

J. M. TUASON & CO., INC., ETC., PLAINTIFF AND APPELLEE, VS. BIENVENIDO DE LEON, DEFENDANT AND APPELLANT. J. M. TUASON & CO. INC., REPRESENTED IN THIS INSTANCE BY GREGORIO ARANET...

G.R. Nos. L-16668 and L-16669. January 31, 1962

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal by writ of error from two orders denying similar petitions to set aside analogous judgments in the above entitled cases, upon the ground of mistake and excusable negligence.

On August 3, 1959, separate judgments were rendered in Civil Cases No. Q-3600 and Q-3611 of the Court of First Instance of Rizal (L-16668 and L-16669 of this Court) ordering the respective defendants therein, and all other persons claiming under each, to vacate two (2) lots of about 200 square meters each, situated in the barrio of North Tatalon, Quezon City, forming part of a bigger parcel of land known as Sta. Mesa Heights Subdivision and covered by Transfer Certificate of Title No. 1267, which, in turn, originated from Original Certificate of Title No. 735, issued in 1914, both in the name of plaintiff J. M. Tuason & Co., Inc., and to remove the house and other constructions on said lots, and sentencing the defendants in each case to pay the plaintiff P60 a month from the date on which said defendants had been found to have usurped the possession of said lots until such time as plaintiff shall have been restored in such possession, and the costs. Almost three months later, or on October 28, 1959, said defendants filed separate petitions to set aside the aforementioned judgments, upon the ground that their failure to be present at the hearing of their respective cases on July 31, 1959, was due to mistake and excusable negligence, and that they had a good and valid defense, as set forth in the affidavits attached to said petitions. Upon denial thereof, both defendants interposed the present appeal.

Inasmuch as the two cases are identical, except as to the caption, title and number thereof, as well as the name of the defendants and the particular lot involved in each, plaintiff was allowed to file only one brief in reply to the separate briefs of said defendants. For the same reason, both cases will be jointly disposed of in this decision.

Appellants maintain that the lower court had abused its discretion in issuing the order appealed from, but we find no merit in such pretense. As stated in said order, defendants' motion for postponement of the hearing, scheduled to take place on July 31, 1959, was filed on that same date. Likewise, the motion for postponement—which has not been included in the records on appeal—was based upon the allegation that Jeremias Meris, one of the attorneys for the defendants, had become voiceless due, presumably, to a severe cold and the strain in his voice during a preliminary investigation the previous day. Yet no medical certificate was attached to said motion.

"The fact of illness must be established by some satisfactory sworn statement, either in the shape of an affidavit or the certificate of a physician that satisfies the court of the inability of the party to be present."
(Natividad vs. Marquez, 38 Phil., 608)

What is more, copy of said motion was not served on the plaintiff. Again, the records show that defendants-appellants were, and still are represented by two sets of lawyers, namely, Attorney Jeremias Meris and the law firm Asuncion, Bulos, Revilla & Associates. The alleged indisposition of Atty. Meris could not have prevented, at least, a member of said law firm, from appearing on behalf of said defendants.

Lastly, defendants' defenses were, allegedly, (1) adverse possession for over 50 years, (2) nullity of plaintiff's title, upon the ground that the same had been obtained by fraud and, (3) that the lots in question were not embraced in said title. Considering, however, that the latter was derived from an original certificate of title issued in 1914, it is obvious that the first two defenses are absolutely untenable. Moreover, defendants' affidavits are clearly insufficient to establish prima facie that their third defense is meritorious, apart from the fact that the evidence introduced at the hearing of these cases disproved it.

Wherefore, the orders appealed from are hereby affirmed, with costs against defendants-appellants. It is so ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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