

ERLINDA D. PABALAN-VALLAR, PLAINTIFF-APPELLANT VS. SPOUSES GERARDO DIÑO AND MARIETTA DIÑO, PABLO LUMAGUE, VILLA-SAN MECHANICAL & BUILDING CONTRACTOR CORPORATION REPRESENTED BY: ...

Ponente: GARCIA, R. R. J.

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GARCIA, R. R. J.:

Before Us is an appeal from the Order[1] dated August 23, 2013 of the Regional Trial Court (RTC), Branch 95, Palawan which dismissed the complaint for annulment of sale and recovery of possession of real estate property filed by plaintiff-appellant Erlinda D. Pabalan-Vallar against defendants-appellees, the dispositive portion of which reads:

WHEREFORE, premises considered, the motion filed by the defendants is hereby GRANTED and accordingly, the complaint in this case is hereby ordered DISMISSED for prematurity, failure of the plaintiff to implead an indispensable party and failure of the plaintiff to prosecute this case for unreasonable length of time. The [R]egister of [D]eeds of Puerto Princesa is also directed to cancel any entry or entries annotated in the certificate of title that arose out of this case for lack of basis therefore anymore.

IT IS ORDERED.[2]

THE FACTS

On August 29, 2005, appellant Erlinda D. Pabalan-Vallar filed with the Regional Trial Court (RTC) of Palawan a complaint[3] for annulment of deed of sale and recovery of possession of real estate property against appellees spouses Gerardo Diño[4] and Marietta Diño, Pablo Lumague and Villa-San Mechanical and Building Contractor Corporation (Villa-San Corporation for brevity), represented by Conrado Villarama. The complaint alleged that appellant is an American citizen and a resident of Fremont, CA. Appellee Gerardo is appellant's half brother. They are children of the late Laura Diño who died on October 22, 1989[5]. During the lifetime of Laura, she acquired the subject parcel of land measuring 750,913 square meters situated at Inagawan, Puerto Princesa City covered by Transfer Certificate of Title (TCT) No. 7757[6] of the Register of Deeds of Puerto Princesa.

During appellant's visit to the Philippines in December 2004, she was informed that the subject property had been sold by appellee Gerardo in favor of appellees Pablo Lumague and Villa-San Corporation. On the basis of the information, appellant secured from the Registry of Deeds of Puerto Princesa a copy of TCT No. 7757 which bore the following memorandum of encumbrances: Entry No. 6323 referring to a Deed of Donation[7] dated October 10, 1989 by virtue of which Laura Diño donated the subject property in favor of appellee Gerardo; Entry No. 6324 referring to BIR Certification[8] dated May 30, 1997 to the effect that the donor's tax on the subject property had been paid; and Entry No. 6325 pertaining to a Deed of Absolute Sale[9] dated June 23, 1995 by virtue of which appellee Gerardo sold the subject property to his fellow appellees Pablo Lumague and Villa-San Corporation for the amount of P800,000.00.

Appellant was surprised to discover these documents since she neither executed any special power of attorney

(SPA) in favor of appellee Gerardo nor was she aware that their mother executed a deed of donation in his favor. The purported SPA executed in favor of appellee Gerardo and the Deed of Donation dated October 10, 1989 are spurious or falsified. Hence, the complaint prayed that the Deed of Absolute Sale dated June 23, 1995 be declared null and void and that appellees be ordered to reimburse appellant the amount of P50,000.00 as attorney's fees and costs of suit.

In their traverse, appellees spouses Gerardo and Marieta admitted that they sold the subject property to their fellow appellees. They explained that the property was mortgaged with Philippine National Bank (PNB), Palawan branch, by Laura Diño in 1983. Appellant was aware of the loan but did not say anything about its settlement. Meanwhile, appellee Gerardo received several demands from the bank which warned him that the property will be foreclosed if the loan will not be paid. Since appellee Gerardo did not have money to pay off the loan, he asked his co-appellees Lumague and Villa-San Corporation to redeem the property from PNB. It was averred further that appellant can pay any time his co-appellees the amount paid to the bank and the latter will immediately deliver the land to her.

