

RAUL ARELLANO, PETITIONER, VS. COURT OF FIRST INSTANCE OF SORSOGON, BRANCH I, AND SANTIAGO UY-BARRETA, RESPONDENTS.*G.R. No. L-34897. July 15, 1975*

Ponente: BARREDO, J.

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Petition for certiorari to annul and set aside the orders of respondent court of March 31 and May 24, 1971 and January 12 and February 11, 1972 in its Civil Case No. 2167, entitled Santiago Uy-Barreta vs. Raul Arellano and Emilio B. Bayona, which had the combined effect of allowing the plaintiff to revive his action for reconveyance of property and damages against the defendant Arellano long after the same had been repeatedly dismissed, per orders of August 19, 1969, February 16, 1970 and February 23, 1971, for plaintiff's failure to comply with the rules on discovery by never serving answers to interrogatories of said defendant received by plaintiff as early as May 9, 1967, respondent court holding that the ground of res adjudicata, invoked by Arellano, was untenable, since the said orders of dismissal had no legal basis aside from not being on the merits.

I

The judicial controversy between petitioner Raul Arellano (Arellano for short) and respondent Santiago Uy-Barreta (Barreta for short) started way back on February 4, 1967 when Barreta[1] filed aforementioned Civil Case No. 2167 with respondent court against Arellano and a certain Emilio B. Bayona for reconveyance, with damages, of a certain parcel of land located in Sorsogon, Sorsogon, alleging as cause of action that the defendants had successfully maneuvered in bad faith, thru a supposedly false extrajudicial partition, to secure the issuance of a certificate of title No. T-3670 which enabled them to ultimately have the cancellation thereof by Transfer Certificate of Title No. T-3739 in the name of Arellano. After being served with summons, Arellano filed on May 5, 1967, instead of an answer, a motion to dismiss based on the ground of failure of the complaint to state a cause of action, inasmuch as on its face, said complaint seeks the setting aside of a torrens title by virtue of nothing more than a claim of ownership through continuous adverse possession for allegedly more than fifty-three (53) years. Simultaneously, pursuant to Rule 25 of the Rules of Court, Arellano dispatched the following written interrogatories to Barreta, which the latter received on May 9, 1967:

"WRITTEN INTERROGATORIES

Mr. Santiago Uy-Barreta
Sorsogon, Sorsogon

Sir:

In accordance with the provisions of Rule 25 of the new Rules of Court, you are hereby served the following interrogatories, to be answered by you, separately and fully in writing under oath. The answers shall be signed by you, and copy thereof served on the undersigned within fifteen (15) days from receipt of these

interrogatories.

- 1) Do you have a certificate of title registered in your name over the property, subject of this litigation?
- 2) If so, what is the number of the title?
- 3) If not, under what title do you claim the property?

Manila for Sorsogon, Sorsogon, May 5, 1967." (Page 30, Record.)

Since Arellano had not received any answer to the foregoing written interrogatories as of June 9, 1967, on this date, his counsel filed a motion, praying thus:

"WHEREFORE, defendant respectfully prays.

- 1) for leave that his Written Interrogatories be given due course and plaintiff be required to send his Answers thereto within five (5) days from receipt of the order;
- 2) that plaintiff's complaint be dismissed if he fails to comply with the aforesaid order sought for;
- 3) that hearing of defendant's Motion to Dismiss, rescheduled for June 17th, 1967, be postponed to such date fixed by this Honorable Court if plaintiff shall send his Answers to defendant's Written Interrogatories." (Pp. 31-32, Record.)

and setting the same for hearing on June 17, 1967. For reasons not appearing in the record, nothing happened relative to either the motion to dismiss of May 5, 1967 or the subsequent motion of June 9, 1967 until February 12, 1969, over one and a half years later, when respondent court motu proprio set both motions for hearing for February 28, 1969, on which date, upon request of Barreta, the court gave him ten (10) days within which "to file the corresponding opposition after which the said motion will be deemed submitted for resolution." In an order dated March 25, 1969, the court noted the failure of Barreta to comply with the promise to file an opposition to the written interrogatories within ten (10) days, and with reference to the motion to dismiss of May 5, 1967, gave him another five (5) days from receipt of the order. As nothing again was heard from Barreta as of April 7, 1969, on this date, Arellano filed a motion reiterating "his prayer for the dismissal of plaintiff's complaint pursuant to Section 5, Rule 29 and Section 3, Rule 17", alleging that Barreta had failed to serve answers to the interrogatories sent to him despite the periods previously given to him by the court. When this motion was heard on April 25, 1969, once more Barreta asked for deferment and the court postponed its consideration "for new assignment," which came on August 6, 1969, on which date, the following self-explanatory order was issued:

"After hearing the argument of both counsels, the counsel for the plaintiff is hereby given ten days from today within which to file whatever pleading he may desire to submit in connection with the motion to dismiss and in answer to the argument advanced by counsel for the defendant Raul Arellano. Counsel for the defendant Raul Arellano is also given ten days from receipt of the pleading which counsel for the plaintiff may submit in connection with the motion to dismiss, after which the motion will be deemed submitted for resolution by the Court." (Page 43, Record.)

Five days later, however, Arellano filed another motion for "instant dismissal" thus:

"COMES NOW defendant Raul Arellano, by the undersigned counsel, to this Honorable Court respectfully states:

1. That under date of May 5th, 1967, defendant dispatched Written Interrogatories for plaintiff to answer. Since plaintiff received it on May 9th, 1967, he had up to May 19th, 1967 to object thereto or up to May 24th, 1967 within which to give his Answers. (Rule 25, Sections 3 & 2, Revised Rules of Court). Plaintiff neither objected nor answered.

