

FRANCISCO ORFIDA, PETITIONER, VS. PEDRO PANUELOS AND HON. VALERIANO DEL VALLE, JUDGE OF THE COURT OF AGRARIAN RELATIONS, 9TH REGIONAL DISTRICT, BRANCH I, NAGA CITY, RESPONDENTS.

G.R. No. L-23375. March 30, 1968

Ponente: ZALDIVAR, J.

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ZALDIVAR, J.:

This is an appeal from the decision, dated February 12, 1964, of the Court of Agrarian Relations, Ninth Regional District, Branch I, Naga City, and the order of the same court, dated July 24, 1964, in CAR Case No. 608-CS-'61.

On March 27, 1961, respondent Pedro Panuelos - hereinafter referred to as tenant - filed with the Court of Agrairan Relations, Naga City, a petition for reinstatement and damages, wherein he allege that since 1918 he had been the tenant on a landholding si-tuated at Bagacay, San Jose, Camarines Sur, with an area of 1.5 hectares, more or less; and that in Novem-ber, 1960 he was ejected therefrom by herein petitioner Francisco Orfida - hereafter referred to as landowner who placed a certain Mariano Fullero[1] as the new tenant thereon.

On August 1, 1961, the landowner filed his answer, denying the claim of illegal ejectment and alleging, by way of special defense, that the tenant had surrendered to him the land after the palay harvest in December, 1960. As counterclaim, the landowner prayed for the delivery of 96 cavans of palay, or its value in the sum of P1,056.00, representing his undelivered shares from 1942 to 1950, and the payment of damages. Mariano Fullero, the other respondent in the lower court, was declared in default upon his failure to file an answer.

After submitting his evidence at the hearing on September 9, 1963, the tenant rested his case. The re-ception of the evidence for the landowner was set for Oc-tober 11, 1963, then reset for November 14, 1963, and finally for December 12, 1963. When the case was called for hearing on December 12, 1963, the landowner failed to appear, thereupon counsel for the tenant moved for the submission of the case for decision on the basis on the evidence presented by the tenant.

On February 12, 1964, the agrarian court rendered a decision ordering the reinstatement of the tenant, the ejectment of Mariano Fullero from the landholding in question, and the landowner to pay the tenant twelve (12) cavans of palay, or their value at the rate of P12.00 per cavern - as consequential damages representing the ex-tent of the tenant's participation beginning from the year 1960 and for every year thereafter until the tenant is reinstated.

On March 10, 1964, the landowner, through counsel, filed a motion for new trial, which motion was opposed by the tenant. Before resolving the said motion for new trial the lower court set the same for oral argument on May 27, 1964. On May 27, 1964, for failure of the tenant's counsel to appear because he was indisposed, the lower court reset the hearing for oral argument for June 9, 1964. On June 9, 1964, counsel for the landowner appeared alone, while the tenant appeared and informed the court that his counsel, Atty. Pacamarra, had a case before the

Municipal Judge of Tigaon. At this stage, respondent Judge, finding the motion for new trial to be well founded, without hearing any more the motion on oral argument, issued an order granting the landowner's motion for new trial, setting aside his decision of February 12, 1964 in order to afford the landowner opportunity to present his evidence, and at the same time setting the hearing for new trial on June 17, 1964 at 9:00 a.m. in the sala of the court in Naga City.

On June 17, 1964, at 9:00 a.m. - the time and day set for the hearing - the court first heard CAR Case No. 788 - Camarines Sur '63, entitled "Sixto Cabilin vs. Rufino Ramos, et al." Later, at 9:14 a.m., the hearing of the "Cabilin vs. Ramos" case was suspended and the instant case was called, but the landowner and his counsel were not in court. Thereupon, on motion of counsel for the tenant, respondent Judge issued an order in open court setting aside his order for new trial of June 9, 1964 and reviving the judgment on the merits of this case which was issued on February 12, 1964. At 9:22 a.m., the court session for this particular case was terminated, and the tenant and his counsel left the courtroom. At 9:23 a.m. the hearing of CAR Case No. 788 was resumed, and after the respondent Judge had finished dictating an order in the said case in open court, the court session was adjourned at 9:34 a.m. It was at this precise moment - 9:34 a.m. that the landowner's counsel, Atty. David C. Naval, appeared and manifested to the court that he learned of the recent order of the court setting aside the order for a new trial and reviving the decision that was rendered on February 12, 1964, and said counsel re-requested that the latest order be set aside for the reason that his failure to arrive in court on time was due to his client's failing health and eyesight. Since the tenant and his counsel had already left the courtroom, the counsel for the landowner was advised by respondent Judge to file a written motion for reconsideration and to serve a copy of it to the tenant so that the latter would have an opportunity to object or conform to the motion. On the same day, June 17, 1964, at 2:00 p.m., the landowner's counsel filed his motion for reconsideration. The record shows that to this motion is attached a small note, written on a piece of paper bearing the rubber stamp letter-head of the agrarian court, which reads: "Petitioner's counsel manifested to submit his motion w/out further argument." The signature on the note is illegible. The court, nevertheless, set the motion for reconsideration for hearing on July 24, 1964, and counsel for the landowner was duly notified of this hearing on July 11, 1964 by registered mail. On July 13, 1964, counsel for the landowner filed a motion for continuance of the scheduled hearing on his motion for reconsideration, alleging as reason that he had to appear at the hearing of two criminal cases before the Municipal Court of Cabusao, Camarines Sur, at the same hour and day that his motion for reconsideration was scheduled to be heard on July 24, 1964. On July 20, 1964, the tenant filed his opposition to the landowner's motion for reconsideration of the order of June 17, 1964. On July 24, 1964, respondent Judge issued an order denying the motion for reconsideration for lack of merit.

