

RUFINO ADAN, ET AL., PETITIONERS, VS. NICASIA PANTALLA, RESPONDENTS.*G.R. No. L-12399. May 29, 1959*

Ponente: BAUTISTA ANGELO, J.

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Plaintiff brought this action before the Court of First Instance of Camarines Sur against Rufino Adan, Celedonio Ribares, Elena Vda. de Clave and Fabian Samson to recover the ownership and possession of a parcel of land. Defendants, in their answer, alleged that the land in question does not belong to plaintiff but portions thereof belong respectively to them although their areas have not been determined.

After several postponements, the court set the case for hearing on March 11, 1955. Notice of hearing was received by counsel for defendants on February 17, 1955. When the case was called for trial on the date first mentioned, counsel for both plaintiff and defendants informed the court that they were ready to go to trial and, accordingly, plaintiff presented her evidence consisting of her testimony and some documentary evidence. After plaintiff had rested her case, defendants' counsel moved for continuance alleging that his clients have not come to court although he had notified them in writing that the trial was set for March 11, 1955. Plaintiff objected to this motion contending that defendants' counsel had informed the court that he was ready to enter trial aside from the fact that he was notified thereof more than 20 days in advance and had given a written notice thereof to his clients as he claimed, and considering the opposition to be well-taken, the court denied the motion. Thereupon, the court rendered judgment declaring plaintiff owner of the land in question and ordering defendants to pay her the sum of P7,000.00, to restore its possession to her, and deliver 100 cavans of palay each year until the land is fully restored.

On April 14, 1955, defendants filed a motion for new trial alleging as reasons therefor that "A week later defendants Rufino Adan and Elena Vda. de Clave came. Rufino Adan said that he just received the letter and Elena Vda. de Clave had just arrived from Olongapo. Fabian Samson could not come because he was too old and sickly. Celedonio Ribares was then in Camarines Norte." This motion was not verified nor accompanied by the requisite affidavits of merits, for which reason counsel for plaintiff registered his opposition thereto. But pending ruling on said motion, defendants' counsel filed a supplementary memorandum to which he attached the affidavits of merits. The court, however, found the same not well-founded and denied it. Whereupon, defendants appealed to the Court of Appeals which in due time rendered a confirmatory decision. Hence the present petition for review.

The only issue raised by appellants is that respondent court erred in denying their motions for postponement and for new trial based upon mistake and excusable negligence and in awarding to plaintiff excessive damages.

In their affidavits of merits, appellants stated that it was agreed between their counsel and Rufino Adan that the former would send the notice of hearing to Adan at Managle, Sipocot, Camarines Sur, who would in turn notify his co-defendants of the date of trial; that their counsel had actually sent a letter to Rufino Adan at said place but

because the latter went to Larap, Camarines Norte to work in the mines, he received the letter only on March 13, 1955, or two days after trial, for which reason defendants were not able to attend the trial. Under these facts, appellants contend that their failure to appear was due to mistake or excusable negligence. The trial court however did not consider this conduct justifiable, more so when their counsel was given more than 20 days notice in advance to prepare for trial. Neither the Court of Appeals considered the reasons given justifiable as may be seen from the following comment:

"But, resolving the issue on the merits, we find that upon the facts relied upon by appellants in their motion for new trial, they were not entitled to it and; consequently, the lower court committed no abuse of discretion in issuing the order of denial.

"The record discloses that the corresponding notice of trial was served on appellants' counsel since February 17, 1955, that is, more than three weeks before the date set for the trial. He had more than sufficient time to notify his clients. That the latter did not receive the notice sent by him in due time must be deemed' due to their negligence, because a party to an action in court is under obligation to notify his attorney of his whereabouts, so that the latter may be in position to contact him readily whenever his presence in court is required.

Considering the circumstances of this case, we find no plausible reason for disturbing the findings made by the trial court and by the Court of Appeals. Motions for continuance are addressed at the sound discretion of the court. The exercise of such discretion is generally upheld unless good reasons are shown to the contrary. Here the reasons given are not satisfactory.

"It is urged, in the first place, that the lower court abused its discretion in denying defendants' motion for continuance. But it appears that there had already been two prior postponements granted both at defendants' own instance and that the last motion for that purpose, though sent five days before the date set for trial, did not conform to the Rules and gave no notice to the adverse party or counsel. Moreover, the only ground therein stated was that the parties were on their way to an amicable settlement. But it would appear that opposing counsel informed the court that there was no truth about that statement as no proposal for settlement had ever been made. In the circumstances we do not think the lower court abused its discretion in denying a continuance.

"Defendants cannot now be heard to say that because trial was not postponed they were deprived of their day in court. No one deprived them of their day in court. Of their own volition they preferred not to come to the hearing on the day set, presumably assuming that their motion for continuance would be granted. Defendants had no right to make such assumption, for continuances are granted for good cause alleged and proved and not merely at the will of either or both of the parties to the case." (Gayon vs. Ubaldo, G. R. No. L-7650, Dec. 28, 1955; See also Cruz vs. Malabayasbas, et al., supra, p. 708).

With regard to the amount of damages awarded to plaintiff by the lower court and affirmed by the Court of Appeals, which appellants find excessive, the same cannot now be looked into. This involves a question of fact which is not within our province to consider at this instance.

Wherefore, the decision appealed from is affirmed, without costs.

Paras, C J., Bengzon, Padilla, Montemayor, Reyes, A., Labrador, Concepcion, and Endencia, JJ., concur.

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