

CRISPINA GUANZON, ET AL., PLAINTIFFS AND APPELLANTS, VS. FERNANDO MAPA, DEFENDANT AND APPELLEE

G.R. No. L-19249. February 28, 1963

Ponente: PAREDES, J.

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PAREDES, J.:

On October 31, 1961, the Court of Appeals certified the case to this Court, stating that the issue involved herein is "solely on the interpretation of the order of the court a quo dated October 5, 1959, particularly the dispositive portion thereof, which is a legal question."

The Order issued in Civil Case No. 4666, CFI, Negros Occidental, between the same parties, subject of this proceeding, reads as follows—

"When this case was called for trial today, the defendant and his counsel appeared but the plaintiffs filed a motion for postponement in lieu of appearance. The record shows, however, that since the original complaint was filed, the counsel for the plaintiffs had asked for no less than five (5) postponements of the trial without the defendant having asked for any single postponement, and after the motion to amend the complaint was denied by this Court, the plaintiffs again asked for at least three other postponements.

"Wherefore, the plaintiffs' motion for postponement is denied and this case is hereby dismissed for lack of interest. The defendant's counterclaim is likewise dismissed, without prejudice."

On November 29, 1959, plaintiffs-appellants presented another complaint with the CFI of Negros Occidental, against appellee herein for the recovery of a parcel of land, Civil Case No. 5557, which was the object of the previous complaint, dismissed on October 5, 1959.

Under date of February 1, 1960, defendant-appellee interposed a Motion to Dismiss, contending that the cause of action of plaintiffs is already barred by a prior judgment. The decision quoted above was reproduced in the motion to dismiss and submitted in support of the said motion. The motion to dismiss was opposed by plaintiffs, arguing in the main, that the dismissal of the previous complaint, was without prejudice and, therefore, the second complaint, is not barred.

On February 16, 1960, the court a quo handed down an Order, the pertinent portions of which state—

"A perusal of the dispositive part of the order of this Court, above-quoted, shows the contention of the defendant that the dismissal of the complaint in Civil Case No. 4666 is with prejudice to be well-taken. The first sentence of the dispositive part of the order in question refers to the dismissal of the complaint, which is without any condition at all, and under Section 3, Rule 30, of the Rules of Court, it is understood to be with prejudice, and shall have the effect of an adjudication upon the merits. It is the second sentence of the dispositive part of the order in question, referring to the counterclaim of the defendant's which was dismissed 'without prejudice,' meaning, that the defendant's right to prosecute his counterclaim in a separate action is thereby reserved.

"The ruling laid down by the Supreme Court to the effect that a dismissal upon plaintiff's failure to appear at

the trial does not constitute *res adjudicata*, is no longer good under the new Rules except where dismissal is made expressly without prejudice.' (Comments on the Rules of Court, by Moran, Vol. I, p. 636).

In view of the foregoing, the Court finds the motion to dismiss filed by the defendant to be well-founded, and the plaintiffs' complaint dated November 25, 1959, is hereby dismissed."

Plaintiffs-appellants filed with the lower court a motion for Reconsideration, on three (3) grounds, to wit —

- That the order of October 5, 1959, dismissing Civil Case No. 4666 is vague and as such should be interpreted in favor of the preservation of the right of the plaintiffs;
- That plaintiffs have a meritorious case, and if given due course, will eventually prosper; and
- That the dismissal of the present case will work an injustice and inequity to the plaintiffs.

Full discussion of the above grounds was made by counsel for the appellants. Liberal interpretation of the rules was invoked, in view of the supposed vagueness of the order. As for the merits of the case, appellants pointed out that the alleged sale of the property to the appellee's predecessors-in-interest was made before the expiration of the 5 years, period provided for by the Public Land Act. The motion for reconsideration was *deiiiiefi*.

The only issue We are called upon to determine in this proceedings, is the import of the Order of October 5, 1959. It will be noted that the lower court made a clear interpretation of the Order, when it said: "* * *. The first sentence of the dispositive part of the order in question refers to the dismissal of the complaint, which is without any condition at all, arid under Section 3, Rule 30 Of the Rules of Court, it is understood to be with prejudice, and shall have the effect of an adjudication on the merits". We share the view of the court *a quo*. No other reasonable interpretation could, have been meant. And considering the fact that the judge who issued the controversial order, was also the one who interpreted or clarified the same, it becomes apparent that what the court really ordered, when, it dismissed the complaint was a dismissal with prejudice. If he had meant what the appellants want Us to understand, his Honor, could have likewise suffixed the dismissal of the complaint with the phrase "without prejudice", in the same way he did with the dismissal of the defendant's counterclaim. The argument of appellants that the word "likewise" refers or modifies both the complaint and counterclaim, is, to Our mind, untenable. Even under ordinary rules of grammar, the phrase "without prejudice" appearing on the second sentence of the dispositive portion of the decision, should modify or refer only to the counterclaim. Had the two sentences been separated by a comma, there would have been no doubt, that the phrase without prejudice had modified and/or referred to the dismissal of both the complaint and the counterclaim. But there were no different and distinct sentences, containing different subjects, predicates and modifiers.

Conformably with all the foregoing, the Order appealed from should be, as it is hereby **AFFIRMED**. Costs taxed against plaintiffs-appellants.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Dizon, Regala and Makalintal, JJ. concur.

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