2. Two (2) years later, when incidents in this case were set for hearing, herein defendant filed a Manifestation dated February 24th, 1969 and a Motion dated April 7th, 1969 praying for the dismissal of plaintiff's complaint precisely for his failure to submit his Answers to the Written Interrogatories. The latter Motion was set for hearing on August 6, 1969.

3. On said date, defendant's counsel appeared and argued. Plaintiff's counsel, in open court, stated that plaintiff's Answers have been served on defendant's counsel in Manila to which counsel replied that they have not received the same. Plaintiff's counsel, however, said again in open court that such Answers must have been served already by a certain Atty. Berenguer that very moment or if not, possibly the next day.

4. It is now five (5) days since that hearing and up to now plaintiff's Answers which his counsel promised had either been served or will be served on defendant, have in fact not been served, contrary to plaintiff's representations in court.

5. Plaintiff cannot ignore the provisions of the Rules of Court on this matter. For such failure, dismissal is proper. (Rule 29, Section 5, Revised Rules of Court).

WHEREFORE, defendant respectfully prays, for reasons set forth above, for the instant dismissal of plaintiff's complaint. Defendant prays for such other relief, just and equitable, in the premises." (Pp. 44-45, Record.)

Finding the points raised in this motion to be well-taken, on August 19, 1969, the court ordered:

"Considering the motion dated August 11, 1969, filed by counsel for the defendant, Raul Arellano, alleging that the Written Interrogatories for the plaintiff to answer was sent by them to the plaintiff on May 5, 1967, was received by the plaintiff on May 9, 1967, which according to the provision of Rule 25, Section 1, the plaintiff had up to May 24, 1967, within which to give his answer or to file his opposition to the said interrogatories before the Court and, therefore, more than two years had already elapsed since the said Written Interrogatories was sent to the plaintiff and in spite of the fact that, again the said plaintiff asked to be given another five (5) days from August 6, 1969, within which to file his objection before this Court and since up to now the said counsel for the plaintiff failed to file his objection to said Written Interrogatories nor answered the same, as prayed for by counsel for the defendant, Raul Arellano, the complaint is hereby dismissed as against the said defendant, Raul Arellano, without special pronouncement as to costs." (Page 46, Record.)

Copy of this order was served on Barreta on August 20, 1969. Thus, the incident seemingly ended.

Almost three months later, however, or on December 16, 1969, Barreta filed a "Motion for Reinclusion of Raul Arellano as Indispensable Party Defendant" in which, significantly, he maintained that Arellano is an indispensable party and as such had to be reincluded as defendant precisely because the "action against him was dismissed in view of plaintiff's failure to answer the written interrogatories which actually and incidentally is not a ground for the dismissal of an action", adding that he, the plaintiff, "is now ready with the copies of the documents needed to answer the queries of Mr. Raul Arellano in his quest for interrogatories." Arellano opposed, and on February 16, 1970, the motion was denied thus:

"O R D E R

Considering the motion for re-inclusion of Raul Arellano as indispensable party-defendant, filed by counsel for plaintiff, together with the corresponding opposition thereto by telegram filed by counsel for said Raul Arellano, it appearing and as stated in the order of this Court dated August 19, 1969, dismissing the case as against the said Raul Arellano, for failure on the part of counsel for the plaintiff to answer or file an opposition to the written interrogatories submitted by counsel for Raul Arellano within the reglementary period as provided in Rule 25, Section 1 of the Revised Rules of Court in connection with Rule 29, Section 5 of the same Revised Rules of Court and considering further the fact that the order of this Court dismissing the case against Raul Arellano dated August 19, 1969, was received by counsel for the plaintiff on August 20, 1969 and the

motion for the re-inclusion of Raul Arellano as indispensable party was filed only on December 16, 1969, without even asking for the reconsideration of the order of dismissal within the reglementary period, the motion for re-inclusion of Raul Arellano as indispensable party in this case is hereby denied." (Pages 52-53, Record.)

It turned out almost a year afterwards that even the foregoing order had not terminated the case. Under date of January 16, 1971, Barreta, represented this time by new counsel, filed a "Motion to Set Aside Orders Dismissing Complaint against Defendant Raul Arellano", which was set for hearing on February 4, 1971. Pertinent portions of this motion read:

"Preliminary Statement —

It must be noted that the disputed orders resulted in the dismissal of the complaint against Raul Arellano not under any of the grounds provided for under Rule 16, Section 1 of the Revised Rules of Court, but from supposed failure and/or refusal of the plaintiff to answer interrogatories served under Rule 25 in relation to Rule 29 of said Rules of Court. In like manner it must be taken into account that Raul Arellano is a mere transferee of Emilio B. Bayona, who already filed an answer to the complaint where said defendant claims that the transfer to his co-defendant is for value and in good faith. In other words, the issues had been joined and that there exist in this case a common cause of action against the two defendants. (Rule 18, Sec. 4, Rules of Court)

The order of dismissal
of August 19, 1969 is contrary
to law and violates due process.

