

ALEJANDRA ROASOL AND FRUCTUOSO VIÑA (SPOUSES), AND JESUS T. BALMORIA AND CRUZA CAGA-ANAN (SPOUSES), PETITIONERS, VS. COURT OF FIRST INSTANCE OF MISAMIS OCCIDENTAL, BRANCH II, OZ...*G.R. No. L-44777. October 30, 1978*

Ponente: FERNANDO, J.

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There appears to be ample justification for petitioner Alejandro Roasol in this certiorari and prohibition proceeding entertaining a sense of grievance sufficing to call for redress from this Tribunal. Notwithstanding a free patent No. V-193430 in her favor covering lot 1752 dated August 10, 1961 to the disputed land in question, which has been in her possession all the while,[1] respondent Court of First Instance of Misamis Occidental, then presided by Judge Geronimo R. Morave, enjoined her and her co-petitioners, her husband, Fructuoso Viña and their vendees, the spouses Jesus T. Balmoria and Cruza Caga-anan, "from taking possession and/or harvesting the fruits of the coconut [trees]" of such property.[2] The preliminary injunction was obtained at the instance of private respondent Victoriano Roasol, the plaintiff in a suit for annulment of title and reconveyance, himself the grantee of another free patent granted in 1967.[3] Such order was issued on April 26, 1974, respondent Court disregarding not only the aforesaid free patent but also the special defense set up in such pending action before the lower court that private respondent did file with the Bureau of Lands "a public land application over the land in question but his application was returned unrecorded, after which he filed such suit." [4] The denial of such application by private respondent was precisely because he was already a grantee of lot 1843.[5] It must be noted likewise that both the Director of Lands and the Secretary of Natural Resources, made defendants by private respondent, sustained in their answers the validity of the free patent in favor of petitioner Alejandra Roasol.[6] The case dragged on for more than two years due to postponement sought by private respondent.[7] When on July 21, 1976, the case was again called for hearing with petitioners and their counsel being present but with private respondent and his counsel failing to appear, notwithstanding a previous order of respondent court that no further postponement would be allowed, petitioners filed a motion to dismiss.[8] Their prayer was granted, the action for annulment being dismissed on the same day in view of such non-appearance and failure to prosecute.[9] That ought to have settled matters. It did not turn out that way. What did transpire, however, was that the troubles of petitioners were far from over. The very same Judge Melecio A. Genato, then presiding in respondent court, on August 19, 1976 granted a reconsideration of such dismissal reinstating the case anew. Hence this certiorari and prohibition proceeding, petitioners alleging a grave abuse of discretion.[10]

On October 18, 1976, about a week after its filing with this Tribunal, we issued this resolution: "Considering the allegations, the issues raised and the arguments adduced in the petition for certiorari and/or prohibition with prayer for preliminary injunction, the Court resolved without giving due course to the petition to require the respondents to comment, not to file a motion to dismiss, within ten (10) days from notice. The Court further resolved to issue a temporary restraining order, effective as of this date and continuing until otherwise ordered by

the Court." [11]

