

THE PROVINCE OF PANGASINAN, REPRESENTED BY GOVERNOR CONRADO F. ESTRELLA AND JORGE SORIANO, PLAINTIFFS AND APPELLEES, VS. PEDRO PALISOC, JUAN AQUINO, PASCUAL LOMBOY, GENOVEVA AQU...

G. R. No. L-16519. October 30, 1962

Ponente: PAREDES, J.

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PAREDES, J.:

On August 27, 1956, the Provincial Government of Pangasinan, represented by its Highway District Engineer, and Jorge Soriano, entered into a written contract of lease for the operation of the Bocboc Ferry along the Agno River, between the municipalities of San Carlos and Aguilar, same province, in consideration of P150.00 for a period of one calendar year, unless revoked for cause.

On September 1, 1956, the lessee Jorge Soriano began the operation of the ferry business, carrying passengers and cargo to and from the Agno River between Aguilar and San Carlos with the rate of fee fixed by the government.

On September 2, 1956, defendants put up a ferry and began carrying passengers and cargo through the same route as that operated by the lessee, charging fees of 5 centavos per passenger and fifty centavos on cargo, without authority from the provincial government. On February 11, 1957, defendants constructed a bamboo bridge over the same route, against the protest and objection of the lessee. Plaintiff Soriano asked the Provincial government to stop the defendant from ferrying and carrying passengers, but the government was unable to do so.

On February 26, 1957, Jorge Soriano filed a complaint against the Province of Pangasinan and Pedro Palisoc, Juan Aquino, Pascual Lomboy, Genoveva Aquino and Andres de los Santos. The province of Pangasinan, upon its motion, was allowed to join the plaintiff Soriano, as party plaintiff and an amended complaint was filed on April 29, 1957. The other defendants filed their answer. The original as well as the amended complaint prayed for damages against the defendants and a writ of preliminary prohibitory injunction which was issued by the trial court on May 21, 1957.

A pre-trial conference was set by the trial court on July 29, 1959 which was postponed upon petition of parties to August 29, 1959. On motion of counsel for defendants, the pre-trial hearing was postponed to September 24, 1959, with due notice to Atty. Dominador Soriano for the defendants and the counsel for plaintiffs. On September 24, 1959, in view of the non-appearance of the defendants and their counsel on motion of plaintiffs counsel, the trial court allowed the plaintiffs-appellees to present their evidence, before the special deputy clerk of court. On September 30, 1959, the trial court rendered its decision which is now the subject of the appeal. The decision made the writ of preliminary injunction issued, definite and permanent; ordered the defendants to demolish the bridge at their own expense, to pay jointly and severally to the plaintiff Jorge Soriano, the sum of P1,755.00 as damages and the sum of P300.00 as attorney's fees.

Defendants-appellants moved for a reconsideration of the decision on the following grounds: (1) that they had

been deprived of their day in court; (2) that their failure to appear at the pre-trial conference was due to excusable negligence; and (3) that they have a meritorious defense. The plaintiff-appellee countered that (1) the non-appearance of defendants and their counsel was deliberate, to delay the disposition of the cases; (2) that the pre-trial is a part of the trial itself; (3) that the sickness of Pedro Palisoc one of the defendants is not a valid ground for the rest of the defendants in not appearing in court; (4) that the medical certificate of Palisoc was obtained illegally; and (5) that the municipal resolution of the municipalities of Aguilar and San Carlos, as to the necessity of a bridge over the Agno River is not a meritorious defense. The motion having been denied, defendants appealed and now claim in their brief that the trial court erred: (1) In allowing the plaintiffs-appellees to present their evidence, upon defendants' failure to appear at the pre-trial conference (2) In appointing the deputy clerk of court to receive the evidence of the plaintiffs-appellees; (3) In rendering judgment on the basis of the evidence received by the deputy clerk of court; and (4) In denying the motion for reconsideration.

Appellants claim that under the circumstances, the scheduled pre-trial conference on September 24, 1959, was in effect, turned into a trial on the merits, a purpose for which no notice was given to the appellants and such hearing, consequently, virtually amounted to a denial to the said appellants of their day in court. They further claim, that section 1 of Rule 25 of the Rules of Court which governs pre-trial conferences in this jurisdiction, does not authorize the reception of evidence on the merits of the case upon failure of the defendants to appear at the pre-trial conference. It should be noted, however, that the rule does not also prohibit such procedure to be followed. In a pre-trial conference, the parties to the case are notified of the date of the pre-trial hearing and are obliged to obey the orders of the court to that effect. It is recognized right of the trial court that where a plaintiff failed to appear at a pre-trial conference, the case could or might be dismissed (*Wisdom vs. Texas Co.* IFRS 278, 72 F. Supp; 992). This being the case, applying the rule, a converso where a defendant and his counsel refuse without justifiable reasons, to appear in the pre-trial hearing, the court, as a matter of equity and impartiality, may or can also order the plaintiff to present his evidence on the merits of the case. Once jurisdiction has been acquired over the person and the subject of the case, the trial court has the full control and disposition thereof. To allow a defendant to appear or not in a pre-trial hearing "would be to submit a pre-trial conference to the whims and caprice of the defendant without any corresponding sanction and action against him in Court". A pre-trial hearing should not be left to the will and wishes of the defendants, to cause disadvantage to the complaining party and hamper the court in its duty to implement the language and spirit of the pre-trial, which is the beginning and a part of the trial itself.

The procedure of designating the clerk of court as commissioner to receive and report evidence to the court is sanctioned by sections 2 & 3 of Rule 34, Rules of Court. When the parties do not consent, the court, may, upon the application of either or of its own motion, direct a reference to a commissioner when a question of fact other than upon the pleadings, arises upon motion or otherwise, in any stage of a case or of carrying a judgment or order into effect (Section 2(c) Rule 34). Among other powers or duties, the commissioner may be directed to report only upon particular issues, or to do or perform particular acts or to receive and report evidence only and the trial or hearing before him shall proceed in all respects as though the same had been before the court (Sec. 3, same rule). After all, the duty to decide the case on the merits rests on the judge who shall write personally and directly prepare and sign the decision, based upon the evidence reported by the commissioner (Rule 35). This is what has been done in the present case.

The damages claimed by the plaintiff-appellees have been proven by a preponderance of evidence and at this stage of the proceedings, we are not prepared to alter the trial court's findings, to this effect. The exemption provided by section 2134 Adm. Code, cited by appellants, for travelers on foot or mounted animals from toll or ferriage fees is not applicable in the present situation of plaintiff Jorge Soriano, because the enterprise is a private leased right. The law only allows the exemption in bridges or ferries constructed at the expense of and maintained

by the government. Defendants-appellants contend that Jorge Soriano, did not suffer any damage because he did not secure a certificate of public convenience (Sec. 15, C. Act No. 146). This Act, however, does not cover Jorge Soriano who used bancas of small sizes for transportation, and the lease was only for one year duration.

The motion for reconsideration of the trial court's decision, was correctly denied. The respondent Court found as a fact that Atty. Soriano's failure to attend the pre-trial was due to an unexcusable negligence, and the non-appearance of defendant Pedro Palisoc at the pre-trial was not due to illness. The trial court found a culpable omission on the part of defendants and their counsel "to cooperate with the Court in the prompt disposal of the cause". Moreover, the evidence sought to be introduced, by the movants, is of such character, that even if adduced, same will not alter the decision.

In view hereof, the decision of September 30, 1959, sought to be aside, is affirmed, with costs against the defendants-appellants.

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

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