Modes of discovery provided for the Rules of Court are intended to aid in the prompt administration of justice but can never be resorted to or be used to secure benefits from fruits of fraud. To begin with the question contained in the interrogatories dated May 5, 1967 sought to elicit facts clearly seen from the allegations of the complaint, more particularly pars. 2, 15 to 18, and 22 to 24. The interrogatories were therefore frivolous and need not be answered. (Hogaboom vs. Price, 53 Iowa 703, 6 NW 43) In Arellano's counsel's motion set June 17, 1967, he asked the Court to:

'1) for leave that his written interrogatories be given due course and plaintiff be required to send his answers thereto within five (5) days from receipt of the order;

'2) that plaintiff's complaint be dismissed if he fails to comply with the aforesaid order sought for.

"This was not ruled upon then but the Court set the incident for consideration on February 28, 1969. His honor even gave plaintiff's counsel 5 days from August 6, 1969 to file any objection to the interrogatories. It was plain then that the propriety and need to answer the interrogatories were brought before the Court for proper ruling, plus the period for plaintiff to answer the same. It does not appear that defendant Arellano insisted upon the Court to give due course to the interrogatories and/or fix a period for plaintiff to make the answer. The import of the order of August 19, 1969 does not indicate that the Court required plaintiff to answer the questions which His Honor found proper. The mere failure of plaintiff's counsel to file an opposition does not ipso facto create the legal obligation to answer them or that they were proper because Arellano himself so asked the Court to rule on them.

It would thus appear that the order of August 19, 1969 dismissing the complaint for failure to file an opposition or to answer, in the absence of a Court directive to that effect violates the import of Rule 29, Section 1 and Section 3 of the Rules of Court. Section 5 of Rule 29 clearly provides that a dismissal is in order if 'A PARTY WILFULLY FAILS' to answer the interrogatories. There is no wilfull refusal to answer here because Arellano himself thru counsel placed the interrogatories within the ambit of the requirements of Rule 25, Sec. 3 of the Rules of Court

when he filed his motion dated June 9, 1967 and failed to get any ruling therein in his favor, for said section provides — 'answers shall be deferred until the objections are determined, which shall be at as early a time as is practicable.' In fact in the United States from where the modes of discovery embodied in our Rules have been taken, the Court to protect litigants usually require evidence on the question of willfulness. (*Millinocket Theatre Inc. vs. Kurson*, U.S. Dist. Ct., S.D.N.Y. April 25, 1941, cited in *Moran's*)

It is respectfully submitted that the steps defined by Rule 25 and Rule 29 of the Rules of Court preparatory to a penalty of dismissal upon refusal to make discovery are part of the guaranties to all litigants in order that due process of law may be observed and secured to all. As defendant Arellano voluntarily placed the admissibility of his interrogatories before the Court and the fixing of the period within which to answer them in his motion dated June 9, 1967, he cannot avoid complying with the Rules of Court on the matter before any dismissal order can be entered. Plaintiff had every right to reply on the efficacy of the rules to protect him during the conduct of his litigation. The order of dismissal of August 19, 1969, without a prior order for plaintiff to answer as the questions were proper and the expiration of the period thus fixed for such answers by the Court, may be said to be premature. Violative then of due process, the said order of August 19, 1969 and the implementing order of February 16, 1970 are annulable, if not void ab initio for being entered without jurisdiction.

The said orders of dismissal
may hardly be blamed on plaintiff

We incorporate what we said in the preceding discussion as far as relevant herein. Plaintiff upon receipt of the interrogatories delivered them to his lawyer. As a party in the case, plaintiff must rely on his counsel. As the matter of propriety of the questions was before the Court, plaintiff had to wait for a directive to him to submit his answer as envisioned by Rule 25, Sec. 3 of the Rules of Court. His lawyer may have been of the said impression. Why then penalize the plaintiff for what had happened. If an error had been committed, certainly plaintiff is not to blame.

There is no order of the Court which plaintiff refused to comply with. As seen from the context of the disputed order of August 19, 1969, plaintiff's lawyer was given five days from August 6, 1969 within which to file his objections to the interrogatories, which were then subject of Arellano's motion for leave to be given due course and for the Court to give plaintiff only 5 days to answer (pls. see prayer, Motion of June 9, 1967). True enough plaintiff's counsel failed to file the objections. His Honor should have ruled therefore in favor of the movant by giving due course to the interrogatories and requiring plaintiff to make his answer thereto within 5 days, so that Sec. 3 of Rule 25 of the Rules of Court could be followed. Only by the existence of such an order and a subsequent refusal of plaintiff to comply therewith can an order of dismissal be justified as not violative of due process. It would seem that the obligation to answer the interrogatories had not yet commenced for the Court never ruled on their propriety." (Pp. 55-58, Record.)

Alternatively, there were also allegations regarding grounds for relief on account of supposed excusable neglect of former counsel as follows:

"1. That plaintiff immediately after learning of the orders of dismissal became worried and thereafter saw new counsel upon advise of relatives to seek relief from concomitant effects thereof.

2. That last, January 5, 1971, plaintiff was with his lawyer Atty. Amador and on the following day he was furnished copy of the last pleading filed by Atty. Amador which the Court on January 8, 1971 postponed to another day so that within sixty (60) days upon learning of the status of the case against Raul Arellano, plaintiff filed the instant motion to set aside.

3. That plaintiff after delivering the Interrogatories to his lawyer Atty. Amador, had been waiting for an express order from his counsel as to what is to be done and was informed that the matter of propriety of the interrogatory was subject of an incident before the Court and answer can only be made if so ordered by the

Court and within such period so fixed.

