

JUSTO ALCARAZ, MARIA ALCARAZ, FRANCISCA ALCARAZ, JOAQUIN ALCARAZ, VENANCIO ALCARAZ, AND PATROCINIO ALCARAZ, PLAINTIFFS-APPELLEES, VS. RICARDO RACIMO AND CLEOTILDE RACIMO, DEFEND...

G.R. No. L-26746. October 27, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Court of First Instance of Ilocos Norte which ordered the partition of the parcels of land in dispute between plaintiffs-appellees and defendants-appellants, share and share alike, and the dismissal of the latter's counterclaim and from the order denying the motion for reconsideration.

The facts are summarized by the lower court as follows:

"1. That Romulado Racimo and Petrona Acacio were husband and wife;

"2. That the afore-mention (sic) couple have two children, namely Donato Racimo and Maria Racimo. Donato Racimo and Maria Racimo already died and the children of Donato Racimo are the defendants herein while the children of Maria Racimo are the plaintiffs;

"3. There is no question as to the location and identity of the parcels of land in litigation because both plaintiffs and defendants admit their existence and identities.

"According to the evidence of the plaintiffs, the parcels of land in question were formerly one whole lot but it had been divided into parcels now described in the complaint. It was purchased in the year 1890 by the spouses Romualdo Racimo and Petrona Acacio from its former owner Evaristo Malinta. (See Exhibits A, trans. A-1) Because Romualdo Racimo died ahead, his wife Petrona presented herself before the Justice of the Peace of Vintar, Illocos Norte, in 1891 for the issuance of a Spanish title called Informacion Posesoria. (See Exhibit B)

"The evidence of the plaintiffs also shows that Petrona Racimo did not only cause the issuance of the afore-mentioned title she saw (sic) it also that since the property was not imigated, the 'Zanjeros' converted the said property into an irrigated ricefield although there were portions of the same which could not be irrigated. It is for this reason that the whole property had been divided into parcels. For the work done by the 'Zanjeros' they were given 2/3 of the land and the remaining one-third (1/3) remained in the possession of the surveying spouse, Petrona Acacio.

"The evidence of the plaintiffs also shows that all the owner's share of the harvest of the parcels of land in suit had been given to Petrone Acacio but when she died, Ricardo Racimo, son of Donato Racimo, and Cuadrato Alcaraz, son of Maria Racimo, took over the management of the property. The evidence of the plaintiffs further shows that although Ricardo Racimo was named in the Tax Declaration purposes, one (1) uyon of palay from the owner's share was set aside for the payment of taxes.

"The evidence of the plaintiffs also shows that the owner's share of the palay harvested from the land in suit, after the deduction of one (1) uyon for taxes, had always been divided between the plaintiffs and defendants

who are chil-dren of Donato Racimo and grandchildren of the spouses Romualdo Racimo and Petrona Acacio.

"The evidence of the plaintiffs shows further that in 1950, the defendants herein had refused to give the corresponding share of the plaintiffs of the palay harvested from the lands in suit hence this civil suit for partition.

"On the other hand, the evidence of the defendants shows that Petrona Acacio way back in 1902 was then living in a state of penury. It was Ricardo Racimo, son of Donato Racimo, who had been advancing money for her expenses. The money given her amounted to P200.00. To compensate Ricardo for his goodness of heart, she executed the document Exhibit 1 and the trans. Exhibit 1-A whereby she had given Ricardo Racimo the parcels of land described in the complaint on condition that the owner-ship of the said parcels of land will be effective after her death. The defendants marked this document as Exhibit 1, trans. Exhibit 1-A. Since this document although marked has not been formally offered as evidence, the Court did not take this document into account in deciding this case, considering that the Court shall consider no evidence which has not been formally offered. (Section 35, Rule 132 of the Rules of Court)"

During the trial, defendant Ricardo Racimo died. In view thereof, the court ordered the plaintiffs-appellees to amend their complaint within five days to substitute the deceased's heirs as party-defendants. Plaintiffs-appellees failed to amend the complaint within the five-day period but on the sixth day, they filed the amended complaint. Upon motion of the defendants-appellants, the amended complaint was dismissed. However, upon subsequent motion of the plaintiffs-appellees, the court reconsidered its order of dismissal and admitted the same.

