

JOSE H. FERNANDEZ, PLAINTIFF-APPELLANT, VS. FELOMINO FERNANDEZ, DEFENDANT-APPELLEE.

Ponente: PERALTA, JR., E. B., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/129345a1f198/>

PERALTA, JR., E. B., J.:

It was the court a quo's dismissal of the civil case[1] due to the absence of plaintiff-appellant and his counsel during the scheduled May 12, 2010 pre-trial conference, and the failure to file the Pre-Trial Brief within the period prescribed by law,[2] which spawned the appeal before Us.

The instant controversy came to fore when herein appellant Jose H. Fernandez brought an action for Partition with Accounting of Rents and Profits and Damages on June 18, 2009 against his father Felomino Fernandez.

Appellant's cause of action, eventually raffled to the Regional Trial Court, Branch 52, Sorsogon City, docketed as Civil Case No. 2009-8070, reads:

“1. That plaintiff is of legal age, Filipino, married, with capacity to sue and be sued, and a resident of Barangay Central, Casiguran, Sorsogon where he may be served with summons and other processes of this Honorable Court; whereas defendant, is likewise of age, Filipino, married and may be served with summons and processes of this Honorable Court at his residence in Barangay Central, Casiguran, Sorsogon;

2. That plaintiff and defendant are related by flesh and blood, plaintiff being the legitimate and only child of defendant and his deceased wife, Carmen Habitan-Fernandez;

3. That plaintiff and defendant are the intestate heirs of the estate of the late Carmen who passed away on February 25, 1967. The said estate is part of the conjugal property regime of defendant and his deceased wife, which said properties are located in the municipalities of Magallanes and Casiguran, Sorsogon, listed and more particularly described as follows:

xxx xxx xxx

4. That prior to the filing of the case at bar, plaintiff exerted all his earnest effort to settle the matter agreeably, by requesting defendant for several times that the above-described real properties, which comprise the estate of the late Carmen, be amicably partitioned between them by mutual agreement, but defendant refused and continuously refuses to do so;

5. That following the termination of defendant's marriage with Carmen by reason of the latter's death, defendant did not liquidate the conjugal property in a proceeding for the settlement of the estate of deceased person nor defendant liquidated the conjugal property, either judicially or extra-judicially, within a year from the death of his deceased spouse and (Art. 130, Family Code);

6. That defendant contracted a subsequent marriage with one Maria Escalderon on May 8, 1986, without complying with the foregoing requirements of the law;

7. That defendant, without plaintiff's knowledge, may have disposed several real properties in favor of his second wife or any other person, albeit knowing that said properties were part of the conjugal property of gains

with his deceased spouse;

8. That since 1967 after death of Carmen until to date, defendant administers the conjugal property, including plaintiff's inheritance from the estate of his late mother, and collects the income solely for himself from said properties. Plaintiff was allowed by defendant to administer only five (5) parcels of land in 1998, when plaintiff demanded from defendant that he given his just share from his mother's estate;

9. That plaintiff desires that the above-listed and described real estate be partitioned between him and defendant, for which plaintiff prays that his one-half (½) share from his mother's estate in the conjugal property with that of defendant, be given to him as provided for by law (Art. 966, New Civil Code);

10. That plaintiff demands that an accounting be rendered for the rents and profits realized from the properties subject of this partition and collected solely by defendant since 1967 until to date, and upon determination of the total income generated from said rents and profits, plaintiff's share be given to him.

x x x ”

On September 30, 2009, defendant-appellee filed an Answer with Counterclaim.[3]

Pre-trial conference was scheduled on May 12, 2010 with previous notice to all the parties.[4] However, plaintiff-appellant and his counsel failed to attend. As a result, the trial court issued an Order[5] which dismissed the Complaint, viz:

“Upon motion of Atty. Jacinto Tagum considering the absence of the plaintiff or his counsel who in fact filed a motion for postponement of today's pre-trial and considering further that the said plaintiff failed to file his pre-trial brief, upon motion of the said counsel for the defendant who has filed his pre-trial brief and whose client defendant Felomino Fernandez, despite his advanced age and apparent infirmity is present in today's pre-trial, let this case be dismissed.