4. That plaintiff relying on this felt that there was no necessity to make the answers until he was notified of the existence of an order from the Court to the said effect.

5. That the order of dismissal of which plaintiff learned of prior to conferring with Atty. Kallos took the plaintiff by surprise as he had not been ordered by the Court to submit his answer to the interrogatories." (Pp. 58-59, Record.)

Promptly opposed by Arellano on the oft-repeated ground that the case had long ago been finally dismissed, on February 23, 1971, the court denied Barreta's motion thus:

"Considering the motion to set aside order dismissing complaint against defendant Raul Arellano filed by the new counsel for the plaintiff, together with the opposition to the same filed by counsel for defendant Raul Arellano, and the reply by the new counsel for the plaintiff, and taking into account the fact that the dismissal of the case as against the defendant Raul Arellano was issued on August 19, 1969 and therefore the same is already final, the motion to set aside order is hereby denied." (Page 63, Record.)

Undaunted by the repeated orders of dismissal and denial above set forth, and apparently possessed of an unexhaustible arsenal of purported remedies to keep his case from being considered finally terminated, hardly a month later, Barreta bounced back with apparent success on March 22, 1971, when he filed a "Motion for Admission of Amended Complaint", since respondent court readily granted the same on March 31, 1971 even before Arellano could object to it or be heard. No elucidation of the reasons for the long belated amendment had to be made by Barreta. All that his motion alleged almost perfunctorily in this respect was:

1. That after a mature consideration and study of the facts of the case, there has arisen the need of amending the complaint with the inclusion of new plaintiff and new defendants and alternative defendants.
2. That the amended complaint is now attached to this motion corresponding admission by the court." (Page 64, Record.)

And so, in due time, Arellano moved to set aside this order, but after it was opposed by Barreta, the trial court issued an order of denial which counsel for Arellano claims he has never received, so much so that, unaware of such denial, under date of October 5, 1971, he filed a supplemental motion (to set aside). Again, Barreta opposed and on January 12, 1972, respondent court issued the following order of denial:

"Counsel for defendant Raul Arellano filed a motion dated August 25, 1971, praying that Raul Arellano's 'Motion to Set Aside Order Dated March 31, 1971' be resolved. A reading of the records of this case shows that said motion was specifically resolved and denied by the Court in its order dated May 24, 1971 (page 138). It also appears that a subsequent motion for reconsideration of said order was also denied by the Court on June 15, 1971 (page 150). It still appears in the records of the case that the allegations in the motion of counsel for Raul Arellano dated August 25, 1971, praying that the motion to set aside order dated March 31, 1971 be resolved, is not well-founded considering that as above stated the same has already been resolved by this Court and it is final.

The manifestations of counsel for defendant Raul Arellano in its supplemental motion is not supported by law and jurisprudence considering that the order of dismissal of the Court of the case against defendant Raul Arellano dated August 19, 1969 (page 60) does not constitute *res judicata* within the meaning of the Rules of Court so as to bar the filing of the amended complaint admitted by the Court and including defendant Raul Arellano as party defendant, said order of dismissal not being a decision on the merits.

Premises considered, the motion dated August 25, 1971, praying that the order of the Court dated December 30, 1971, be resolved is hereby denied. However, in the interest of justice, defendant Raul Arellano is hereby

given fifteen (15) days from receipt of this order to file a responsive pleading to the amended complaint, if he so desires, as already stated in the order of the Court dated May 24, 1971." (Pages 105-106, Record.)

On the other hand, the first order of denial referred to, dated May 24, 1971, reads:

"Before this Court are two motions: (1) motion for reconsideration of the order of March 31, 1971 filed by counsel for the defendant Raul Arellano, and (2) motion to dismiss filed by counsel for the defendant Simplicio M. Bautista.

With respect to the first motion, the Court finds from the amended complaint filed by the plaintiff the inclusion of new causes of action and new parties who, under the allegations therein, are being sued together. However, although it is true that the original complaint was already dismissed by final order as against the defendant Raul Arellano yet it appears in the fourth cause of action in the amended complaint that it seeks to nullify the very order of this Court dismissing the original complaint against said defendant on grounds of fraud and connivance. It also appears in the amended complaint that the plaintiff questions the validity of the issuance of Transfer Certificate of Title No. T-3573 issued on October 19, 1966 for Lot 3383 without any proper court order.

As to the second motion, movant Simplicio M. Bautista moves for the dismissal of the complaint on two grounds: that on July 19, 1958, the Court allegedly declared the sale in favor of Pedro Leynes as null and void and of res adjudicata due to the dismissal of the case against the defendant Raul Arellano on August 19, 1969.

During the oral arguments on these motions, counsel for the plaintiff produced a copy of the order of July 19, 1958, which order has not in effect declared the nullity of any sale. Neither can the Court consider for the present the ground of res adjudicata because the fourth cause of action does not involve defendant, Simplicio M. Bautista. In the opinion of the Court, it would seem better for all the parties impleaded in the amended complaint to join issues so that after trial on the merit the respective contentions of all of them could be passed upon with justice and fairness considering the fact that up to now plaintiff Santiago Uy-Barreta is in actual possession of the portion of the land described in the complaint and has his own house on the same.

"WHEREFORE, the Court hereby denies both motions filed by counsel for the defendants Raul Arellano and Simplicio M. Bautista without prejudice to the defendant's raising the previous order of dismissal and for the Court to consider the same. The Court, therefore, hereby directs the defendant Raul Arellano to file a responsive pleading to the amended complaint if he so desires." (Page 83, Record.)