Meanwhile, appellees Lumague and Villa-San Corporation narrated in their Answer[10] that in January 1995, appellee Gerardo approached them and offered for sale the subject property. Since appellees Gerardo and Lumague and Conrado Villarama are all members of Iglesia Ni Cristo, respectful discussions about the purchase of the property were made possible. Appellee Gerardo disclosed that he and appellant co-own the subject property and that the same was mortgaged with PNB. Their family wanted to dispose the same since they could no longer maintain it. He also informed them that the property was already given to him by their mother for purposes of transferring the title in his name. He could not effect the transfer, however, for lack of funds to discharge the loan and dispense the expenses of registration. Appellee Gerardo presented to them the owner's duplicate copy of TCT No. 7757, History of Title[11] dated July 2, 1982 issued by the Registry of Deeds of Puerto Princesa, the Deed of Donation dated October 10, 1989 and a Special Power of Attorney[12] dated June 7, 1994 executed by appellant and one Bienvenido Diño[13] authorizing appellee Gerardo to sell, transfer, convey or otherwise dispose the subject property as well as to enter into agreements for the settlement of any obligation or indebtedness relating to the same. Relying on these documents, appellees Lumague and Villa-San Corporation decided to purchase the subject property. As agreed, they discharged the loan with PNB in the amount of P650,000.00; delivered to appellee Gerardo an AUV Tamaraw C-40, valued at the amount of P190,000.00 and paid the additional amount of P800,000.00 to appellee Gerardo. The assailed Deed of Absolute Sale dated June 13, 1995 was then executed. In turn, appellee Gerardo surrendered the property to appellees Lumague and Villa-San Corporation.

Appellees Lumague and Villa-San Corporation registered their adverse claim on the subject property with the Register of Deeds of Puerto Princesa after paying real estate tax, donor's tax, capital gains tax and documentary stamp tax in the total of P295,187.97. They also remitted an additional amount of P271,108.00 to appellee Gerardo to dispense the expenses of processing the clearance with the Department of Agrarian Reform (DAR).

In view of the foregoing narration, appellees Lumague and Villa-San Corporation claimed that they purchased the subject property and registered their claim thereto in good faith. They have exercised more than the requisite degree of prudence in ascertaining the authority of the seller in the person of appellee Gerardo as the sole owner of the subject property. The instant complaint came as a surprise. It has been fourteen (14) years since they purchased the subject property and it is only now that appellant questioned the same. Appellant has no clear right to the property or even sufficient justification as to why she is acting only now on her brother's alleged unauthorized disposal of the property. Hence, they prayed that the instant complaint be dismissed. By way of counterclaim and cross-claim, they claimed that they are entitled to the total amount of P1,966,295.97 from appellant and appellee Gerardo. This amount represents all payments made, taxes paid and cost incurred in

relation to the purchase of the subject property.

Before the case was set for pre-trial or on August 12, 2009, appellees Lumague and Villa-San Corporation filed with the court a quo Written Interrogatories to Plaintiff with Request for Admissions[14]. In her Answer[15] thereto, appellant stated that she has two (2) half brothers, appellee Gerardo and one Bienvenido Diño who is also permanently living abroad. She was aware that the subject property had been encumbered by way of mortgage in favor of the PNB. At one point, she gave verbal instructions to appellee Gerardo to negotiate with the bank and pay the latter the amount of P80,000.00 to pay the said mortgage.

On August 18, 2010, appellees spouses Diño were declared in default on account of their failure to attend the pre-trial hearing held on even date.[16]

In the Pre-trial Order[17] dated September 8, 2010, it was stated that appellant will be presenting five (5) witnesses, including herself. On the other hand, all of the appellees will be presented as witnesses for the defense.

During the trial, or on May 16, 2011, the first witness for the plaintiff in the person of Engr. Joven Baluyot took the witness stand. Engr. Baluyot testified that he is the assistant city assessor of Puerto Princesa City. He enumerated the tax declarations found in their office which relate to the subject property. The first one was Tax Declaration No. 013-2123 which was canceled by Tax Declaration No. 013-2895 under the name of the late Laura Diño and which referred to TCT No. 7757. Tax Declaration No. 013-2895 was canceled by Tax Declaration No. 013-2931 in the name of appellee Gerardo. The remarks thereon indicated that the subject property was covered by TCT No. 180692 in the name of appellee Gerardo. In turn, Tax Declaration No. 013-2895 was canceled by Tax Declaration No. 013-2932 which pertains to TCT No. 180693 in the name of appellees Lumague and Villa-San Corporation issued on September 18, 2009.