On August 14, 1964, the landowner, through counsel, filed before the agrarian court a notice of appeal. Subsequently, on August 18, 1964, the landowner filed the present appeal before this Court.

In this appeal the landowner claims: (1) that respondent Judge erred in not holding that the tardiness of petitioner (landowner) and his counsel on June 17, 1964 was excusable negligence; and (2) that respondent Judge erred in ordering, without offer of evidence, the revival of the judgment rendered on the merits of the case dated February 12, 1964 which had been previously set aside.

This appeal has no merit.

The landowner contends that respondent Judge committed an error when on June 17, 1964 he issued the order setting aside the order of June 9, 1964 and reviving the decision of February 12, 1964. This order of June 9 set aside the decision rendered on February 12, 1964 and granted a new trial "at which respondent /landowner/ shall be allowed to present his evidence." [2] Precisely, the hearing of June 17, 1964, was set for the reception of the evidence pursuant to the order of June 9, 1964. But when the case was called for hearing on June 17, 1964 the

landowner and his lawyer were not present, and so the court issued that order in question.

The record shows that the landowner was duly noti-fied of the hearing set for June 17, 1964, and had ample time to prepare for the scheduled hearing. The landown-er and his counsel arrived late in court on the day of the hearing. The landowner and his counsel arrived late in court on the day of the hearing. The landowner claims that they arrived in court late because he and his counsel had to come from the town of Goa which is fifty kilometers distant from Naga City and they had to travel by bus, and that he is blind and suffering from hypertension. It appears, how-ever, that the landowner had been having a poor vision for sometime, long before June 17, 1964, and he had been attending previous hearings of this case. The record discloses that the trip from Goa to Naga City by bus takes only about two hours, and there are many buses that leave Goa for Naga at such a time as would enable a traveler from Goa to reach Naga City before nine o'clock in the morning - because there are buses that leave Goa for Naga City at 3:30, 4:00, 5:00 and 6:00 in the morning. It is shown also in the record that the tenant and his counsel came from the town of San Jose which is 55 kilometers distant from Naga City. The landowner cannot, therefore, claim that their late arrival in court was excusable neg-ligence on his part and on the part of his counsel. At any rate, We consider that in issuing the orders of June 17, 1964 and of July 24, 1964, respondent Judge had sim-ply exercised his discretion, and We do not choose to disturb the action of the Judge because there is nothing in the record that would justify a finding that the Judge acted with abuse of discretion. On the contrary, We note that respondent Judge had been rather considerate with the landowner, and had given the landowner many chances to defend his side of the case. After respondent Judge had issued the order of June 17, 1964 he even suggested to counsel of the landowner to file a motion for reconsi-deration, with notice to the tenant so that the latter is afforded a chance to agree or object. The motion for reconsideration was set for hearing on July 24, 1964, but the landowner and his counsel did not appear at the hear-ing, so respondent Judge denied the motion for reconsi-deration on that day.

A reading of the record of this case gives Us the impression that the landowner has not exercised due dili-gence in defending his rights and interests in spite of the chances that respondent Judge had given him. Under the circumstances obtaining in this case in the court below, as have been pointed out in this opinion, We are of the considered view that respondent Judge had good and valid reasons to issue his order of July 24, 1964 denying the motion for reconsideration of the order of June 17, 1964 - thereby maintaining the order of June 9, 1964 which gave the effect of reviving the decision that he rendered on February 12, 1964.

The landowner also contends that respondent Judge erred when he ordered the revival of the decision ren-dered on February 12, 1964 without requiring the presenta-tion of new evidence to support the decision, thereby de-priving him of his day in court. This argument is flimsy. The decision of February 12, 1964 was based on the evi-dence presented by the tenant on September 9, 1963, as reported by the commissioner duly appointed by the agra-rian court. The new trial ordered by the court was simply for the purpose of giving the landowner a chance to pre-sent his own evidence. But the landowner did not exert diligence to avail of the opportunity given him to pre-sent his evidence. He cannot correctly claim now that he has been deprived of his day in court. The decision of February 12, 1964 has for its basis the evidence present-ed by the tenant on September 9, 1963. Inasmuch as no new trial was actually held, because the order of June 17, 1964 had done away with the new trial that was pre-viously granted in the order of June 9, 1964, it follows that the evidence presented by the tenant on September 9, 1963 stands.

IN VIEW OF THE FOREGOING, the decision of the Court of Agrarian Relations, Ninth Regional District, Branch I, Naga City, in its CAR Case No. 608-CS-'61, dated Feb-ruary 12, 1964, and its orders dated June 17, 1964 and July 24, 1964 in said case, are affirmed, with costs against the petitioner Francisco Orfida.

IT IS SO ORDERED.

Reyes, Acting C.J., Bengzon, Sanchez, Castro, Angeles, and Fernando, JJ., concur.
Dizon and Makalintal, JJ., did not take part.
Concepcion, C.J., on official leave.

[1] Also a co-respondent of Francisco Orfida in the court below.

[2] As quoted from the order of June 17, 1964. The word inside the bracket is supplied.

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