

PHILIPPINE NATIONAL BANK, PLAINTIFF-APPELLEE, VS. ESTANISLAO PINEDA, DEFENDANT-APPELLANT.

G.R. No. L-28505. August 29, 1969

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

From a judgment of the City Court of Manila^[1] which reads: "WHEREFORE, judgment is hereby rendered ordering the defendant to vacate the premises within six (6) months from receipt of this Decision, provided he pays the rent in arrears in the sum of P149.60 as of April 30, 1967, and updates the payment of rental within ten (10) days from receipt of this Decision, provided, how-ever, that defendant shall not be entitled to the said 6-month grace should he fail to make the above-stated payments. Attorney's fees in the amount of P50.00 and costs are assessed against defendant", defendant appealed to the Court of First Instance of Manila.^[2] Issues having been joined in the latter court, the case was set for pre-trial. After the case was repeatedly called for the scheduled pre-trial on October 20, 1967, the last time at 9:05 a.m., defendant and his coun-sel failed to appear. The court dismissed the appeal for failure to prosecute. Defendant's efforts at reopening were thwarted below. He came to this Court on appeal.

We vote to affirm. First. Defendant and his counsel's failure to appear is a ground to authorize dismissal for failure to prosecute. The judgment of the inferior court is thus revived.^[3] Defendant's excuse for his failure to appear at the scheduled pre-trial was that his counsel, Atty. Pompeyo L. Bautista, had with-drawn from the case as his attorney. Correctly did the lower court state that this excuse is "very flimsy."^[4] With reason. The record does not bear out such withdrawal. Under the law, notices are given to counsel.^[5] Second. Defendant has not shown any valid defense. It is conceded that he is a lessee without a fixed term. This explains the fact that the City Court gave him time to vacate the premises. Nor will his averment that he has a residential house on the land advance his cause. He may not, as he claims, require reimbursement of one-half of the value thereof. Because, the option to acquire the improvements is on the owner of the land.^[6] So that reopening of the case will be futile. ^[7]

Judgment affirmed.

Costs against defendant-appellant.

SO ORDERED.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Castro, Fernando, Capistrano and Teehankee, JJ., concur.

Barredo, J., concur in the result. See separate opinion.

Reyes, J., is on official leave.

[1] Civil Case 153045, City Court of Manila, entitled "Philippine National Bank, Plaintiff, versus Estanislao Pineda, Defendant."

[2] Civil Case 69965, Court of First Instance of Manila, Branch V, entitled "Philippine National Bank, Plaintiff, versus Estanislao Pineda, Defendant."

[3] Section 9, Rule 40, Rules of Court; Vda. de Palanca vs. Chua Deng Klan (1969), 27 SCRA 356, 365.

[4] Record on Appeal, p. 40.

[5] Section 2, Rule 13, Rules of Court.

[6] Article 1678, Civil Code of the Philippines. See: Lapeña vs. Morfe, 101 Phil. 997, 1001.

[7] Cf. De la Cruz vs. Burgos, G.R. No. L-28095, July 30, 1969

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CONCURRING OPINION

BARREDO, J.:

I concur in the result.

To my mind, this case is quite different from the case of Vda. de Palanca vs. Chua Keng gian, 27 SCRA 356, wherein I dissented. In the Palanca case, the Court of First Instance dismissed defendant's appeal for failure to prosecute only because he had not taken any move to have the case calendared even for pre-trial for an unreasonable length of time. In the case at bar, the re-cord shows that the same had been set for pre-trial se-veral times and the cause of the dismissal of the appeal was precisely the failure of defendant-appellant to appear thereat. Under 3 of Rule 20, "if at the pre-trial the court finds that facts exist upon which a judg-ment on the pleadings or a summary judgment may be made, it may render judgment on the pleadings or a summary judgment as justice may require." I imagine that while His Honor may not have actually held any pre-trial, His Honor must have gone somehow over the pleadings, and since, as explained in the main opinion, it is obvious from the records that defendant-appellant has no sub-stantial defense on the merits, I would regard the here-in questioned order of dismissal of defendant-appellant's appeal as virtually a judgment on the pleadings, consi-dering that its effect is to revive the inferior court's judgment against the defendant-appellant. It is my be-lief that the rules an pre-trial are broad enough to enable courts to adopt any measure, conducive to the early and expeditious termination of any case, which is consistent with the purposes of a pre-trial set forth in Section 1 of Rule 20 and not expressly prohibited by said rule or any law or other provision of the rules of court.

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