During the next hearing held on July 11, 2012, appellant's counsel, Atty. Arnulfo L. Tagle, was present but the counsel for appellees Lumague and Villa-San Corporation were unable to attend because they were not properly notified. The next hearing was set for January 16, 2013.[18]

On July 12, 2012, appellant's counsel, Atty. Tagle, filed a motion[19] to withdraw appearance. Thereafter, on August 13, 2012, a new counsel for the plaintiff in the person of Atty. Ferdinand M. Corpuz entered his appearance.[20]

On January 10, 2013, Atty. Corpuz filed an Urgent Ex-Parte Manifestation and Motion[21] which stated that his formal appearance in behalf of appellant in August 2012 was based only on a verbal agreement with the latter. The formal retainer agreement between him and appellant remained unsigned because appellant had to go back to the United States in July 2012. Since then, appellant has not communicated with Atty. Corpuz. The latter has likewise failed to locate appellant's whereabouts since it appears that she moved to another address. Hence, it was prayed that the hearing set on January 16, 2013 be canceled and the continuation of the trial be deferred for at least sixty (60) days to give Atty. Corpuz more time to locate and confer with his client.

During the scheduled hearing on January 16, 2013, appellant and her counsel were absent. The counsel for appellees Lumague and Villa-San Corporation, however, were present.[22]

On February 7, 2013, appellees Lumague and Villa-San Corporation filed a motion to declare appellant deemed to have waived her right to present evidence with motion to dismiss the instant complaint pursuant to Rule 17 of the Revised Rules of Court.[23]

On March 5, 2013, Atty. Corpuz filed a notice of withdrawal of appearance as counsel for appellant with conformity of the latter.[24] On March 13, 2013, Atty. Zoilo C. Cruzat filed an entry of appearance as counsel for

appellant with an opposition to appellees' motion to declare appellant to have waived her right to present evidence and motion to dismiss.[25]

In the assailed Order[26] dated August 23, 2013, the court a quo ruled in favor of appellees and dismissed the instant complaint on the grounds of failure of appellant as plaintiff to prosecute the case for an unreasonable length of time, prematurity and failure to implead an indispensable party. It was explained that the postponements obtained by appellant and the withdrawal of her counsel had caused delay in the case, to the prejudice of appellees. The complaint, which is one between family members, was likewise prematurely filed in the absence of an effort towards a compromise as required under Article 151 of the Family Code. Also, an indispensable party in the person of Bienvenido Diño was not impleaded as party to the case. Bienvenido is a brother of appellant and appellee Gerardo and a co-owner of the subject property. He is also a party in the SPA dated June 7, 1994 allegedly executed in favor of appellee Gerardo. Without Bienvenido, the court a quo cannot afford to grant a complete relief or dispose the instant case with finality. The pertinent portions of the assailed order are quoted:

After going over the record of this case and considering the foregoing premises, the court finds for the defendants, due to the following grounds:

Without the inclusion of defendants Pablo Lumague and Villasan Mechanical, the primary parties in this case are Erlinda Pabalan-Vallar, Gerardo Diño and Bienvenido Diño, who are siblings and therefore belong to the family. In other words, the purported author of the fraud and falsification and the alleged victim thereof, [are] all belong to one family and, thus, this case is undeniably one by and between family members.

