

LEODEGARIO ORTEGA, ET AL., PLAINTIFFS AND APPELLANTS, VS. DOMINADOR PACHO, DEFENDANT AND APPELLEE.*G.R. No. L-8588. March 14, 1956*

Ponente: BAUTISTA ANGELO, J.

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Plaintiffs impleaded the defendant before the Court of First Instance of Leyte to recover certain rentals for the use of a portion of land belonging to them and the amount of 500 as damages. Answering the complaint, defendant set up certain special defenses and a counter-claim.

On motion of plaintiff's counsel, the case was originally set for hearing on August 3, 1953. When this date came the hearing was postponed to August 15, 1953 upon petition of defendant's counsel. The case was not heard on that date because of the inability of counsel for defendant to appear and so the hearing was again postponed to September 23, 1953. On this date, the attorney for the plaintiffs was sick and upon their petition, the court granted another postponement to July 20, 1954. In the meantime, plaintiffs engaged Attys. Fernando C. Sudario and Alfredo Singzon in substitution of their former counsel and when the date of hearing came, these new attorneys requested the court for another postponement alleging that they did not have time to prepare because the case had been recently entrusted to them, and there being no objection on the part of defendant's counsel, the hearing was again postponed to August 23, 1954.

On that date, Attorney Singzon appeared for the plaintiffs but instead of going to trial, he again asked for postponement on the ground that he had been informed of the hearing by the previous counsel only the day before, which was granted over the objection of defendant, the court postponing the hearing for the last time to September 1, 1954. But when this date came, the following is what happened: "Atty. Sudario informed the court that while the plaintiffs are present his witnesses could not come because he had no time to contact them. Attorney Singzon also informed the Court that he has duly received the subpoena and tried to contact the plaintiffs that he could not locate them. In view of these facts Attorney Benedicto strongly objected to further postponement and insisted in his motion for dismissal" (p. 13, Record on Appeal).

As a result, the court then and there issued an order dismissing the case without pronouncement as to costs. To set aside this order, plaintiffs interposed the present appeal.

It appears that the hearing of this case has been postponed several times upon petition of both plaintiffs and defendant. The original counsel for plaintiffs was Attorney Marcelino R. Veloso who was on July 20, 1954 substituted by Attorneys Fernando C. Sudario and Alfredo Singzon. After the substitution, the hearing was postponed to August 23, 1954 and on this date only Attorney Singzon appeared as counsel for the plaintiffs who, because of lack of time, again asked for postponement which was granted and the hearing was again set to September 1, 1954 with the warning that it would be the last postponement that the court will entertain. But when this date came, the attorneys for the plaintiffs again were not ready for trial and when they asked for another postponement, upon objection of counsel for defendant, the court dismissed the case.

It is now contended by appellants that the dismissal was improvidently made for the reason that the two attorneys of record of the plaintiffs were not given the notice of hearing required by the rules for which reason they were not able to contact their witnesses nor prepare their evidence. And this claim is made to depend upon the fact that, while the notice of hearing for Attorney Alfredo Singzon was sent by mail to one Serafln Singzon, no such notice was sent either personally or by mail to the other attorney of record, Fernando C. Sudario. It is contended that such omission or lack of notice is a violation of section 2, Rule 27, which provides that, if a party appears by an attorney service upon the latter shall be made unless otherwise ordered by the court.

While it is true that the notice intended for Attorney Alfredo Singzon was sent by mistake to another attorney by the name of Serafin Singzon, the mistake has been cured when the first named Singzon manifested in open court that after; all "he has duly received the subpoena" which gives the impression that the notice has been relayed to him. And it may be said in this connection that said attorney cannot be heard to complain of such lack of notice in view of the fact that the postponement was granted upon his own request and he was present when the date was set by the court. The case is different with regard to Attorney Sudario who was not actually notified of the hearing but came to know it only one day before when he went to the court to attend to the hearing of another case and casually was informed that the present case was to be heard on September 1, 1954. The question that now arises is: Is this lack of notice to Attorney Sudario of such a nature that would invalidate the action taken by the court? Did such lack of notice deprive the plaintiffs of their day in court?

The answer must of necessity be in the negative considering the undisputed fact that the plaintiffs are represented in this case by two attorneys of record, namely, Fernando C. Sudario and Alfredo Singzon, and at least one of them was duly notified of the hearing. The rule in such a case is that the notice of hearing may be made either upon both attorneys or upon one of them, unless the court directs otherwise. Thus, section 2, Rule 27 provides that, "If any of such parties has appeared by an attorney or attorneys, service upon him shall be made upon his attorneys or one of them, unless service upon the party himself is ordered by the court." This provision is too clear to admit of any other interpretation.

Counsel for appellants contends that the above interpretation is only feasible of the attorneys who appear for a party are law partners or working in the same law office and not when they are practising one independent of the other in which, case notice to both would be necessary ; but such construction is unjustified because It appears contrary to the very letter of the rule. When the rule employs the words "his attorneys or one of them" it can only refer to those employed regardless of whether they belong to the same law firm or office, otherwise that meaning would have been expressed therein. The reason for the rule undoubtedly is that, when more than one attorney appears for a party, notice to one would suffice upon the theory that he would notify or relay the notice to his colleagues in the case. This is a rational and logical interpretation and we find no plausible reason to rule otherwise.

We may perhaps give a concession to situation where either by an 'agreement or proper, manifestation one of the attorneys is expressly designated as the one to whom service of all pleadings is to be made, or where it is admittedly clear or obvious that one is the leading counsel and the rest mere helpers, and this notwithstanding, the notice is given to one not intended to receive it thereby causing as a result the failure of the party or counsel to appear due to lack of such a notice. In such a case, there is indeed failure of due process, and if it arises we would not hesitate to give due relief. But such, is not the situation obtaining in the instant case.

As to whether the trial court has committed an abuse of discretion in dismissing this case notwithstanding the motion for reconsideration set up by the plaintiffs, we find in the record enough justification for such dismissal it appearing that the case has been postponed many times and had been pending trial for nearly three years. The trial court took particular notice of this situation when it refused to reconsider its order of dismissal (p. 21, Record

on Appeals).

The order appealed from is affirmed, without pronounce merit as to costs.

Parás, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Labrador, Concepcion, Reyes, J. B, L., and Endencia, JJ., concur.

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