

**REPUBLIC OF THE PHILIPPINES (CAA), PLAINTIFF-APPELLEE, VS.
CONSUELO GUARIN, DIONISIO BRIGOLA AND GREGORIO BRIGOLA,
DEFENDANTS. DIONISIO BRIGOLA, DEFENDANT-APPELLANT.**

G.R. No. L-26367. January 31, 1978

Ponente: ANTONIO, J.

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ANTONIO, J.:

Appeal from an Order dated August 26, 1965 of the Court of First Instance of Rizal; dismissing the appeal of defendant-appellant Dionisio Brigola in Civil Case No. 2504-P for his failure to prosecute the same under Section 3 of Rule 17 of the Revised Rules of Court,[1] and from the Order dated December 11, 1965 denying the motion for reconsideration of the first Order afore-mentioned.

In an action for forcible entry filed by plaintiff Republic of the Philippines (Civil Aeronautics Administration) with the Municipal Court, now City Court, of Pasay City (Civil Case No. 5278) against the defendants, the said Court rendered judgment on July 7, 1964 declaring that defendants, through force, strategy and stealth, constructed and erected their respective houses on Lot No. 3271, owned by the plaintiff as per Transfer Certificate of Title No. 3735 of the Registry of Deeds of Pasay City, and ordered the defendants Consuelo Guarin, Gregorio Brigola and Dionisio Brigola to vacate the property and turn over its possession to plaintiff so that it may continue the dredging operation then being undertaken by the Bureau of Public Works in line with the development and improvement of the Manila International Airport.

On July 11, 1964, Consuelo Guarin and Gregorio Brigola appealed from said decision to the Court of First Instance of Rizal and docketed therein as Civil Case No. 2504-P.[2] Dionisio Brigola filed his notice of appeal on July 21, 1964.

On July 25, 1964, the Deputy Clerk of Court of said Court of First Instance of Rizal formally notified the parties and their respective counsels that their appealed case had already been docketed.

On July 31, 1964, defendants Consuelo Guarin and Gregorio Brigola filed their answer dated July 29, 1964 to the complaint.

On October 26, 1964, defendant Dionisio Brigola filed a motion to dismiss the complaint dated October 16, 1964 on the grounds that venue is improperly laid and the court has no jurisdiction over the person of the defendant or over the subject matter of the action for the reason that the premises in question is within the jurisdiction of the municipality of Parañaque so that the case should have been filed in Parañaque and not in Pasay City.

On October 29, 1964, plaintiff filed its opposition to the motion to dismiss contending that, in paragraph 2 of the complaint, it expressly alleged, that the land in question is located at, and forms part of, the Manila International Airport in Pasay City, identified as Lot No. 3271 of the Cadastral Survey of Pasay City and covered by Transfer Certificate of Title No. 6735 in the name of the plaintiff; that, pursuant to Section 1(a) of Rule 4 of the Revised Rules of Court, forcible entry and detainer actions regarding real property shall be brought in the municipality or

city in which the subject matter thereof is situated; and that since there is an express allegation as to the location of the property subject of the complaint, which is hypothetically admitted by defendant, it is evident that his motion to dismiss deserves no merit.

On November 21, 1964, the Court of First Instance of Rizal issued an Order holding in abeyance its resolution on the motion to dismiss until the trial of the case, the grounds alleged therein not appearing to be indubitable.

On December 15, 1964, defendant Dionisio Brigola filed his answer with counterclaim, denying specifically the material allegations of the complaint. On December 24, 1964, plaintiff filed its answer to said defendant's counterclaim.

On August 26, 1965, the plaintiff filed an ex parte motion to dismiss appeal of the defendants, pursuant to Section 9 of Rule 40 of the Revised Rules of Court, alleging, among others, (1) that defendants Consuelo Guarin and Gregorio Brigola had filed their answer dated July 29, 1964, while defendant Dionisio Brigola had also filed his answer on December 15, 1964; (2) that since their receipt of the notice of docketing of their appealed case from the Deputy Clerk of Court, defendants have not taken any steps to prosecute their appeal; (3) that considering the length of time that had elapsed since the receipt of the docket entries in the instant appealed case, dismissal of the appeal is deemed warranted, pursuant to Section 9 of Rule 40 of the Revised Rules of Court; (4) that the failure of the defendants to prosecute their appeal in the instant case is an indication that they have no valid defense against the cause of plaintiff; and (5) that the appeal was frivolous intended merely to delay the execution of the judgment against them by the Pasay City Court.

