

JOSE AGRAVANTE, AND JUAN AGRAVANTE PETITIONERS, VS. JUANA PATRIARCA, SUBSTITUTED BY ROSITA ORDOÑEZ AND RICARDO ORDOÑEZ, AND HON. ALFREDO REBUENO, JUDGE, COURT OF FIRST INSTANCE ...

G.R. NO. L-48324. March 14, 1990

Ponente: NARVASA, J.

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NARVASA, J.:

In 1969, Juana Patriarca Peña filed with the Court of First Instance of Camarines Sur[1] an action to quiet title with damages against Jose Agravante and Juan Agravante.[2] Answer was in due course filed by the defendants.

The case was set for pre-trial but before it could be held, a fire broke out on June 26, 1976 in the capitol building of Camarines Sur. The records of the court were burned, including that of Case No. R-182. The record of said case was reconstituted and the case was once more scheduled for pre--trial on January 25, 1978. The defendants' counsel moved for cancellation of this setting. The Court reset the pre-trial to February 27, 1978. But again, the defendants' attorney, pleading illness, sought to have this second pre-trial setting cancelled by motion which although dated February 14, 1978, was filed only on February 22, 1978.[3] The motion contained no notice of hearing, but there was a photocopy of a medical certificate dated January 30, 1978 attached to it, attesting to the attorney's indisposition ("headache") and advising rest for him. This motion was denied by the Presiding Judge who promulgated the following Order on February 22, 1978,[4] notice of which was served on defendants' counsel on February 24, 1978:

"The motion dated February 14, 1978 filed by Atty. Gil P. Pacamarra, for the defendants, being not in accordance with the rules for lack of notice to the adverse party, for lack of setting of the date of hearing, and for the reason that the medical certificate attached thereto is only a xerox copy of an alleged medical certificate dated since January 20, 1978, indicating that if rest is what is only needed by Atty. Pacamarra, from that date to the date of the next hearing of the case, he has sufficient period to rest, and therefore, the motion is not meritorious, the same is hereby denied."

At the scheduled pre-trial on February 27, 1978 neither the defendants nor their counsel appeared. The Court consequently declared the defendants in default and authorized the plaintiff to "present *** (her) evidence ex-parte at any time before this Court." [5]

On March 4, 1978, Juana Patriarca Peña having died, her heirs presented a motion advising of her demise and praying that they be substituted in her stead in the action.[6] This was granted by Order of March 7, 1978:[7]

"For lack of objection to the motion of the plaintiff dated March 4, 1978 (the same) is hereby granted and Deogracias Peña and Rosita Peña-Ordoñez, heirs of the late Juana Patriarca-Peña the original plaintiff in this case, *** (are) hereby ordered substituted in lieu of the deceased party plaintiff."

The defendants moved for reconsideration of these three (3) orders, dated February 22 and 27, and March 4, 1978.

The Judge denied the motion for lack of merit on April 11, 1978 as well as a second, presented by the defendants.

Hence, this petition for certiorari in which it is essentially contended that the defendants had been denied their day in court. While conceding that their counsel's motion for postponement was defective in that it had not been set for hearing, the defendants nonetheless contend that that flaw was but a formal one, caused by its having been hastily drawn up when counsel was suffering from pain (headache). They also theorize that the pre-trial setting was void since notice thereof had not been given to the defendants personally, only their counsel having been notified; that when the Trial Court authorized the plaintiff to present evidence *ex parte*, she had already been dead for some time and therefore the court failed to acquire jurisdiction of her person; and that they had had no opportunity to object to the motion for plaintiff's substitution by her heirs.

The petition is completely without merit.

The omission in defendants' motion for cancellation of the pre-trial scheduled on February 27, 1978 of a notice of hearing was not a mere formal defect, as defendants seem to imagine. The motion for cancellation or postponement was not one that could be granted by the Court as a matter of course, and thus be acted on *ex parte*. No party has a right to a postponement of a trial or hearing, or pre-trial; and his adversary has the right to oppose any move towards this end. A party or counsel desiring a postponement of a pre-trial or trial must comply with the requisites of motions in general set out in Rule 15 of the Rules of Court, i.e., the motion shall be made in writing, shall state the grounds upon which it is based and if necessary be accompanied by supporting affidavits and other papers, and notice thereof -- specifying the date of hearing which is supposed to be specified by the movant himself -- shall be served by the applicant on all parties concerned at least three (3) days before said hearing, together with a copy of the motion and of any affidavits and other relevant papers. Such notice of hearing, it must be added, is essential. Its importance is underscored by the prohibition of action by the court on any motion which is not accompanied by proof of service thereof, except when the court is satisfied that the rights of the adverse party or parties are not affected. And if the motion be grounded on illness of a party or counsel, the Rules further require an "affidavit that the presence of such party or counsel at the trial (or pre-trial) is indispensable and that the character of his illness is such as to render his non-attendance excusable." [8]