SO ORDERED.”

On May 24, 2010, plaintiff-appellant moved to reconsider[6] the preceding Order, but it was denied on January 11, 2011,[7] the dispositive portion of which reads:

“All told, this Court, after a meticulous study of the arguments set forth in the Motion for Reconsideration filed by plaintiff through counsel, finds no cogent reason to revise, amend, much less reverse the Order of this Court dated May 12, 2010. The Motion for Reconsideration is thus DENIED.

SO ORDERED.”

In his appeal[8] elevated to this court, plaintiff-appellant harped on a singular ascription insofar as the lower court in this wise:

“THE HONORABLE COURT A QUO ERRED WHEN IT DISMISSED PLAINTIFF-APPELLANT'S COMPLAINT BY HIS FAILURE AND OF HIS COUNSEL TO APPEAR AT THE SCHEDULED PRE-TRIAL CONFERENCE ON MAY 12, 2010 AND PLAINTIFF-APPELLANT'S FAILURE TO FILE HIS PRE-TRIAL BRIEF WITHIN THE PRESCRIBED PERIOD, ALTHOUGH PLAINTIFF-APPELLANT'S COUNSEL FILED A MOTION FOR POSTPONEMENT OF THE SAID PRE-TRIAL CONFERENCE ON MAY 7, 2012 OR SIX (6) DAYS BEFORE THE SCHEDULED HEARING.”[9]

To the question of whether the trial court's demeanor during pre-trial conference warrants a different perspective, We find no fault on the part of the lower court.

In dismissing plaintiff-appellant's Complaint, the court a quo cited two grounds: a) non-appearance at the pre-trial conference and b) failure to file pre-trial brief.

Section 4, Rule 18 of the 1997 Rules of Civil Procedure mandates the appearance of the parties and counsel during the pre-trial conference:

“SEC. 4. Appearance of parties. – It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.”

Corollarily thereto, Section 5 of the Rule spoke of repercussions for non-appearance during the mandatory session:

“SEC. 5. Effect of failure to appear. — The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence ex-parte and the court to render judgment on the basis thereof.”

From the foregoing proviso, it was explicit that the failure of a party to appear at the pre-trial can produce adverse consequences. For the plaintiff's absence, he may be declared non-suited and his case dismissed. On the other hand, the unjustified absence of the defendant can authorize the plaintiff to present evidence ex parte as basis for the court's verdict thereafter.

Although counsel for the plaintiff-appellant filed a Motion for Postponement,[10] which explained his predicament borne of an election related activity, he cannot assume that his Motion would be automatically granted. Indeed, what constitutes a valid ground to excuse litigants and their counsels from appearing at the pre-trial under Section 4, Rule 18 is subject to the sound discretion of a judge.[11]

Withal, as the “preferred mode” for cognition,[12] the notice for pre-trial conference is coursed through the counsel[13] and incremental notice to the client would amount to a supernumerary exercise.[14] Yet, there was no indication on record that counsel for plaintiff-appellant was authorized by his client in the form of a Special Power of Attorney to represent the plaintiff,[15] and at the very least, counsel for the plaintiff should have instructed his client to appear before the lower court on May 12, 2010. After all, and more significantly, it is the absence of the plaintiff during pre-trial conference, despite presumed notice through counsel, which can elicit the peril contemplated by Section 5, Rule 18.[16]

Moreover, plaintiff-appellant was bound by the action of his counsel in the conduct of the trial. Well-entrenched is the rule that the negligence of counsel will bind his client. Along this line, *Gotesco Properties, Inc. vs. Spouses Moral* was instructive:[17]

“The general rule is that a client is bound by the acts, even mistakes, of his counsel in the realm of procedural technique. The basis is the tenet that an act performed by counsel within the scope of a “general or implied authority” is regarded as an act of the client. While the application of this general rule certainly depends upon the surrounding circumstances of a given case, there are exceptions recognized by this Court: “(1) where reckless or gross negligence of counsel deprives the client of due process of law; (2) when its application will result in outright deprivation of the client's liberty or property; or (3) where the interests of justice so require.”

