically the same as those in the present litigation; before filing of the answer, plaintiff Josefina Mortel submitted on April 9, 1953 a motion to dismiss her complaint "stating that .she was in fact and in truth married to the defendant Cesar

Aspiras and that Anactieto F. Aspiras participated in the solemnization of the marriage as father of Cesar Aspiras, and that she filed her said complaint at the height of anger and thus the contents thereof did not represent her true sentiments" (29 Record on Appeal). It is also admitted that on April 1, 1953 the defendants in said Civil Case No. 19115 presented a motion to dismiss, asserting the plaintiff had no cause of action because she "was a school teacher, knew that she contracted marriage with Cesar Aspiras and there was no misrepresentation or fraud perpetrated against her." (15, 29 Recdrd on Appeal.)

There is no question that on April 11, 1953 the court issued, in said civil case, an order stating, "upon separate motions of both parties the complaint is hereby dismissed".

For the sake of clearness the rules cited by both sides are quoted:

"SECTION 1. Dismissal by the plaintiff.—An action may be dismissed by the plaintiff without order of court by filing a notice of dismissal at any time before service of the answer. Unless otherwise stated in the notice, the dismissal is without prejudice, except that * * *.

"SEC. 4. Effect of dismissal on other grounds.—Unless otherwise ordered by the court, any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, operates an adjudication upon the merits." (Rule 30, Rules of Court.)

There is another section that may be pertinent:

"SEC. 2. By order of the court.—Except as provided in the preceding section, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. * * * Unless otherwise specified in the order, a dismissal under this paragraph shall be without prejudice. * * *."

In the light of the above provisions, let us examine what transpired in Civil Case No. 19115. Before the answer was made, plaintiff filed a "Motion to Withdraw and/or Dismiss"; and she asked the court "that the complaint * * * be withdrawn and/or dismissed". At first glance her pleading does not fall exactly within the letter of the "notice" contemplated by Section 1. In addition it asked for a court order of dismissal.

But if it does not fall under section 1, it may be considered as a motion which the court could dispose of under section 2. When acting under such section to court could consult the wishes of the defendant. The defendant may object; but the court may order dismissal, and such order is without prejudice. Wherefore if the defendant agrees, the order is a fortiori also without prejudice. Unless otherwise expressly stated, of course.

Now then, the defendants' motion to dismiss in April 1953 could in legal contemplation be deemed a conformity to plaintiff's motion to withdraw. Therefore, the court's order upon both motions should be without prejudice, under section 2.

On the other hand, viewing the pleading with liberality[a] and seeing thru the form to the substance, the plaintiffs "motion to withdraw or dismiss" of April 9 amounted practically to a "notice" of dismissal, before service of the answer, because it advised the defendants of plaintiff's desire to withdraw. Its caption did not alter nor disguise its nature as plaintiff's statement of her determination to drop the matter. It contemplated, it is true, a court order of dismissal; but it was not thereby taken out of the purview of section 1, since even after a "notice" given under said section, a court's order of dismissal would not be incongruous. Defendant's conformity, if openly given, would be surplusage, and would not modify the ensuing juridical situation.

As we see section 1, when the plaintiff files the notice, the matter is dismissed without the necessity of a court order; but a court order may subsequently be entered definitely taking cognizance of the withdrawal and shelving the *ezpediente*, without thereby throwing the matter out of the scope of said section 1 (b).

Being then of the opinion that the proceedings In Civil Case No. 19115 could be classified either under section 1 or under section 2, we cannot but declare section 4 to be inapplicable. In other words, we hold the dismissal to be without prejudice. At most, defendants may contend that the order of April 11, 1953 was also an order sustaining their motion to dismiss for lack of cause of action, such order barring^a subsequent litigation. In fact such was their contention in the court below, (p. 27 Record on Appeal.) However, we do not believe that the court's order meant to declare that plaintiff had no cause of action. It did not say, "for the reasons stated in defendant's motion" the case is dismissed. It merely stated "upon separate motions of both parties the complaint is dismissed"—which ordinarily could mean "since both parties ask for dismissal, the case is dismissed". In all probability the court did not stop to consider the merits of the controversy. Indeed it would be a debatable point whether the court could still properly delve into the merits of the case after plaintiff had withdrawn.^b

Anyway, even granting that the court's order also held that no cause of action existed, the situation would be one wherein the order was both provisional and final in character (if that is legally possible). Then it would not be fair to apply such finality to plaintiff, since she would thereby be forever barred from submitting her claim to the courts, although she had reasons to believe the order was a provisional dismissal. On the other hand, considering the order as provisional, defendants would not be unduly prejudiced nor definitely harmed, because they are not deprived of the opportunity to defend themselves. Defendants should have insisted either that the court make a specific ruling upon their motion or that the dismissal be expressly made with prejudice.

It may be stated in this connection that we are all the more inclined to permit this new litigation, because in another expediente we have just decided, (of which we may take judicial notice) (Adm. Case No. 154, Mortel vs. Aspiras), evidence has been introduced indicating that the plaintiff's motion for dismissal had been prepared at the request of defendant Anacleto Aspiras who promised plaintiff full support,—and that there is prima facie merit to her claims for annulment and damages.

This is verily one instance requiring liberal construction of the Rules for the purpose of assisting the parties to obtain just, speedy and inexpensive determination of their controversies—without regard to technical objections that do not square with the ends of justice.

The appealed order is hereby reversed and the case remanded to the lower court for further proceedings.

Paras, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

[a] Pleadings to be liberally construed. Sec. 17 Rule 15.

[b] It might be argued that under section 1 the notice automatically dismissed the case "without prejudice" and the order of the court was a surplusage, in no way construable as implying dismissal with prejudice.

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