The defendants' counsel, Atty. Gil Pacamarra, attributes his omission to include a notice of hearing in his motion in question to his headache at the time. But neither his motion nor its supporting medical certificate showed "that the character of his illness is such as to render his non-attendance excusable," i.e., that the headache was so severe and expected to last for such a period of time as to make it impossible or extremely difficult for him to attend the pre-trial, still a month away. Indeed, since rest was apparently all that was needed to relieve him of his indisposition at the time, January 27, 1978 (the date of his motion), he had enough time therefor, as the Trial Court tartly observed, "from that date to the date of the next hearing of the case" (February 27, 1978). There was, too, a not unreasonable hesitancy on the part of the Trial Court to give full credence to the medical certificate attached to the motion, since it was not verified and was only a xerox copy.

Furthermore, as shown by the record, notice of the denial of his motion for postponement had been served on Atty. Pacamarra on February 24, 1978, three (3) days before the pre-trial set on February 27, 1978. There is nothing in the record to excuse his failure to exert any effort to himself appear at the pre-trial, or cause his client, or any other representative, to present himself before the Court to advise it of his predicament.

The objection that notice of pre-trial was not served personally on the defendants as well as on their attorney is, in the premises, utterly without merit. Atty. Pacamarra did not protest against this defect in relation to the pre-trial settings on January 25 and again on February 27, 1978. If he believed that failure of notice to be a grave defect, he should have brought it to the Court's attention forthwith, and the matter would have immediately been set aright.

He did not do so. Moreover, this Court has already ruled that service of the notice of pre-trial on a party through his counsel is not only proper but is the preferred mode.[9]

Also completely without merit is the defendants' contention that the demise of the plaintiff, Juana Patriarca, long before the pre-trial setting prevented the Trial Court's acquisition of jurisdiction over her. It is axiomatic that jurisdiction of the person of the plaintiff is acquired by the court by the filing of the complaint.[10] The subsequent death of the plaintiff in a real action like the one at bar,[11] does not affect the Court's jurisdiction, all that is entailed in this eventuality being the substitution of the heirs for the deceased in accordance with the procedure set out in Section 17, Rule 3 of the Rules of Court. That substitution is precisely what was done by the Court a quo.

There is furthermore no showing whatever that defendants had any ground at all to oppose that substitution mandated by the Rules, or that they have suffered any prejudice of any sort by reason of that substitution, so as to give validity to their other claim that they had not been accorded sufficient opportunity to object to the substitution.

Finally, the remedy against an order of default is a motion to set it aside on the ground of fraud, accident, mistake, or excusable negligence, to which shall be appended an affidavit showing the invoked ground, and another, denominated affidavit of merit, setting forth facts constituting the party's meritorious defense or defenses. This remedy was not availed of by the defendants. It is true that their counsel filed a motion for reconsideration of the order of default, but the motion did not comply with the requisites above mentioned and was therefore correctly denied by the Trial Court.

Whether intended or not, the defendants' actuations in this case not unreasonably give rise to the conclusion that they were motivated by a desire to delay the disposition of the case; and whether or not so intended, delay has regrettably resulted. It is time then that this distressing state of affairs be corrected.

WHEREFORE, the petition is DISMISSED, with costs against the petitioners. This decision is immediately executory.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Raffled in due course to Branch IV, presided over by Judge Alfredo Rebuena

[2] The case was docketed as Civil Case No. R-182

[3] Rollo, p. 7

[4] Id., p. 8

[5] Id., p. 9

[6] Id., p. 10

[7] Id., p. 12

[8] Sec. 5, Rule 22

[9] Taroma v. Sayo, 67 SCRA 508, 512-513: "**** while service of such notice ** may be made directly to the party, it is best that the trial courts uniformly serve such notice to party through or care of his counsel at counsel's

address with the express imposition upon counsel of the obligation of notifying the party of the date, time and place of the pre-trial conference and assuring that the party either appear thereat or deliver to counsel a written authority to represent the party with power to compromise the case, with the warning that a party who fails to do so may be non-suited or declared in default."

[10] *Manila Railroad Co. v. Attorney-General*, 20 Phil. 523, 531; and 21 C.J.S., 122 to the effect that the court acquires jurisdiction of plaintiff in an action when he voluntarily comes into court and invokes the exercise of its powers and its assistance to compel defendant to render him his rights under the law (cited in *Feria*, Civil Procedure, 1969 ed., p. 19)

[11] Or an action to recover personal property or enforce a lien thereon, or recover damages for injury to person or property, real or personal -- all of which survive and may continue by or against the executor or administrator or other representative of the deceased party (Sec. 1, Rule 87) -- as distinguished from those claims which are extinguished by a party's death (those which are purely personal) and those which can no longer be prosecuted in an ordinary action but in some other proceeding, as claims for recovery of money, debt or interest thereon (Sec. 21, Rule 3), which should be ventilated as a money claim in the special proceedings for the settlement of the estate of the deceased party (Rule 87)

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