In the Comment submitted by respondents, the claim was made that private respondent Victoriano Roasol was the one who had always been in possession of the disputed lot and that, therefore, there was no grave abuse of discretion that could be imputed to respondent Court in view of its actuation in this case. Thereafter, a reply to such comment was submitted by petitioners. It was therein alleged: "The private respondent is projecting that he is the owner of Lot 1752, Pls-568. When these lands were subdivided for settlements by the Director of Lands, Lot 1752 was allocated to petitioner, Alejandra Roasol, while Lot 1843 was allocated to private respondent, Victoriano Roasol (Annex 'Y'). He did not question, then, these allocations made by the Director of Lands. When respondent Victoriano Roasol filed his public land application over Lot 1752, the same was returned to him because the same was allocated to Alejandra Roasol and that he has his own allocation - that is, Lot 1843. And so, the Honorable Secretary of Natural Resources issued Patent No. 193430 (Annex 'A') to petitioner Alejandra Roasol based upon her application, notices of application, and the final report of investigations, and that he acted 'By authority of the President' with a statement to the effect that he does so because petitioner possesses all the qualifications required by law in the premises and has fully complied with all the conditions, requirements, and provisions of Republic Act No. 872 and Chapter VII of Commonwealth Act No. 141, as amended. It is very clear that the Secretary, as a public official of that stature, has performed his duty fairly and regularly. The land in question is a part of the public domain. It is within the jurisdiction of the Land Department. The Bureau of Lands subdivided this public domain and made allocations thereto. The decision therefore of the Director of Lands as approved by the Secretary of Natural Resources is final." [12] There is this further submission: "Now, private respondent harps on a right to bring a reconveyance suit because he now claims to be the owner. Why did he file his public land application if he is the owner thereof? He is not the owner and he did not even file a protest when his public land application was rejected by the Bureau of Lands. He did not file a protest because he knows that the Director of Lands was only enforcing the policy of the Public Land Law for equitable distribution of the alienable and disposable portions of the public domain." [13]

Thereafter, this Court on December 8, 1976 issued the following resolution: "Considering the allegations contained, the issues raised and the arguments adduced in the petition for certiorari and/or prohibition with prayer for preliminary injunction, as well as the comment of respondents on the petition and the reply of petitioners to the said comment, the Court resolved (a) to consider the aforesaid comment as Answer to the petition and (b) to require the parties in this case to file their respective Memoranda within twenty (20) days from notice." [14] After the submission thereof by the parties, the case was considered submitted for decision.

The above facts argue strongly for the granting of the writs prayed for. Certiorari and prohibition lie.

1. The applicable provision from the Rules of Court reads thus: "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." [15] The above section was formerly embodied in the original Rules of Court that took effect in 1940. [16] Nor was it impressed with a novel character. It is a reiteration of what was found in the Code of Civil Procedures. [17] From *Sunico v. Villapando*, [18] a 1909 decision, to *Arellano v. Court of First Instance*, [19] decided barely three years ago, this Court has uninterruptedly adhered to the doctrine, for failure to prosecute justifies a dismissal of a pending action. In *Sunico*, the delay in the failure to prosecute lasted only three (3) months. So it was in *Bautista v. Teodoro, Jr.* [20] Less than a year elapsed; to be exact, seven (7) months in *Rodillas v. Farmacia Central*. [21] In two other cases, *See Chuan v. De la Fuente*, [22] and in *Masiglat v. Mayor of Pasay City*, [23] the period that transpired was about a year and a half. The applicable doctrine has been formulated by Justice Padilla in *Flores v. Phil. Alien*

Property Administrator,[24] in these words: "The dismissal of an action pursuant to section 3, Rule 30, for failure of the plaintiff to appear at the time of the trial 'rests upon the sound discretion of the Court and will not be reversed on appeal in the absence of abuse. The burden of showing abuse of judicial discretion is upon the appellant since every presumption is in favor of the correctness of the court's action.'" [25]