After the plaintiffs-appellees had rested their case and the defendants were almost through with the presentation of their evidence, the case was post-poned to July 30, 1964, at the instance of the appellants. Their counsel, Atty. Harold M. Hernando, received a copy of the notice of trial on June 28, 1964 but when the case was called for trial, said counsel manifested that he had filed on July 28, 1964 a motion to postpone on the ground that his witnesses were in Apayao, Mt. Province planting rice. Since he had almost a month to prepare for trial, the court issued an order, to wit:

"When this case was called for trial today, Atty. Harold M. Hernando filed a motion to postpone the hearing of this case on the grounds stated in the said motion. But after considering that this case was filed as early as May 30, 1951, or more than thirteen (13) years ago, the motion to postpone is denied.

"As plaintiffs have already pre-sented their evidence and rested their case and because of the denials of the motion to postpone, this case is considered submitted."

A motion for reconsideration of the above-quoted order was filed but the same was denied. During the hearing of said motion, the following proceedings took place:

"COURT:

"Are you going to formally present the documentary evidence which you have presented?

"ATTY. HERNANDO:

"Your Honor, if without the presentation of the testimony of defendant Gamaliel Racimo I doubt the admissibility of my exhibits for formal presentation.

"COURT:

"So you will not present them anymore?

"ATTY. HERNANDO:

"Since the notion is already denied I wish to make of record that I will not present them.

"COURT:

"Since you are not formally presenting, the Court will not take into account the documents which you formally have not presented.

"ATTY. HERNANDO:

"And my last witness would be Mr. Racimo.

"COURT:

"The Court overruled the motion for reconsideration.

"Make it of record that counsel for the defendants although they had identified their documents refuses to formally present them as part of their evidence.

"ATTY. HERNANDO:

"May I pray for the presentation of the testimony of Mr. Gamaliel Racimo.

"COURT:

"The Court overruled your motion. How about your exhibits?

"ATTY. HERHANDO:

"It will remain that way."

(TSN., pp. 2-4, August 14, 1964)

The court rendered a decision ordering the parcels of land in controversy to "be divided between them share and share alike, that is, one-half (1/2) must go to the plaintiffs and the remaining one-half (1/2) must go to the defendants."

In this appeal, defendants-appellants assign the following errors:

I

THE LOWER COURT ERRED IN HOLDING THE PROPERTIES OWNED IN COMMON.

II

THE LOWER COURT ERRED IN CONSIDERING THE CASE ALREADY SUBMITTED FOR DECISION SINCE PLAINTIFFS HAVE PRESENTED THEIR EVIDENCE AND RESTED THE CASE.

III

THE LOWER COURT ERRED IN ASKING THE SUBSTITUTED DEFENDANTS TO SUBMIT EXHIBITS.

IV

THE LOWER COURT ERRED IN ADMITTING THE AMENDED COMPLAINT.

The first assignment of error questions the factual findings of the trial court. In their notice of appeal, the defendants made it clear that they were appealing to the Supreme Court, "the questions involved being purely of law." When the appellants bypassed the then Court of Appeals and went directly to this Court, they impliedly

accepted the findings of fact of the trial court. Our examination of the records for any indication of grave abuse of discretion in the appreciation of evidence by the lower court yields negative results. We find no circumstance to warrant an exception to the general rule that the factual findings below are binding upon us. (*Alimagno v. Court of Appeals*, 120 SCRA 699; *Magpantay v. Court of Appeals*, 116 SCRA 236.)

The first assigned error has no merit.

The second and third assignments of errors are premised on the appellants' contention that the lower court acted with grave abuse of discretion in denying their motion for postponement.

We find no grave abuse.