In complaints filed by and between family members, the law provides that the same be preceded by an effort towards a compromise, which the Court does not find [in] this case, and, hence, the filing of the complaint is premature. xxx

xxx

Surprisingly also, the complaint for the annulment of the deed of sale was brought only by Erlinda D. Pabalan-Vallar, without the accompanying complaint of one Bienvenido [Diño] who is also a brother of plaintiff Erlinda Vallar and Gerardo [Diño] and one of the [grantors] xxx in the SPA and also a co-owner of the property and thus, an indispensable party to the case that without him the Court cannot afford to grant a complete relief or dispose this case with finality. Otherwise stated, without Bienvenido [Diño] complaining, the SPA will be valid and binding as to him and so is the sale insofar as he is concerned.

xxx

Applying the foregoing definitions and principles to the present case, this Court finds that any decision in this case cannot bind Bienvenido [Diño], and the Court cannot wholly nullify the SPA that Bienvenido [Diño] had executed together with Erlinda Vallar and so is the sale with respect to Bienvenido [Diño]'s interest in the property that he co-owns with Erlinda Vallar and Gerardo [Diño]. Obviously, Bienvenido [Diño] is indispensable party in this case without whom this Court is barred from making a final adjudication as to the validity of the SPA and of the sale. Without the presence of indispensable parties to a suit or proceeding, a judgment therein cannot attain finality xxx.

xxx

The foregoing failure on the part of the plaintiff, the postponements obtained by her which were occasioned by non-availability of witness and withdrawal of counsel aggravated all the more the delay that she had cause[d] in this case, all to the prejudice of the defendants.

xxx

Considering the circumstances of this case before the Court, it can be concluded that the plaintiff failed to prosecute the case for an unreasonable length of time. There is a failure to prosecute when the plaintiff, being present, is not ready or is unwilling to proceed with the scheduled trial or when postponements in the past were

due to the plaintiff's own making, intended to be dilatory or caused substantial prejudice on the part of the defendant.[27]

Aggrieved, appellant filed a motion for reconsideration[28] which was denied in an Order[29] dated November 12, 2013. Hence, the instant appeal which raises the following assignment of errors[30]:

I

THE LOWER COURT COMMITTED AN ERROR IN DISMISSING THE CASE ON GROUNDS NOT ASSERTED BY APPELLEES LUMAGUE AND VILLA-SAN CORPORATION IN THEIR ANSWER AND IN THEIR MOTION TO DECLARE APPELLANT TO BE DEEMED TO HAVE WAIVED HER RIGHT TO PRESENT EVIDENCE WITH MOTION TO DISMISS;

II

THE LOWER COURT ERRED IN DISMISSING THE CASE ON THE GROUND OF FAILURE ON THE PART OF APPELLANT TO INCLUDE BIENVENIDO DIÑO, AN ALLEGED INDISPENSABLE PARTY; AND

III

THE LOWER COURT ERRED IN NOT CONSIDERING THE PREVAILING ATTENDANT CIRCUMSTANCES OF THE CASE AS JUSTIFIED REASONS OF APPELLANT'S FAILURE TO PRESENT EVIDENCE DURING THE JANUARY 16, 2013 SCHEDULED HEARING.

THE ISSUE

The focal issue to be resolved in the instant case is whether or not the court a quo erred in dismissing the instant complaint for annulment of deed of sale and recovery of possession of real estate property.

THE RULING

The appeal is bereft of merit.

Appellant essentially argues that the court a quo erred in dismissing the instant complaint on the ground that she failed to present evidence during the hearing scheduled on January 16, 2013. This circumstance alone is not sufficient ground to dismiss the case. The failure to present evidence during the said hearing was due to the failure of her lawyer to appear on the said date, which was beyond appellant's control. Further, the delay in the presentation of witnesses was not attributable to appellant alone. All circumstances affecting the case should have been taken into consideration before the case was dismissed. The court a quo should have been liberal to appellant by giving her an opportunity to present her evidence.

We are not persuaded.

In every action, the plaintiffs are duty-bound to prosecute their case with utmost diligence and with reasonable dispatch to enable them to obtain the relief prayed for and, at the same time, to minimize the clogging of the court dockets.[31] The expeditious disposition of cases is as much the duty of the plaintiff as the court's.[32] On account of this duty of the plaintiff, Section 3, Rule 17 of the Revised Rules of Court states that the trial court may dismiss an action, *motu proprio* or upon motion of the defendant, for failure to prosecute, if the plaintiff, for no justifiable cause, (1) fails to appear at the time of trial; (2) fails to prosecute the action for an unreasonable length of time; and (3) fails to comply with the Rules of Court or any order of the court. We quote:

Section 3. Dismissal due to the fault of the plaintiff. – If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect

of adjudication upon the merits, unless otherwise declared by the court.

