

JUSTINO LUCERO, PETITIONER, VS. JUDGE LEON P. DACAYO OF THE COURT OF AGRARIAN RELATIONS, EIGHTH JUDICIAL DISTRICT, BRANCH I, LUCENA CITY, LORETO UMALI, VICTORINO UMALI, SERGIO U...

G.R. No. L-23718. March 13, 1968

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R EYES, J.B.L., Acting C.J.,:

Original petition for certiorari against the order of the Judge presiding over Branch I, Eighth Judicial District, Court of Agrarian Relations, maintaining the dismissal of Case No. 700 of said Court, allegedly issued in grave abuse of discretion.

Justino Lucero, claiming to be the tenant of one-half (eastern portion) of four parcels of coconut land owned by Loreto, Victorino, Sergio and Felimon, all surnamed Umali, petitioned the Court of Agrarian Relations (Branch I, in Lucena City) for a judgment ordering, among others, therein respondents landowners to desist from ejecting him (petitioner) from the landholding in question; to deliver to him his alleged lawful share in the harvests from December, 1963 and there-after; to make a reliquidation and accounting of previous harvests, from 1949 to January, 1964; to deliver to petitioner whatever share he may still be entitled under the law; and to reimburse him attorney's fees and costs.

In due time, respondents filed their answer traversing the averments of the petition. Thereafter, the case was set for pre-trial conference.

On August 6, 1964, when the case was called for pre-trial meeting at 9:30 in the morning, petitioner was not present, although his counsel as well as the other parties were there. In view of the assurance of his counsel that petitioner would come, the court declared a recess. However, as petitioner was still not around when the session was resumed at 10 o'clock, the judge granted respondents' verbal motion and ordered the dismissal of the case with prejudice.

Petitioner's counsel filed a motion for reconsideration of the order of dismissal, with prayer that the pre-trial conference be set for another date, alleging that petitioner's failure to arrive in court on time was for reasons beyond the latter's control. This motion was accompanied by a sworn statement of petitioner to the effect that he left his house for the court on August 6, 1964 at about 6:00 in the morning; that as resident of barrio Quipot, he had to walk a distance of about three kilometers to reach the town-proper of Tiaong; that his trip through this stretch of road was delayed because he was a sick man^[1] and the road was under water caused by the rain of the previous night; that he arrived in Tiaong at about 9 in the morning; that he happened to board a baby-bus that made frequent stops to pick up and unload passengers, and he reached the court in Lucena City after 10 o'clock.

By resolution of October 1, 1964, the motion for reconsideration was denied, the court ruling that while petitioner's late arrival for the pre-trial meeting may be excusable, the affidavit of merits attached to the motion failed to state the valid cause of action which petitioner intended to prove, as required by Section 2 of Rule 37 of the Rules of Court. The tenant, consequently, instituted the present proceeding, charging the respondent Judge of

having gravely abused his discretion in refusing to reconsider the order of dismissal of Case No. 700.

This petition is meritorious. The denial of petitioner's motion for reconsideration, allegedly for non-compliance with the requirements of Section 2 of Rule 37, was erroneous. In the first place, there was no sense in requiring that the affidavit of merits should state the plaintiff's cause of action, because that was already pleaded in the complaint filed in the same Court. Secondly, the provisions of Rule 37, on New Trial, do not govern all motions for reconsideration based on fraud, accident, excusable negligence or mistake; they are applicable only when a party, adversely affected by a judgment already rendered in a case, seeks to have it set aside and a new trial held, in the hope that the aforesaid judgment may be reversed or modified on account of the evidence that is to be produced. For, if a new trial is indeed granted, the original decision shall be vacated and the action is to stand for trial de novo.[2] The procedure contemplated under this Rule, therefore, involves a reopening of the case for hearing, after it was already submitted for decision and a judgment thereon was actually reached. Since the reopening would necessarily affect the party in whose favor the disputed judgment was rendered, the Rule requires the movant to show the valid cause of action or defense which he intends to prove at the new trial, to prevent this remedy from being utilized merely to delay termination of the proceedings.

But in the case at bar, the proceeding below had not gone beyond the pre-trial stage; the parties had not as yet adduced any evidence. A postponement of the pre-trial to another date would not have caused the respondents landowners irreparable damage or prejudice. The dismissal is the more unjustified, because according to the lower court itself, the failure of petitioner to arrive on time for the pre-trial conference was excusable. In short, this is not an occasion for the enforcement of the precautionary measure prescribed in Rule 37. The motion filed in this case, being nothing but a simple pleading for reconsideration of the order of non suit, need not be accompanied by an affidavit of merits except to show the true cause of the failure to appear at the pre-trial.

Considering that the granting or denial of a motion for re-consideration involves an exercise of discretion, and bearing in mind the strictures of Article 24 of the Civil Code of the Philippines,[3] it cannot be gainsaid that there had been a patent abuse of discretion when petitioner's motion, which is meritorious and in due form, was denied. The action of the court may be properly questioned in an action for certiorari. The delays of an ordinary appeal render it an inadequate remedy in the circumstances obtaining in this case.

WHEREFORE, the writ of certiorari is granted; the order of dismissal, of August 6, 1964, as well as the resolution of October 1, 1964, issued by the lower court are hereby set aside, and the case is remanded for further proceedings. No costs.

SO ORDERED.

Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] Attached to the affidavit was the certification of a chest physician that petitioner Lucero was suffering from a reactivation of PTB at the apex of his right lung.

[2] Section 5, Rule 37, Rules of Court.

[3] Art. 24. -- In all contractual, property or other relations, when one of the parties is at a disadvantage on account of his moral dependence, ignorance, indigence, mental weakness, tender age or other handicap, the courts must be vigilant for his protection.

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