Insisting however that the case insofar as he was concerned had long been terminated and could no longer be revived, much less indirectly thru the subterfuge of an amended complaint, Arellano filed on February 4, 1972 a motion for the reconsideration of the order of January 12, 1972. On February 9, 1972, Barreta filed a comment on said motion and on February 11, 1972, respondent court issued the last impugned order thus:

"Considering the motion for reconsideration dated February 4, 1972, filed by counsel for Raul Arellano, the Court finds to be well-founded the allegation therein that counsel for Raul Arellano never received a copy of the order of the Court dated May 24, 1971, as well as June 15, 1971, which orders denied the motion to set aside the order of the Court dated March 31, 1971 admitting plaintiff's amended complaint. However, the Court cannot reconsider its order dated January 12, 1972 based on said ground, considering that counsel had been subsequently informed of said orders and given an opportunity to argue his original motion, and for the reason stated in the second paragraph of the order of the Court dated January 12, 1972, specifically, that the dismissal of the Court of the case against defendant Raul Arellano dated August 19, 1969 does not constitute res judicata. The Court further reiterates its ruling that said order of dismissal dated August 19, 1969, does not constitute res judicata considering that from the records of the case, it appears that the written interrogatories sent to the plaintiff was done without leave of Court and in violation of Section 1, Rule 24 of the New Rules of Court which prescribes that leave of Court is required for said written interrogatories after jurisdiction has been obtained over any defendant or over property which is the subject of the action.

The urgent motion filed by counsel for the defendant Raul Arellano dated April 19, 1967, specifically manifests that defendant received copy of plaintiff's complaint on April 6, 1967. Thus, at the time and date the written interrogatories to the plaintiff was sent, (which written interrogatories is dated May 5, 1967) the court had already acquired jurisdiction over the person of the defendant, and consequently, leave of court was necessary before said written interrogatories could be sent to the plaintiff (Section 1, Rule 25 in connection with Section 1 Rule 24). The order of the court dated August 19, 1969, dismissing the case as against the defendant. Raul Arellano shows that said order of dismissal was issued based on the erroneous assumption that the written interrogatories for the plaintiff sent by the defendant Raul Arellano was proper even without previous leave of court. It is to be noted further, that there is nothing in the records to show that the court had granted leave to file the written interrogatories, there being only an order of the court dated August 6, 1969 giving counsel for the plaintiff ten (10) days to file whatever pleadings he may desire to submit in connection with the motion to dismiss and in answer to the argument advanced by counsel for the defendant Raul Arellano.

PREMISES CONSIDERED, the order of dismissal of the court dated August 19, 1969, cannot, therefore, be considered as one of those falling under the provision of Section 3 of Rule 17 of the New Rules of Court and to constitute an adjudication upon the merits, since the same was not founded on either a failure to appear at the time of the trial, or to prosecute this action for an unreasonable length of time, or to comply with the rules of court or any order of the court. The motion for reconsideration is therefore denied.

Considering also the urgent motion dated February 4, 1972, defendant Raul Arellano is hereby given thirty (30) days from receipt of this order to file his responsive pleading to plaintiff's amended complaint." (Pp. 113-115, Record.)

II

The problem posed by the foregoing extended recital of the proceedings below is not as complicated as it would seem to be at first glance. The root issue here is whether or not the order of August 19, 1969, aforementioned, providing for the dismissal of the subject action (Civil Case No. 2167) as against Arellano was legally issued and not having been set aside by any superior court within the reglementary period has already become final. In the affirmative, it should follow as a matter of course that all the four (4) orders of respondent court questioned herein which combinedly admit or give due course to the amended complaint of Barreta rejoining Arellano as defendant in the same case, Civil Case No. 2167, are illegal and should be set aside. After a careful review of the record, We are fully convinced that the petition asking for such nullification should be granted.

A

While the reason for the evident turtle pace of the proceedings below does not appear in the record and none of the parties have so far volunteered any explanation thereof, it is a fact that Barreta had all the one and a half years after he was served the written interrogatories of Arellano until the first step was taken to make him serve his answers to the same in the form of a motion that the case be dismissed as against Arellano for such failure to serve said answers. Nevertheless, upon his request, respondent court, by its order of February 28, 1969, still gave him ten (10) days to file his opposition. And the ten days passed, but he did not file any opposition. In its order of March 25, 1969, the court noted that as of then, no such opposition had yet been filed. Even when Arellano reiterated in his motion of April 7, 1969 his prayer for dismissal of the action against him, invoking not only Section 5 of Rule 29 but also Section 3 of Rule 17, he remained nonchalant. At the hearing of said motion on April 25, 1969, he succeeded in securing a postponement of its consideration to "new assignment." And when the "new assignment" came on August 6, 1969, he was once more granted, after being heard in oral argument, "ten days from today within which to file whatever pleading he may desire to submit in connection with the motion to

dismiss (presumably of June 9, 1967, reiterated April 7, 1969) and in answer to the argument advanced by counsel for the defendant Raul Arellano." But, what is worse as recounted in Arellano's motion of August 11, 1969, quoted above, Barreta's counsel had stated at said hearing of August 6th that "plaintiff's answers (to the interrogatories) have been served on defendant's counsel in Manila to which counsel replied they have not received the same. Plaintiff's counsel, however, said again in open court that such answers must have been served already by a certain Atty. Berenguer that very moment or if not, possibly the next day", all of which representations have turned out to be untrue. Neither the promised opposition nor the expected answers ever came. Hence, the reiterative prayer in said motion for "instant dismissal of plaintiff's complaint."