In the present case, plaintiff-appellant's counsel postulated that his busy schedule and heavy workload during the May 10, 2010 National and Local Elections as the City Election Officer of Sorsogon City Commission on Elections was the reason for his failure to submit his Pre-Trial Brief and appear during the Pre-Trial. While We can perhaps comprehend the reason for counsel's physical absence during the pre-trial conference, what We can hardly ignore was the similar absence of the plaintiff himself on May 12, 2010 before the trial court.

Anent the failure of plaintiff-appellant to file the Pre-Trial Brief, it must be underscored that Section 6, Rule 18 also obliged the parties to file with the court and serve on the adverse party their pre-trial briefs at least three days

before the scheduled pre-trial. Otherwise, the failure to file the Pre-Trial Brief shall have the same effect as failure to appear at the pre-trial.[18]

In the final denouement, amidst the procedural backdrop herein, punctuated by apparent apathy of both the plaintiff and counsel anent their duty to personally appear during the slated pre-trial conference, and obligation to submit the Pre-Trial Brief prior to the compulsory session, We believe that no reversible error can be hurled against the court a quo.

WHEREFORE, by reason of the foregoing premises, the plaintiff's APPEAL is hereby DENIED. Accordingly, the Orders dated May 12, 2010 and January 11, 2011 of the Regional Trial Court, Branch 52, Sorsogon City in Civil Case No. 2009-8070 are hereby AFFIRMED.

SO ORDERED.

De Leon, M.M., (Chairperson) and Cruz, S.C., JJ., concur.

[1] For partition with accounting of rents and profits and damages, Civil Case No. 2009-8070, Record, pp. 1-7.

[2] Orders dated May 12, 2010 and January 11, 2011, Record, pp. 43,75-76.

[3] Answer with Counterclaim dated September 16, 2009, Record, pp. 32-34.

[4] See Notice of Pre-Trial Conference dated January 29, 2010, Record, p. 37.

[5] Order dated May 12, 2010, Rollo, p.43.

[6] Motion for Reconsideration dated May 24, 2010, Record, pp. 44-47.

[7] Order dated January 11, 2011, Record, pp. 75-76.

[8] Notice of Appeal dated February 11, 2011, Record, pp. 80-81.

[9] See page 2 of the Brief for the Appellant, Rollo, p. 15.

[10] Motion for Postponement dated May 3, 2010, Record, p. 41.

[11] *Khonghun vs. UCPB*, G.R. No. 154334, 31 July 2006, 497 SCRA 320.

[12] *Agravante vs. Patriarca*, G.R. No. 48324, 183 SCRA 113,119, citing *Taroma vs. Sayo*, 67 SCRA 508,512-513.”

[13] Section 3, Rule 18, 1997 Rules of Civil Procedure.

[14] 1 Herrera, Remedial Law, 2007 edition, page 1086 – “... *Agravante vs. Patriarca*, [G.R. No. L-48324, March 14, 1990, 183 SCRA 113] where service through lawyer was held as sufficient even if there was no separate notice for the client.”

[15] Section 4, Rule 18, 1997 Rules of Civil Procedure.

[16] Cf. 1 FERIA and NOCHE, Civil Procedure Annotated, 2013 edition, page 550 – “If the plaintiff fails to appear without a valid cause and without a duly authorized representative, the action may be dismissed or, as the former rule provided, he may be non-suited. The dismissal is with prejudice unless otherwise ordered...”; 1 HERRERA, Vide, page 1087, citing *American Ins. vs. Republic*, 21 SCRA 464 [1967] and other cases – “Both client and counsel must appear at the pre-trial. This is mandatory. Failure of the client to appear is a ground for dismissal.

Counsels are not the only ones required to attend the pre-trial. The appearance of the plaintiff and defendant is also mandatory their failure to do so without justification is not a ground for new trial.”

[17] G.R. No. 176834, November 21, 2012.

[18] Benavidez vs. Salvador, G.R. No. 173331, December 11, 2013; 1 Regalado, Remedial Law Compendium, 10th edition, 2010, page 317.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.