

EDUARDO N. PEREZ, IN HIS OWN BEHALF AND IN BEHALF OF HIS SISTERS, ANGELA PEREZ MONTIEL, JOSEFINA PEREZ SALAS, LEONARDA PEREZ GABILA, ALEJANDRO PEREZ DOMINGO, JR., GLORIA D. AQUI...

G.R. No. L-29802. October 26, 1976

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

This is an appeal from the order of the Court of First Instance of Davao, Branch II, dated February 14, 1968, dismissing the complaint in Civil Case No. 5670, and from the order, dated May 26, 1968, denying the plaintiff's motion for reconsideration.

On August 23, 1965, the plaintiffs filed a complaint[1] in the Court of First Instance of Davao, Branch III - - docketed therein as Civil Case No. 4784 - - against the defendants for the declaration of nullity of contract, accounting of farm products and for damages. In due time, the defendants filed their answer,[2] claiming that the cause of action has prescribed and is barred by the statute of limitations.

When the case was set for trial on the merits on February 15, 1967, the plaintiffs and their counsel failed to appear. Thereupon, the court issued an order,[3] dismissing the complaint. Reconsideration of the order of dismissal was, likewise, denied in its order,[4] dated March 10, 1967.

Several months later, or on July 28, 1967, the plaintiffs filed again another complaint,[5] in the Court of First Instance of Davao, Branch II - docketed therein as Civil Case No. 5670 - against the same defendants, alleging substantially the same allegations as in their previous complaint. The defendants moved to dismiss the complaint[6] on the ground of res judicata, alleging that the dismissal of the complaint in Civil Case No. 4784 is with prejudice and therefore had the effect of an adjudication on the merits. Overruling the plaintiffs' opposition,[7] the trial court issued on February 14, 1968 its order[8] dismissing the complaint. Plaintiffs motion for reconsideration[9] having been denied,[10] they interposed the present appeal.

The only issue to be resolved in this case is whether or not the dismissal of the complaint in Civil Case No. 4784 is with prejudice, and therefore operates as an adjudication on the merits which bars the complaint in Civil Case No. 5670 under the rule of res judicata.

The resolution of this issue hinges on the meaning and import of the order of the Court of First Instance of Davao, Branch III, presided over by the late Judge Manases G. Reyes, dated February 15, 1967, dismissing the complaint in Civil Case. 4784, as follows:

"For failure of the plaintiffs and their counsel to appear, notwithstanding notice, the complaint is hereby dismissed. Defendants' counterclaim is likewise dismissed without prejudice." [11]

The Court a quo is of the view that under the aforequoted order what was "dismissed without prejudice" is the

de-fendants' counterclaim. Hence, the dismissal of the complaint in Civil Case No. 4784 is with prejudice, and had the effect of an adjudication on the merits in accordance with Section 3, Rule 17 of the Rules of Court, and therefore constitutes *res judicata*.^[12]

The claim cannot be sustained. Although the said order, standing alone and by itself, might be construed as a dismissal with prejudice with the consequent effect of an adjudication on the merits,^[13] nevertheless We find that in arriving at the above conclusion the trial court ignored and did not take into consideration the subsequent order of the Court of First Instance of Davao,^[14] Branch III, dated March 10, 1967, resolving the plaintiffs' motion for reconsideration of the order of dismissal, dated February 15, 1967, reading as follows:

"This is a motion for Reconsideration filed by counsel for plaintiffs alleging that the date of the hearing made in Open Court was not noted in his diary and, hence, that explains why they failed to appear at the scheduled hearing of the case.

"The Order of the Court is specific setting the case to wit:

"By agreement of both parties, reset this for hearing on February 15, 1967, at 9:30 A.M.

'Parties are notified in open court.'

"By such specific Order, the Court can not understand why counsel would be misled and shall not have taken note of the date of the trial.

"Considering further that the dismissal is without prejudice, the avenue for ventilating this case in court is not totally gone.

"There is another remedy proper and available to parties and counsel.

"WHEREFORE, said motion for reconsideration is hereby denied."