In *Suarez vs. Judge Villarama, Jr.*[33], the Supreme Court held that the true test for the exercise of the power to dismiss a case on the ground of failure to prosecute is whether, under the prevailing circumstances, the plaintiff is culpable for want of due diligence in failing to proceed with reasonable promptitude. The dismissal of a case for failure to prosecute is addressed to the sound discretion of the trial court and where the plaintiff is chargeable with want of due diligence in failing to proceed with reasonable promptitude in the prosecution of its case, and absent grave abuse on the part of the trial court, the dismissal must be upheld.[34]

In the case at bench, appellant has failed to show that the court a quo gravely abused its discretion in dismissing the instant case on the ground of failure to prosecute. The facts of the case clearly show that the dismissal of the case was warranted under the aforequoted portion of Rule 17.

First off, it is well to note that the instant case was filed on August 29, 2005[35]. More than seven (7) years thereafter, or in January 2013, only one (1) out of the five (5) witnesses[36] for the plaintiff had taken the witness stand. This notwithstanding, during the scheduled hearing for the continuation of the presentation of plaintiff's evidence on January 16, 2013, neither appellant nor her counsel was present despite the fact that the said hearing was set six (6) months earlier. Their absence cannot be justified by the circumstance that six (6) days prior, or on January 10, 2013, appellant's then counsel, Atty. Corpuz, manifested before the court a quo that he cannot locate appellant's whereabouts and asked for sixty (60) days within which to locate and confer with his client. It is well to note that on the day of the scheduled trial for the presentation of the plaintiff's evidence, the court a quo has not ruled upon the motion for more time filed by Atty. Corpuz. There being no action taken by the court a quo thereon, the more prudent course of action was for appellant or her counsel to attend the scheduled trial date. It is well to emphasize that a motion for postponement is a privilege and not a right.[37] A movant for postponement should not assume beforehand that his motion will be granted since the grant or denial of a motion for postponement is a matter that is addressed to the sound discretion of the trial court.[38] Furthermore, the court a quo cannot be faulted for not favorably acting on the said motion. The reasons cited therein, failure to locate his client and absence of a retainer agreement, were too flimsy and self-serving to be given consideration.

Appellant cannot be spared of the consequences of failing to attend the scheduled hearing for the presentation of her own evidence by arguing that this shortcoming was due to the fault of her former lawyer which was beyond her control. It has been repeatedly enunciated that a client is bound by the action of his counsel in the conduct of a case and cannot be heard to complain that the result might have been different had he proceeded differently.[39] If every perceived mistake, failure of diligence, lack of experience or insufficient legal knowledge of the lawyer would be admitted as a reason for the reopening of a case, there would be no end to controversy.[40] Here, appellant is bound by the shortcoming of her chosen counsel in failing to attend the scheduled trial date and the consequent failure to present her evidence on the said hearing.

Moreover, appellant is not totally blameless. The records show that she has been remiss in her duty of prosecuting the instant case. As early as July 2012, or six (6) months prior to the next scheduled trial, Atty. Tagle, appellant's first counsel, withdrew his appearance with her conformity.[41] She then had ample time to retain a new counsel and confer with the same regarding the status of her case before the next trial. In the Urgent Ex-Parte Manifestation and Motion[42] dated January 10, 2013 filed by her second lawyer in the person of Atty. Corpuz, however, it was alleged that six (6) days prior to the scheduled trial date, Atty. Corpuz could not confer with appellant regarding the status of the case because her whereabouts were unknown to him. This was never denied by appellant. Neither did she exert efforts to communicate with Atty. Corpuz about her whereabouts and to apprise herself of the status of her case. From these circumstances, it is clear that appellant failed to give to her then counsel the necessary assistance the latter needed. In *Rural Bank of the Seven Lakes (S.P.C.), Inc. vs.*

Dan[43], the Supreme Court pronounced that the plaintiff is obliged to give the necessary assistance to his counsel, as his interest in the outcome of the case is at stake. It is wrong for plaintiff to expect that all he needs to do is sit back, relax and await a favorable outcome. Failure to do so would justify the dismissal of the complaint, as in the instant case.