On the same day, August 26, 1965, the Court of First Instance of Rizal, finding the plaintiff's ex parte motion to dismiss to be well-taken, and the fact that case has been pending for an unreasonable length of time, issued an Order granting said motion to dismiss and likewise ordering that the case be remanded to the Pasay City Court for execution of its judgment dated July 7, 1964.

Defendants' motion for reconsideration filed on September 28 and October 7, 1965, which were opposed by plaintiff on October 14, 1965, having been denied by an Order dated December 11, 1965 of the Court of First Instance of Rizal, only defendant Dionisio Brigola interposed the present appeal, claiming that the lower court erred: (1) in dismissing the appeal on the ground of failure to prosecute; and (2) in not taking into consideration the fact that the Clerk of Court is duty bound to set the case for pre-trial or trial on the merits.

In his brief, appellant Dionisio Brigola contends that, since he had perfected his appeal with the Court of First Instance of Rizal, Branch III, Pasay City, in Civil Case No. 2504-P, which must be tried de novo, it is the duty of the plaintiff to see to it that the case is set for trial and not of the defendant, pursuant to Section 9 of Rule 40 of the Revised Rules of Court; that even assuming that it is the appellant who should take the initiative in setting the case for trial, he, as appellant in the case at bar, has not failed to prosecute his action "for an unreasonable length of time," as the issues were only joined after December 23, 1964 (when plaintiff filed its answer to defendant's counterclaim) and that from January 1965 to August 26, 1965, the date when the lower court issued the dismissal order, only about eight (8) months had elapsed.

We find these contentions without merit.

The appealed Orders are premised on appellant's failure to take any step in the prompt disposal of his appeal in the lower court pursuant to the provisions of Section 9 of Rule 40, in relation to Section 3 of Rule 17 of the Revised Rules of Court.[3] This Section 9 of Rule 40 should be construed in its entirety and in conjunction with Section 3 of Rule 17, particularly with reference to the phrase "failure to prosecute", the former with respect to failure to prosecute appeal and the latter to an original principal action. The first sentence of Section 9 of Rule 40

speaks of the effect of an appeal from an inferior court (now municipal or city court) to the Court of First Instance, whereas the second sentence thereof refers to the revival of the appealed judgment and the remanding to the justice of the peace or municipal court (now municipal or city court) of the case for execution in case the appeal is withdrawn or dismissed for failure to prosecute. Since it is the appellant who is obviously interested in the appeal, he should therefore be the one to have the appealed case set for trial as early as possible. The "failure to prosecute" in the instant case should, therefore, be construed to mean failure on the part of the appellant to prosecute his appeal. It is well-known policy of the courts to expedite the disposal of cases to prevent their dockets from being clogged and it is incumbent upon the parties to take the initiative in the prompt disposal of cases as a duty to themselves, to the courts and to the public. There are more patent considerations why an appellant in forcible entry and detainer cases should show greater diligence in the prosecution of his appeal. Forcible entry and detainer actions are summary proceedings designed to provide for an expeditious means of protecting actual possession of right to possession of property.[4] Their purpose, regardless of the actual condition of the title to the property, "is that the party in peaceable and quiet possession shall not be turned out by strong hand, violence or terror." It is thus intended "to prevent breaches of the peace and criminal disorder which would ensue from the withdrawal of the remedy", for it is obvious that persons believing themselves entitled to the possession of property would resort to force to gain possession rather than institute some appropriate action in court. Pursuant to such objective, Section 9 of Rule 70 of the Revised Rules of Court allows the restoration of the lessor to his possession of the premises, thru a writ of preliminary mandatory injunction, if the court is satisfied that the lessee's appeal is frivolous or dilatory.

