

**VICTOR H.M. GUTIERREZ, PETITIONER, VS. THE HONORABLE
NUMERIANO ESTENZO, JUDGE, COURT OF FIRST INSTANCE OF
ZAMBALES, BRANCH I, ROLANDO FELICIANO AND JOSE T. NERY,
RESPONDENTS.**

G.R. No. L-30247. January 31, 1972

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This is a petition for certiorari against the order of the Court of First Instance of Zambales dismissing its Civil Case No. 366-O for failure of therein plaintiff to appear at the scheduled pre-trial conference.

The controversy between herein petitioner and private respondents, Rolando Feliciano and Jose T. Nery, commenced when the former filed in the City Court of Olongapo an action for forcible entry against the latter (Civil Case No. 384) for their occupancy of a parcel of land in Upper Kalaklan, Olongapo City. In due time, judgment was rendered by the City Court in favor of the plaintiff, and therein defendants were ordered to vacate the property which was found to be covered by a residence Permit issued by the Director of Forestry to plaintiff Gutierrez, and to restore possession of the land to the latter; to demolish the building they had constructed thereon; and to pay the sum of P200.00 a month for the occupation of the land from the date of illegal entry until possession is finally restored to the plaintiff. From this decision, defendants appealed to the Court of First Instance of Zambales (Civil Case No. 366-O).

The case in the Court of First Instance was first set for pre-trial conference on 26 September 1968, but it was postponed on account of defendants' absence. Re-set for 11 December 1968, no pre-trial could again be held because although defendants were present on that day, plaintiff and his counsel were not around. Thereupon, on defendants' motion, the judge in open court ordered the dismissal of the case. Plaintiff later moved for reconsideration of the dismissal order, alleging that counsel's failure to attend the pre-trial conference was due to mistake or excusable negligence, and that plaintiff himself was not able to appear in Olongapo because, as sworn to by him, plaintiff was at the time by the bedside of his dying father in Macabebe, Pampanga. And when this motion was denied for lack of merit on 6 February 1969 plaintiff instituted the present proceeding, claiming that the court committed grave abuse of discretion in dismissing the case and praying that the disputed order be nullified and the respondent judge be ordered to try the case on the merits.

In their separate answers to the petition, respondents denied petitioner's allegation of abuse of discretion attending the dismissal order. It is contended that petitioner can not capitalize on the favorable decision of the City Court, because upon perfection of the appeal therefrom and the docketing of the case in the Court of First Instance, said decision of the inferior court ceased to exist so that the case will have to be tried *denovo* on the merits as if it had never been tried before, and that the order to dismiss the case, on account of plaintiff's failure to prosecute, was issued conformably to Section 3 of Revised Rule 17.[1]

We find merit in the petition.

It is apparent from the record that the court a quo had gravely abused its discretion in issuing its order of dismissal. In the first place, there is its uneven, if not partisan, handling of the absences of the parties at the pre-trial hearings. When the defendants failed to appear at the pre-trial conference of 26 September 1968, the trial court merely postponed pre-trial to 11 December, instead of declaring them in default, as warranted by Section 2 of Revised Rule 20. But when it was plaintiff who failed to appear at the hearing of 11 December 1968, the trial court rigidly applied the section aforementioned and incontinenti non-suited the petitioner.

The partiality of the court below is emphasized by its refusal to take into account the serious causes for plaintiff's non-appearance at the pre-trial of 11 December 1968, averred in the plaintiff-petitioner's sworn motion for reconsideration (Petition, Annex "C"). Petitioner therein averred, under oath, that he could not come to Olongapo for the pre-trial, because he was at the time at the bedside of his father, who was on the verge of death, in Macabebe, Pampanga. This fact alleged in a verified motion was nowhere controverted or denied by private respondents. That the reason given by plaintiff constituted sufficient excuse is not disputable.

Finally, the court below apparently failed to realize that there is no showing that the excuse of plaintiff petitioner was, and could not have been, made for the purpose of delaying the proceedings. Having obtained a judgment in his favor in the inferior court, and not having recovered possession of the property in spite of the judgment, any delay in the resolution of the appeal by the Court of First Instance would necessarily be to petitioner's disadvantage.

FOR THE FOREGOING CONSIDERATIONS, the petition for a writ of certiorari is hereby granted, and the orders of the respondent judge of 11 December 1968 and 6 February 1969 are annulled and set aside, for being issued in grave abuse of discretion.

The records are ordered remanded to the court of origin for further proceedings conformable to this opinion. No costs.

Concepcion, C.J., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] "SEC. 3. Failure to prosecute. - If 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 motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by court.

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