The defendants-appellants were almost through with the presentation of their evidence when the case was postponed to July 30, 1964. The notice of resetting was received by defendant's counsel on June 28, 1964. As earlier stated, counsel had more than one month to prepare for the next hearing and to make his witnesses available.

On July 30, 1964 the defendant's counsel informed the court that two days earlier he had filed a motion for postponement on the ground that his witnesses had gone to Apayao, Mountain Province to plant rice. The court denied the motion, after observing that the complaint had been filed thirteen (13) years earlier. The court considered the case submitted for decision.

According to the affidavit of Gamaliel F. Racimo, upon the denial of the motion for postponement, their counsel phoned him at Vintar, Ilocos Norte to immediately come to court at Laoag. Their lawyer had decided to forego the testimony of the witnesses in Apayao and "he will only present me to testify as a defendant in the case, then he will close and rest the case."

It is plain from the foregoing that without much hesitation, the appellants' counsel could forego the testimony of the supposed witnesses who were planting rice in Apayao, Mountain Province and that he could easily contact the one remaining witness by telephone. The counsel had no business to presume that, under the circumstances of the case, his motion for postponement would be granted. He came to trial unprepared when his one remaining witness could be so easily contacted. Motions for postponement are always addressed to the sound discretion of the court and counsel must be in the court on the day of the hearing with his witnesses so that if his motion is denied, he can proceed with the trial. (See *De Vera v. Santos*, 79 SCRA 72). The allegation that Gamaliel Racimo arrived at 9:30 that same morning after the phone call is disputed by the plaintiffs and is not sustained by the records. At any rate, even if true the same does not justify a setting aside of the court's order. There was no error, much less grave abuse of discretion in the lower court's ordering the case submitted for decision.

Prescinding from the above, the lower court did not err in asking the substituted defendants to submit their exhibits upon the denial of their motion for reconsideration. The case having been submitted for decision, the counsel for the defendants-appellants should have offered the exhibits he had presented during the trial especially Exhibit 1 which was the alleged deed conferring title on the original defendant. Instead of doing so, the counsel blatantly refused to offer any of the exhibits for unknown reasons. It is a settled rule that the court shall consider no evidence which has not been formally offered. (Rule 132, Section 35). The exhibits cannot even be considered as evidence which had been offered and rejected during the hearing so that they could be included in the record on appeal. It is obvious that the strategy of the counsel for the defendants-appellants was to incorporate these documents in the record on appeal for the purpose of getting this court's sympathies and inducing it to revise the findings at the trial. Such a step, however, on the part of the defendants-appellants is not sanctioned by the rules of civil procedure. (See *De Castro v. Court of Appeals*, 75 Phil. 824).

As to the fourth assignment of error, there can be no question that a court of competent jurisdiction is vested with authority to set aside its own order in a case where such setting aside is warranted by the Rules and in order to prevent a miscarriage of justice. (*Manongdo v. Vda. de Albano*, 95 SCRA 88, citing *Heirs of Ceferino Morales, etc., et al., v. Court of Appeals*, 67 SCRA 304). It was the counsel for the defendants-appellants who filed an urgent manifestation to direct the plaintiffs-appellees to effect an amendment of the complaint because the defendant had died. When the court ordered the dismissal of the case upon motion of the defendants-appellants, the plaintiffs-appellees, on the same day, filed a motion to admit their amended complaint. Within the period to file an appeal from such order, the court set aside the order of dismissal and admitted the amended complaint, "considering that this case has already been commenced and considering further that counsel for the plaintiff has filed this amendatory complaint just a day after the case has been dismissed for failure to amend the complaint. x x x" Clearly, the court did not abuse its discretion as it is within its prerogative to correct its own order before it becomes final and executory, so as to make it conform to the evidence presented and the applicable laws. (See *Baguyo v. Leviste*, 107 SCRA 35).

WHEREFORE, the appeal is hereby DISMISSED for lack of merit. Costs against the defendants?appellants.

SO ORDERED.

Melencio-Herrera, Plana, and Relova, JJ., concur.

Teehankee, (Chairman), in the result.

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