

CIRIACO RACIMO, PLAINTIFF-APPELLEE, VS. ARCADIO DIÑO, DEFENDANT-APPELLANT.

G.R. No. L-27804. February 27, 1976

Ponente: AQUINO, J.

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AQUINO, J.:

On May 27, 1958 Ciriaco Racimo, who had leased from the Manila Railroad Company since 1945 a lot located at Tramo Street, Barrio San Dionisio, Parañaque, Rizal, which he had subleased to Arcadio Diño, filed against him an unlawful detainer action in the justice of the peace court of that municipality (Civil Case No. 584).

Diño in his answer pleaded as defenses that Racimo had no cause of action against him because it was the Manila Railroad Company that could eject him and that it was the Court of First Instance of Rizal that had jurisdiction over the case because he had been occupying the lot for more than thirteen years.

After trial the justice of the peace court in a decision dated October 25, 1962 (more than four years after the action was filed) ordered Diño to vacate the lot and to pay Racimo two hundred pesos as damages.

Diño appealed to the Court of First Instance of Rizal, Pasay City Branch III. On May 8, 1963 the deputy clerk of court of that branch notified the parties and their lawyers that the appealed case had been docketed. Diño refiled his answer on May 22, 1963. Racimo answered the counterclaim in that answer on June 10, 1963.

On March 31, 1964 the lower court *ex mero motu* dismissed Diño's appeal because of his failure to prosecute it "for an unreasonable length of time". It ordered the remand of the case to the municipal court of Parañaque for the execution of its judgment.

The lower court denied Diño's motion for the reconsideration of that order of dismissal which motion was opposed by Racimo. From that order of dismissal, Diño appealed to the Court of Appeals. According to his notice of appeal he would raise questions of law and fact.

After the briefs had been filed, the Court of Appeals in its resolution of May 26, 1967 certified the case to this Court because the appeal involves a pure question of law and no factual issue had been raised (CA-G.R. No. 34457-R).

Diño contends that the lower court erred in invoking section 9, Rule 40 of the Rules of Court in dismissing his appeal. Section 9 provides that "if the appeal is withdrawn, or dismissed for failure to prosecute, the judgment (of the inferior court) shall be deemed revived and shall forthwith be remanded to the municipal or city court for execution."

Appellant Diño contends that section 9 does not authorize the trial court *motu proprio* to dismiss, for failure to prosecute, an appeal from an inferior court. His theory is that a motion to dismiss should be filed so that the dismissal would be in consonance with the requirements of due process. He argues that it was mandatory upon the Clerk of Court to set the case for pre-trial and, if the case had not been scheduled for pre-trial, it could not be

dismissed for supposed failure to prosecute.

Those contentions are not tenable. We hold that the trial court did not err in dismissing Diño's appeal.

Issues had been joined in the trial court in June, 1963 after plaintiff Racimo had answered the counterclaim in Diño's answer. The fact that Racimo's lawyer on September 30, 1963 had filed a motion to withdraw as his counsel on the ground that he was going abroad and that the said motion had not been acted upon by the lower court did not justify defendant Diño in not prosecuting his appeal for a period of nine months. The fact that Racimo had no lawyer was not Diño's responsibility. That was Racimo's worry.

The instant case is an ejectment case which is a summary action that should be disposed of with the least delay. It was commenced in 1958. It had been pending for nearly six years at the time defendant Diño's appeal was dismissed. His defenses of lack of cause of action and lack of jurisdiction were highly controversial.

It is settled that under section 3, Rule 17 of the Rules of Court an action can be dismissed by the trial court on its own motion for plaintiff's failure to prosecute it for an unreasonable length of time. That power rests in the sound discretion of the trial court. What is an unreasonable length of time depends upon the circumstances of each particular case. The lower court's exercise of discretion will not be disturbed in the absence of patent abuse. The onus of showing abuse of judicial discretion rests upon the appellant since every presumption is in favor of the correctness of the lower court's action (*Monte vs. Urotia*, L-27187, July 22, 1971 and eight other cases, 40 SCRA 41, 51-52).

That ruling under section 3 of Rule 17 is applicable under section 9 of Rule 40 to an appeal to the Court of First Instance from the decision of an inferior court (See *People's Car, Inc. vs. Arcellana*, L-29098, July 22, 1971 and *Bolivar vs. Bandayrel*, L-29373, July 22, 1971, 40 SCRA 42 involving cases originating from the City Court of Manila and appealed to the Court of First Instance of Manila, where the appeals were dismissed for failure to prosecute).

This Court refused to disturb dismissals for failure to prosecute for a period of less than three months or one year (*Montejo vs. Urotia*, *supra*).

While it is the duty of the Clerk of Court to calendar the case for pre-trial or trial, that obligation does not relieve the appellant in this case from prosecuting his appeal diligently (*Smith Bell & Co., Ltd. vs. American President Lines*, 94 Phil. 879).

There being no merit in defendant's appeal, the lower court's order of dismissal is affirmed with costs against the appellant.

So ordered.

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

Barredo, J., concurs in the result.

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