Upon these premises, We cannot perceive how the order of dismissal of August 19, 1969 could be faulted as baseless and illegal. On the contrary, had the order been otherwise, We would not have hesitated to consider such negative action a grave abuse of discretion and order by mandamus the dismissal prayed for. The seeming cocksureness of Barreta that he could secure a delay of the proceedings, as in fact he successfully got almost interminable postponements and extensions from the trial court cannot but strike Our attention. The record reveals that for no reason at all, plaintiff held the consideration of the incident regarding the interrogatories of defendant for all the time he or his counsel wanted. The forbearing attitude of the trial court in this respect was unwarranted. There was absolutely nothing complicated in the questions involved, and for the matter to have been left unacted upon definitely from May, 1967 to August, 1969 is beyond any justifiable explanation. In fact, none has been shown to Us. More than a year ago, in *Sacdalan vs. Bautista*, 56 SCRA 175, We expressed Ourselves clearly in regard to a similar situation this wise:

"We do not hesitate to grant the petition. The manifestly unpardonable negligence of private respondents, displayed in the record, throughout all stages of these proceedings, is matched only by the inexplicable liberality extended by respondent judge to them. The Court cannot but express its annoyance in the premises. Under the circumstances extant in the petition and its annexes, the disposition of respondent judge to further give private respondents another chance to repeat their inattention and disrespect to the court is simply unwarranted and constitutes, to say the least, grave abuse of discretion. The resulting injury to the administration of justice in consequence of the tactics of private respondents and/or their counsel and the indifferent attitude of the court towards them are so deplorable, specially in these times when it is imperative that the people need to be convinced that the courts will not brook any unnecessary delay in the conduct of its judicial business, that a repetition by any of those concerned will certainly merit drastic action on the part of this Court. (Private respondents are so unconcerned about their obligation to the Court that after asking for extension to file their answer they did not file any and have not had the courtesy to explain why.)." (at page 177.)

To be sure, We can uphold the order of dismissal in question on the strength of the basic principles of discovery procedure more specifically, for failure of Barreta to serve any answer to Arellano's interrogatories. The contention of respondent that it was erroneous for the trial court to dismiss the action without first ordering Barreta to answer the interrogatories of Arellano and waiting for his failure to do so has no merit. Neither is there merit in the claim that the sending of the interrogatories in question had not yet been given due course by the court. "Leave of court is not necessary before written interrogatories may be served upon a party." (2 Moran 90, 1970 ed.) In any event, if Section 1 of Rule 25 could be susceptible of the construction suggested by counsel for Barreta, it is to Us a sufficient basis for the discovery procedure of written interrogatories in this case to have proceeded in motion after plaintiff had been given a period to oppose and had failed to do so. Besides, the repeatedly unfulfilled promises of counsel to produce the answers of his client render such objection academic. Withal, the order of dismissal of August 19, 1969, which counsel referred to in his motion of December 16, 1969 as having been issued "in view of plaintiff's failure to answer the written interrogatories" was virtually accepted as final in said motion, so much so that the artifice of moving for the reinclusion of Arellano as an indispensable

party was conceived. In brief, there is here a case where the party served with written interrogatories has for unexplained reasons failed altogether to comply with the requirement of Section 2 of Rule 25 that they be answered. Under these circumstances, the assailed dismissal finds justification in Section 5 of Rule 29 which provides:

"Failure of party to attend or serve answers. — If a party or an officer or managing agent of a party wilfully fails to appear before the officer who is to take his deposition, after being served with a proper notice, or fails to serve answers to interrogatories submitted under Rule 25, after proper service of such interrogatories, the court on motion and notice, may strike out all or any part of any pleading of that party, or dismiss the action or proceeding or any part thereof, or enter a judgment by default against that party, and in its discretion, order him to pay reasonable expenses incurred by the other, including attorney's fees."

The provision cited by counsel, which is Section 1 of the same rule read together with its Section 3(c), is not applicable here. The said provisions are:

"Sec. 1. Refusal to answer. — If a party or other deponent refuses to answer any question propounded upon oral examination, the examination shall be completed on other matters or adjourned, as the proponent of the question may prefer. Thereafter, on reasonable notice to all persons affected thereby, he may apply to the court of the province where the deposition is taken for an order compelling an answer. Upon the refusal of a witness to answer any interrogatory submitted under sections 25 and 26 of Rule 24 or upon the refusal of a party to answer any interrogatory submitted under Rule 25, the proponent of the question may on like notice make like application for such an order. If the motion is granted, the court shall require the refusing party or deponent to answer the question or interrogatory and if it also finds that the refusal was without substantial justification, it may further require the refusing party or deponent or the attorney advising the refusal, or both of them, to pay to the examining party the amount of the reasonable expenses incurred in the obtaining the order, including reasonable attorney's fees. If the motion is denied and if the court finds that the motion was made without substantial justification, it shall require the examining party or the attorney advising the motion or both of them to pay to the refusing party or deponent the amount of the reasonable expenses incurred in opposing the motion, including reasonable attorney's fees."

xxx xxx xxx

Sec. 3. Other consequences. — If any party or an officer or managing agent of a party refuses to obey an order made under section 1 of this rule requiring him to answer designated questions, or an order under Rule 27 to produce any document or other thing for inspection, copying, or photographing or to permit it to be done, or to permit entry upon land or other property, or an order made under Rule 28 requiring him to submit to a physical or mental examination, the court may make such orders in regard to the refusal as are just, and among others the following:

xxx xxx xxx

(c) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceedings or any part thereof, or rendering a judgment by default against the disobedient party."

