

SEGUNDA INOCANDO, ASSISTED BY HER HUSBAND, MAXIMO BERSEDE, PLAINTIFF AND APPELLEE, VS. JUAN INOCANDO, DEFENDANT AND APPELLANT.

G.R. No. L-16030. November 29, 1960

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

This is an appeal from an order of the Court of First Instance of Cebu, denying defendant-appellant's motion to set aside the judgment rendered in its Civil Case No. R—3737 with prayer for new trial. The appeal was taken to the Court of Appeals, but that court has certified the case to us on the ground that the question involved is purely legal.

The record shows that on October 14, 1954 Segunda Inocando, assisted by her husband Maximo Bersede, filed in the court below a complaint, which was subsequently amended, against Juan Inocando, praying for the recovery of a parcel of land, for the removal of a fence built by the defendant around it and for damages. In his answer, the defendant denied the material allegations of the complaint, alleging that the property in dispute is part of his own land, and as counterclaim, claimed moral and exemplary damages, plus attorney's fees. In due time, plaintiff filed her answer to the counterclaim.

The case remained pending trial until June 30, 1956, when the court below, upon plaintiff's motion, set it for hearing on August 10, 1956. Notice of said hearing was received by counsel for the defendant on July 10, 1956. On August 9, the day before the date set for hearing, counsel for the defendant filed a motion for postponement on the ground that he was unable to contact his client. When the case came up for hearing the following day, the lower court denied the motion and proceeded to hear the evidence of the plaintiff in the absence of defendant and the latter's counsel. On August 17, after the case had been submitted for decision, the defendant, through a new counsel, filed a motion to reopen the case and for retrial, alleging that he was not notified of the hearing and that he has a good and substantial defense as shown in his affidavit attached to the motion. The motion was opposed by the plaintiff.

On September 25, 1956, the lower court rendered a decision in favor of the plaintiff and against the defendant. Two days later, or on September 27, the motion to reopen the case and for retrial was denied for not being well-founded.

On October 9, 1956, the defendant filed a "Motion to Set Aside Judgment and For New Trial", on the grounds of accident, mistake and/or excusable negligence, it being alleged that while his former counsel was duly notified of the hearing he was not and that if new trial would be granted, he could prove that the land in litigation is part of his land. Attached to the motion were defendant's affidavit and that of Beato Inocando, his brother. After opposition to the motion had been filed by plaintiff, the lower court on October 25, 1956 denied the same for lack of merit. From this order, defendant took the present appeal.

The appeal is without merit.

It is not disputed that the present case, prior to the date of hearing set for August 10, 1956, had been pending before the court a quo for almost two years since it was originally instituted. Neither is it disputed that notice of said hearing was received by defendant's counsel on record on July 10, 1956, or thirty days earlier, yet said counsel filed his motion for postponement only the day before the hearing. Considering the circumstances of the case and the rule that motions for postponement or continuance are addressed to the sound discretion of the court (*Linis vs. Rovira*, 61 Phil. 139; *Cruz vs. Malabayabas, et al.*, 105 Phil. 708; 57 Off. Gaz., [8] 1401; *Montelibano, et al. vs. Benares*, 103 Phil. 106; 54 Off. Gaz., [12] 3787), the court below, in our opinion, committed no error in denying the motion for postponement. The lower court apparently found the claim of defendant's counsel that he was not able to contact his client to be unworthy of belief since he had been notified of the hearing one month in advance, and even assuming the claim to be true, it has not been satisfactorily explained why he had to file his motion the day before the date of hearing and present it on the very day of trial. On top of all these, counsel did not even appear at the hearing. Under the rulings laid down by this Court, he had no reason to assume that the trial court would grant his request for postponement, especially since his motion was filed on less than three days notice as required by the Rules. (*Wack Wack Golf Country Club vs. Court of Appeals*, 106 Phil. 501; 59 Off. Gaz., [34] 5501; *National Lumber & Hardware Co. vs. Velasco*, 106 Phil. 1098, *Montelibano, et al. vs. Benares*, *supra*.)

Appellant complains that his failure to appear at the hearing was not due to his fault but to the fact that he was not personally notified of the hearing. This complaint finds no legal justification because, under our rules, if a party appears by an attorney who makes of record his appearance, service of the pleadings is required to be made upon the attorney and not upon the party. (Sec. 2, Rule 27.) Indeed, in such a case notice to the party is not notice in law. Needless to add, misconduct on the part of counsel is binding upon the client.

"A client is bound by the action of his counsel in the conduct of a case and cannot be heard to complain that the result might have been different had he proceeded differently (*U. S. vs. Umali*, 15 Phil., 33). A client is bound by the mistakes of his lawyer (*Montes vs. Court of First Instance of Tayabas*, 48 Phil., 640; *Isaac vs. Mendoza*, 89 Phil., 279), 'If such grounds were to be admitted as reasons for reopening cases, there would never be an end to a suit so long as new counsel could be employed who could allege and show that prior counsel has not been sufficiently diligent, or experienced, or learned.'" (*Vivero vs. Santos*, 98 Phil., 500; 32 Off. Gaz., 1427.)

In this connection, no pretense is here made that defendant was not represented by a competent counsel.

We are furthermore constrained not to disturb the judgment rendered by the court below because the alleged good and substantial defense contained in the so-called affidavit of merit attached to the motion under consideration consists only of defendant's allegation that the land in question is a part of the land belonging to him, which allegation is proposed to be corroborated by the statement of his own brother. Such claim is a mere conclusion of law or opinion and as such is not valid. *Mendoza vs. Bulanadi*, (108 Phil 11; 58 Off. Gaz., [15] 3127.)

In view of the foregoing, the order complained of is affirmed, with costs against appellant.

Paras, C.J., Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, and Dizon, JJ., concur.

Order affirmed.

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