It should be noted that in denying the plaintiffs' motion for reconsideration, the said court held, among others that the "dismissal is without prejudice" and that the "avenue for ventilating the case in court is not totally gone." In other words, the plaintiffs may refile the case, or pursue the remedy of appeal. By virtue of the said order, the said court, in effect, amended and modified the February 15th order of dismissal into a "dismissal without prejudice." Considering that it was the late Judge Manases G. Reyes who issued the February 15th order and was the same judge who issued the March 10th order, it becomes evident that what the court really meant and so intended when it dismissed the complaint in Civil Case No. 4784 was a dismissal without prejudice.^[15] Furthermore, since the failure of the plaintiffs to appear at the trial on February 15, 1967 was due to the negligence of their lawyer in not noting down in his diary the hearing on said date and considering that the case has not as yet been tried on the merits, in the interest of justice, the dismissal should be decreed as without prejudice.^[16]

Even granting that the dismissal of the complaint in Civil Case No. 4784 was with prejudice, We find that such dismissal was not warranted under the facts and circumstances obtaining in that case. The records show that every-time the case was set for hearing, the plaintiffs and their counsel had always been present; however, the scheduled hearings were either cancelled by the court *motu proprio* and/or postponed by agreement of the parties, until the case was eventually set for trial on the merits on February 15, 1967.^[17] It was only at this hearing where the plaintiffs and their counsel failed to appear, prompting the court to issue its controversial order of dismissal. Considering that it was the first time that the plaintiffs failed to appear and the added fact that the trial on the merits had not as yet commenced, We believe that it would have been more in consonance with the essence of justice and fairness for the court to have postponed the hearing on February 15, 1967.

We are not unmindful of the fact that the matter of adjournment and postponement of trials is within the sound

discretion of the court; but such discretion should always be predicated on the consideration that more than the mere convenience of the courts or of the parties in the case, the ends of justice and fairness should be served thereby.[18] Postponements and continuances are part and parcel of our procedural system of dispensing justice,[19] and when - as in the present case - no substantial rights are affected and the intention to delay is not manifest, it is sound judicial discretion to allow them.[20] At this juncture, it may not be amiss to quote what this Court has said in the case of *Macasa, et al., vs. Herrera*: [21]

"Inconsiderate dismissals, even if without prejudice, do not constitute a panacea nor a solution to the congestion of court dockets; while they lend a deceptive aura of efficiency to records of individual judges, they merely postpone the ultimate reckoning between the parties. In the absence of clear lack of merit or intention to delay, justice is better served by a brief continuance, trial on the merits, and final disposition of the cases before the court." [22]

In the light of the foregoing, We hold that the dismissal of the complaint in Civil Case No. 4784 is without prejudice, and does not have the effect of an adjudication on the merits. Hence, the dismissal of the said complaint does not constitute a bar to the present proceedings under the doctrine of *res judicata*.

WHEREFORE, the orders appealed from are hereby set aside and this case is remanded to the lower court for further proceedings. No pronouncement as to costs.

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

Barredo, J., concurs in the reason that the order of Feb. 15, 1967 should be denied as having awarded the original order of dismissal before the latter become final.

Aquino, J., in the result.

[1] Printed Record on Appeal, pp. 40-53.

[2] *Ibid.*, p. 54-57.

[3] *Ibid.*, p. 29.

[4] *Ibid.*, pp. 34-35.

[5] *Ibid.*, pp. 1-24.

[6] *Ibid.*, pp. 24-29.

[7] *Ibid.*, pp. 33-35.

[8] *Ibid.*, pp. 68-70.

[9] *Ibid.*, pp. 71-83.

[10] *Ibid.*, pp. 89-91.

[11] *Ibid.*, p. 29.

[12] *Ibid.*, pp. 68-70.

[13] *Guanson vs. Mapa*, L-19249, Feb. 28, 1963, 7 SCRA 457.

[14] Printed Record on Appeal, pp. 34-35.

[15] Cf. Guanson vs. Mapa, *supra*.

[16] De los Reyes vs. Capule, et al., 102 Phil. 464.

[17] Printed Record on Appeal, pp. 77-80.

[18] Limon vs. Candido, L-22418, April 18, 1968, SCRA 1166.

[19] Rexwell Corp. vs. Canlas, L-16746, Dec. 30, 1961.

[20] Limon vs. Candido, *supra*; Panganiban vs. Sta. Maria, 22 SCRA 708; Piedad vs. Batuyong, 55 SCRA 763.

[21] 101 Phil. 44, 48.

[22] See also Valerio vs. Sec. of Agriculture, 104 Phil. 572; Cing Hong So vs. Tan Boon Kong, 53 Phil. 437.

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