What these provisions refer to is a situation where a particular question in the set of written interrogatories served upon a party is concerned, but where the whole set of written interrogatories is ignored and none of the questions is answered the sanction is found in Section 5 above.

B

There is, however, a more solid basis for the impugned dismissal order. It is Section 3 of Rule 17, also invoked even in the court below by petitioner, which provides:

"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."

To begin with, instead of seeing to it that every step is expeditiously taken so that his complaint may be placed in the calendar for trial, by his own transparent dilatory moves, plaintiff in this case contributed actively to the unreasonable and unexplained delay of the preliminary incidents. His excuses in relation to the written interrogatories are flimsy and groundless. As can be seen, the interrogatories are proper, contrary to the observations of plaintiff that they deal with "facts clearly seen from the allegations of the complaint . . . (hence) frivolous and need not be answered." The interrogatories sought specific details of the title relied upon by plaintiff, which is certainly proper, there being no mention of any title of the plaintiff in the complaint. In other words, it can be said that somehow plaintiff was guilty of failure to prosecute his case for an unreasonable length of time, by failing to keep the progress thereof in motion for almost two years. Under the rules; it is the duty of a plaintiff to always take the initiative in keeping the proceedings active and going until it is terminated, otherwise his case may be dismissed either upon motion of his adversary or of the court itself.

What made the dismissal of Barreta's complaint more justified is that his inaction was manifested by paying no heed at all to various periods given to him by the court to file his opposition or "whatever pleading he may desire" to enable the court to act on the incidents pending before it. All practitioners must know that when the court gives a party a period to file any pleading or paper, it is because such pleading or paper is needed to enable it to act justly and fairly. No party may regard such periods as inconsequential and, therefore, treat them with nonchalance and indifference, without sacrificing the public interest, considering that understandably their observance is indispensable to the proper administration of justice. Failure to comply with them must, therefore, be satisfactorily explained to be excusable. Accordingly, the repeated unexplained failure of plaintiff herein to comply with the orders of the trial court is definitely a valid and legal ground for the dismissal of his case, for failure to prosecute.

III

In view of the foregoing discussion and conclusions, the only question remaining for our resolution is whether or not the dismissal of Barreta's complaint as against Arellano by virtue of the trial court's order of August 19, 1969 has the attributes of *res adjudicata*, in which case Barreta's amended complaint admitted by the same trial court thru its impugned order of March 31, 1971 should be barred. Petitioner maintains the affirmative, invoking Section 3 of Rule 17, already quoted above. On the other hand, respondent posits it could not be so because the trial court has not yet passed on the merits of his claim of ownership of the land in dispute, which he believes are clearly with him. Besides, according to respondent, the amended complaint admitted by the trial court attacks directly the validity of the said order of dismissal on the ground of its having been secured allegedly thru fraud, hence the defense of *res adjudicata* is unavailing.

Petitioner is correct. As explained above, although the order itself of August 19, 1969 does not say so expressly, the dismissal ordered thereby should be deemed to be for failure to prosecute. In effect, said order resolved not only Arellano's motion of August 11, 1967 therein specifically mentioned but also those of June 9, 1967 and April 7, 1969 which were to the same end and still unacted upon. The motion of April 7, 1969 invoked Section 3 of Rule 17. Reading all said motions together in the light of the relevant circumstances We have emphasized earlier, there can be no question that they had the dual thrust of complaining not only against Barreta's failure to answer the interrogatories but more importantly his disregard of the periods given him by the trial court to manifest his position.

Upon these premises, the result is inexorable. The very text of Section 3 of Rule 17 enjoins categorically that such a dismissal as that ordered by the trial court on August 19, 1969 "shall have the effect of an adjudication upon the merits, unless otherwise provided by court." These words are incapable of being misunderstood or misconstrued. Indeed, it would not be of any advantage to the speedy administration of justice for the courts to dismiss actions only to keep the door open for them to be easily refiled to reoccupy again the attention of the court which could be better devoted to other cases needing disposition. Only parties who are diligent in the prosecution of their rights and who do not obstruct the even flow of the course of judicial proceedings with unwarranted impositions on the time of the court are entitled to an actual decision on the merits. In the interest of expediting the termination of cases in the courts, sanctions are imperative against any form of obstruction or delay. Indeed, We have repeatedly held that "the dismissal of an action for failure of the plaintiff to prosecute the same rests upon the sound discretion of the trial court and will not be reversed on appeal in the absence of abuse. The burden of showing abuse of judicial discretion is upon appellant since every presumption is in favor of the correctness of the court's action." (1 Moran pp. 528-529, 1970 ed. and the cases therein cited.) And in the case at bar, if there is any abuse of discretion evident, it is the seemingly endless tolerance of the trial court to the continuous and repeated impositions of respondent Barreta. But all these is not to say that dismissal under Section 5 of Rule 29 does not constitute *res adjudicata*, a point We do not here decide, albeit the writer of this opinion feels that such it should be the construction, considering that failure to answer interrogatories constitutes such a subversion of the objective of the rules on discovery designed precisely to obviate technical and lengthy proceedings in the determination of the substantial rights of the parties. The purpose of discovery procedures is to provide means by which both parties in an action may acquire, without waiting for the trial, knowledge of material facts and evidence which otherwise would be peculiarly within the knowledge only of the other. In that way, surprises and deceptions are avoided and the litigants must have to depend no longer on the techniques and tactics of trial lawyers but must win or lose on the basis of the bare facts constituting their causes. It is thus important that the rules on discovery should be duly observed and violations thereof correspondingly dealt with.