Thus, in *Racimo vs. Diño*,[5] involving the validity of the order of the lower court dismissing *ex mero muto* the appeal of the deforciant Arcadio Diño because of his failure to prosecute his appeal "for an unreasonable length of time", this Court speaking through Justice Aquino, declared that:

"It is settled that under section 3, Rule 17 of the Rules of Court an action can be dismissed by the trial court on its own motion for plaintiff's failure to prosecute it for an unreasonable length of time. That power rests in the sound discretion of the trial court. What is an unreasonable length of time depends upon the circumstances of each particular case. The lower court's exercise of discretion will not be disturbed in the absence of patent abuse. The onus of showing abuse of judicial discretion rests upon the appellant since every presumption is in favor of the correctness of the lower court's action (*Montejo vs. Urotia*, L-27187, July 22, 1971 and eight other cases, 40 SCRA 41, 51-52).

"That ruling under section 3 of Rule 17 is applicable under section 9 of Rule 40 to an appeal to the Court of First Instance from the decision of an inferior court (See *People's Car, Inc. vs. Arcellana*, L-29098, July 22, 1971 and *Bolivar vs. Bandayrel*, L-29373, July 22, 1971, 40 SCRA 42 involving cases originating from the City Court of Manila and appealed to the Court of First Instance of Manila, where the appeals were dismissed for failure to prosecute).

"This Court refused to disturb dismissals for failure to prosecute for a period of less than three months or one year (*Montejo vs. Urotia*, *supra.*)" (At p. 424. *Italics supplied.*)

The above ruling is reiterated in *New Japan Motors, Inc. vs. Mariano Perucho*. [6]

It must be noted that the power of the trial court to dismiss the case for failure of the deforciant-appellant to prosecute his case for an unreasonable length of time rests on the discretion of said court, and the same will not be

disturbed in the absence of patent abuse. As to whether or not the delay is unreasonable depends on the environmental facts and circumstances of each case. Indeed, it is the duty and right of the courts to dismiss a suit for failure to prosecute it with due diligence.[7] In the case at bar, the burden of showing that the trial court gravely abused its discretion rests upon petitioner, since every presumption is in favor of the correctness of the action of the lower court. We note that appellant has failed to discharge this burden.

We find equally unpersuasive appellant's contention that under Section 1 of Rule 20 of the Revised Rules of Court, pre-trial is mandatory and consequently it should have been the duty of the Clerk of Court to calendar the case for pre-trial. While it is the duty of the Clerk of Court to calendar the case for pre-trial or trial, that obligation does not relieve appellant in this case from prosecuting his appeal diligently.[8]

WHEREFORE, the appealed order of dismissal is hereby AFFIRMED, with costs against the appellant.

Fernando, (Chairman), Aquino, and Concepcion, Jr., JJ., concur.

Barredo, J., in the result, in view of his dissenting opinion in *Vda. de Palanca vs. Chua Keng Kian*, 27 SCRA 356; in equity, the judgment could be correct.

Santos, J., on leave.

[1] Formerly Section 3 of Rule 30 of the old Rules of Court.

[2] This case, having been tried and decided in the Pasay City Court before Republic Act 6031 took effect upon its approval on August 4, 1969, on appeal to the Court of First Instance of Rizal, Branch III, Pasay City, proceeded by trial de novo. Sec. 9 of Rule 40, Revised Rules of Court.

[3] Provisions under the Revised Rules of Court:

"SEC. 3. Failure to prosecute. - If plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by court." (Rule 17. Italics supplied.)

"SEC. 9. Effect of appeals. - A perfected appeal shall operate to vacate the judgment of the justice of the peace or the municipal court, and the action when duly docketed in the Court of First Instance shall stand for trial de novo upon its merits in accordance with the regular procedure in that court, as though the same had never been tried before and had been originally there commenced. If the appeal is withdrawn, or dismissed for failure to prosecute, the judgment shall be deemed revived and shall forthwith be remanded to the justice of the peace or municipal court for execution." (Rule 40. Italics supplied.)

[4] *Co Tiac vs. Natividad, et al.*, 80 Phil. 127.

[5] L-27804, Feb. 27, 1976, 69 SCRA 421.

[6] L-44387, Nov. 5, 1976, 74 SCRA 14, See also *Vda. de Palanca vs. Chua Keng Kian*, 27 SCRA 356.

[7] *E. E. Elser, Inc. et al. vs. Macondray Co., Inc., et al.*, 96 Phil. 395.

[8] *Smith Bell & Co., Ltd. vs. American President Lines*, 94 Phil. 879; *Racimo vs. Diño*, supra; *New Japan Motors, Inc. vs. Perucho*, supra.

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