The foregoing circumstances clearly show that appellant is chargeable with want of due diligence in failing to proceed with reasonable promptitude in the prosecution of the instant case. Appellant's unjustified failure to attend the scheduled hearing for the presentation of her evidence and the fact that she has presented only one (1) witness in a span of seven (7) years leads to no other conclusion than that appellant has lost interest in seeing her case terminated at the earliest possible time; or that her case is unmeritorious from inception.[44] Whichever the case may be, the court a quo did not err nor did it gravely abuse its discretion in dismissing the instant case on the ground of failure to prosecute for an unreasonable length of time.

Appellant's plea for liberality cannot save the day for her. Rules of procedure must be faithfully followed except only when for persuasive reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure.[45] Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to explain its failure to comply with the rules.[46] Appellant has miserably failed to do so here, warranting the imposition of the sanction of dismissal as provided for in Section 3, Rule 17 of the Revised Rules of Court.

Based on the foregoing discussion, We do not find any compelling reason to veer from the assailed ruling of the court a quo.

WHEREFORE, the instant appeal is hereby DENIED. The Order dated August 23, 2013 of the Regional Trial Court (RTC), Branch 95, Palawan, is AFFIRMED.

SO ORDERED.

Dimagiba, L. R., and Sempio Diy, M. E., JJ., concur.

[1] Order penned by Presiding Judge Bienvenido C. Blancaflor, Rollo, pp. 35-45.

[2] Rollo, p. 44.

[3] Records, pp. 1-9.

[4] Referred in the records also as Gerardo Dinio.

[5] Records, p. 10.

[6] Records, pp. 11-13.

[7] Records, pp. 16-17.

[8] Records, p. 18.

[9] Records, pp. 14-15.

[10] Records, pp. 71-85.

[11] Records, p. 107.

[12] Records, p. 112.

- [13] Referred in the records also as Bienvenido Dinio.
- [14] Records, pp. 157-160.
- [15] Records, pp. 172-176.
- [16] Order dated August 18, 2010.
- [17] Records, pp. 250-256.
- [18] Records, pp. 295-296.
- [19] Records, p. 297.
- [20] Records, p. 300.
- [21] Records, pp. 307-309.
- [22] Records, pp. 310-311.
- [23] Records, pp. 313-316.
- [24] Records, pp. 321-322.
- [25] Records, pp. 324-326.
- [26] *Supra*, at Note 1.
- [27] Rollo, pp. 40-44.
- [28] Records, pp. 350-355.
- [29] Records, pp. 371-374.
- [30] Rollo, p. 22.
- [31] *Espiritu, et al. vs. Lazaro, et al.*, G.R. No. 181020, November 25, 2009.
- [32] *3A Apparel Corporation, et al. vs. Metropolitan Bank and Trust Co., et al.*, G.R. No. 186175, August 25, 2010.
- [33] G.R. No. 124512, June 27, 2006.
- [34] *3A Apparel Corporation, et al. vs. Metropolitan Bank and Trust Co., et al.*, G.R. No. 186175, August 25, 2010.
- [35] Records, p. 1.
- [36] Pre-trial Order dated September 8, 2010, Records, p. 251.
- [37] *Philippine American Life and General Insurance Company vs. Enario*, G.R. No. 182075, September 15, 2010.
- [38] *Ibid.*
- [39] *Lagua vs. The Honorable Court of Appeals*, G.R. No. 173390, June 27, 2012.
- [40] *Victory Liner Inc. vs. Gammad*, G.R. No. 159636, November 25, 2004.
- [41] Records, pp. 297-299.

[42] Records, pp. 307-309.

[43] G.R. No. 174109, December 24, 2008.

[44] Vide: Ko, et al. vs. Philippine National Bank, G.R. Nos. 169131-32, January 20, 2006.

[45] Suarez vs. Judge Villarama, Jr., et al., G.R. No. 124512, June 27, 2006.

[46] Ibid.

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