Of course, Section 3 of Rule 17 may not be invoke in instances of innocuous and inconsequential infractions of the rules or inattention to or violation of unimportant orders of the court, without prejudice to their being considered as contempt and punished accordingly, but when the rule violated is one intended to hasten judicial action and to bring about as just a decision as is humanly possible to do in the most simple manner, or the order disobeyed precisely purports to enable the court to perform its functions properly, it is the better policy not to tolerate deviations, unless clearly justifiable. In the case before Us now, no justification whatsoever has been alleged for the gross disregard by plaintiff of the orders of the trial court.

Anent the contention that the amended complaint seeks in its fourth cause of action to have the order of dismissal of August 19, 1969 nullified for having been supposedly secured thru fraud, to begin with, We are not inclined to give our assent to the procedure adopted by counsel of trying to revive the very complaint that has been dismissed by simply amending it with the addition of an allegation that the previous dismissal was illegal and void. The dismissal of a case may be set aside within the same proceeding only thru a motion for new trial under Rule 37 or a petition for relief under Section 2 of Rule 38, upon compliance with the conditions prescribed in said rules. It is rather incongruous that after a complaint has been dismissed and without the remedies just mentioned being availed of and without any explanation for such omission, We would allow that the same complaint, with some amendments, be the very pleading utilized to annul the very order that dismissed it. After a decision terminating a case has become final, it may be set aside on the ground of fraud only by means of a justified petition for relief, if filed within the period fixed in Section 3 of Rule 38, and after said period but within four years, only by another action for the purpose.

In the instant case, however, it is quite obvious that even if the fourth cause of action alleged by Barreta were in a

new complaint, We would say that it could not prosper. Prescinding already from the point that the particulars of the supposed fraud are not sufficiently averred, contrary to the requirement of Section 5 of Rule 8, We note that according to Paragraph 3 of the "Fourth Cause of Action" referred to, "(P)laintiffs are informed and so believe that there has been connivance of the herein defendants and the two, Richard Doe and John Doe, etc." Surely, for obvious reasons, allegations of fraud intended to induce the court to set aside or annul a final order or decision regular on its face cannot be made on information and belief, even if the pleading is verified. Moreover, going over the records and comparing the allegations in the said "Fourth Cause of Action" with those in the "Alternative Motion for Relief" incorporated by counsel in his motion of January 16, 1971 to set aside order of August 19, 1969, We cannot say that they are entirely consistent with each other. Indeed, why was the supposed fraud alleged in the amended complaint not mentioned at all in the motion of January 16, 1971? Further still, a petition for relief against an order of dismissal once filed must be pursued to its logical conclusion, including an immediate appeal, if it is denied, and it cannot, therefore, be abandoned in favor of an action for annulment on the same basic ground. In other words, after a petition for relief is denied, and no appeal is taken against such denial, an action for annulment of the questioned order or decision based on the same fundamental grounds alleged in the petition is barred. What is worse, We feel that the allegation that Barreta came to know of the order of dismissal only in December, 1970 does not ring true, for as early as December 16, 1969, it was alleged in Atty. Vigor Ja. Amador's motion of that date, complaining against said order of dismissal, that "(P)laintiff is now ready with copies of documents needed to answer the queries of Mr. Raul Arellano in his quest for interrogatories," which clearly implies that somehow client and counsel were in touch with each other relative to the matter in dispute — the interrogatories, the orders of the court and the expected answers to said interrogatories. And from the circumstances extant in the record, We are not prepared to accept the suggestion that Barreta has been the victim of the perfidy of his counsel.

We are saying all these not because they are necessarily within the issues before Us now, considering the nature of the present proceedings, but more because of the Court's desire to put an end to this litigation the only way We are convinced it should terminate. Were We to leave the issue of the propriety of the allegations of fraud in the amended complaint We are disallowing by this decision, the erroneous thought might be left lingering that the Court has priced technicality above the essence of Barreta's claim of ownership, which is not correct. For the long and short of this opinion is that what the Court perceives in the record are not only flagrant violations of the rules and utter disregard of court orders but lack of absolute candor on the part of private respondents. If indeed they have actually lost a rightful claim of ownership over the land in question, they have only themselves to blame.

It was clearly erroneous on the part of respondent court to have admitted the amended complaint of private respondent. And it being apparent that the said amended complaint is validly barred by res adjudicata insofar as petitioner is concerned, the said admission constitutes grave abuse of discretion.

In view of all the foregoing, the petition is granted and the above-mentioned orders of respondent court of March 31, 1971, May 24, 1971, January 12, 1972 and February 11, 1972 are hereby annulled and set aside, the order of dismissal of August 19, 1969 having been properly and legally issued and become definitely final and conclusive. Costs against private respondent.

Fernando, (Chairman), Antonio, Aquino, and Concepcion, Jr., JJ., concur.

[1] References in this opinion to Barreta and Arellano include their respective counsel.

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