2. Respondent Court, then presided by Judge Melecio A. Genato, issued on July 21, 1976, as previously noted, the order of dismissal. It is worded thus: "When this case was called for hearing today, defendants and their counsel appeared but the plaintiff and his lawyer, Atty. Juanito Ybañez failed to appear. Instantly, defendants, through Atty. Dominador B. Borje, manifested that this case has been delayed unnecessarily and therefore invoked the provisions of Sec. 3, Rule 17 of the New Rules of Court and asked the Court to dismiss the case by virtue whereof, whereby the court instructed him to file a written motion to dismiss, which he immediately complied with. The records show that the complaint was filed in February, 1974. A writ of preliminary injunction against the defendants was issued by the court after which the plaintiff amended his complaint twice, thus, dragging the case and delay[ing] the proceeding. After several postponements, the hearing of the case was set last June 17, 1976, but the same was postponed to July 21, 1976, upon a telegraphic request of plaintiff's counsel who was then in Davao City. A copy of the order transferring trial for the last time to July 21, 1976, was furnished Atty. Ybañez by registered mail on June 23, 1976. The delay of the case has worked injustice to the defendants after the issuance of the writ of preliminary injunction against them. The court therefore, finds merits in the motion to dismiss, filed by the defendants, invoking the provisions of the New Rules of Court which states thus: 'Sec. 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. The dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by the court.' (Rule 17, New Rules of Court) Finding the motion to be well-grounded, this case is hereby dismissed with costs against the plaintiff. The writ of preliminary injunction is hereby dissolved." [26] There was a motion for reconsideration by private respondent [27] which was acted upon favorably by respondent Court in the assailed order of August 19, 1976. [28] As there had been no change at all in the facts set forth in the order of dismissal, there is more than ample warrant for the contention vehemently pressed by petitioners that at the very least, there was a grave abuse of discretion correctible by this tribunal. The observation made by the then Justice, later Chief Justice, Bengzon in *Jordas v. Vedad*, [29] finds pertinence: "Bearing in mind that the trial had previously been postponed nine times at plaintiffs' request, that the case had been pending for more than four years and that a preliminary injunction had been issued which showed the urgency of the matter, we think the Hon. Melquiades Ilao, Judge, had rightly used the discretion vested in him by Rule 30, sec. 3, which provides that when plaintiff fails to appear at the trial or neglects to prosecute his action for an unreasonable length of time, the action may be dismissed upon the court's own motion. Indeed, the many postponements requested by plaintiffs, coupled with their failure to show up at the trial could only mean lack of interest to vindicate their claim or absence of proofs to support it. Worse still, it could indicate a desire merely to harass defendants." [30]

3. Much less could the charge of grave abuse of discretion be refuted by this recital in the last paragraph of the assailed order setting aside the dismissal: "Although counsel for the plaintiff received the notice of hearing of this case scheduled on July 21, 1976, said counsel, nevertheless, was candid enough to explain to this Court that he forgot to appear on said scheduled date of hearing inasmuch as he kept a nightly vigil on the night of July 20, 1976, over a critically sick uncle who had supported him in college. He has submitted a duly sworn affidavit of merit attesting to this fact. The Court considers this failure on the part of counsel as excusable negligence with the admonition that counsel should adhere to the requirements in the Rules of Court in regards to [requests] for postponement." [31] Apparently, Judge Genato was unaware that such a ground precisely had been rejected in the

previously cited leading case of *Flores v. Philippine Alien Property Administrator*, in these words: "In her motions for reconsideration of the order dismissing her complaint, the appellant invoked excusable neglect of her counsel. In effect they are motions for new trial under Rule 37 or relief from an order of the Court of First Instance under Rule 38 which must be accompanied by affidavits of merit. As she failed to attach one to her motions, the Court could decline to entertain them. And even if the requirement of an affidavit of merit to be attached to the appellant's motions be waived because the ground invoked by her counsel was excusable neglect on his part and the motion for reconsideration dated and filed on 6 July 1955 was verified by him, still there appears no sufficient reason for granting a new trial or relief from the order of dismissal. Counsel for the appellant received notice of the hearing set by the Court and should have seasonably asked for postponement as he had done before on several occasions when he or his client could not appear on the date set for hearing. A client is bound by the negligence or mistake of his lawyer."^[32] Nothing could be clearer, therefore, than that in reconsidering the dismissal of the pending action before it, respondent Court did commit a grave abuse of discretion, disregarding as it did authoritative pronouncements from this Tribunal that called for application.

WHEREFORE, the writ of certiorari is granted and the order of August 19, 1976 is nullified and declared of no force and effect, thus reinstating the previous order of July 21, 1976 dismissing Civil Case No. OZ-433, entitled *Victoriano Roasol, Plaintiff, v. Alejandra Roasol & Fructouso Viña (spouses) and Jesus T. Balmoria & Cruza Caga-anan, Defendants*. The writ of prohibition is likewise granted, restraining respondent Court from taking any further action in the aforesaid case. The restraining order issued by this Court is hereby made permanent. Costs against private respondent Victoriano Roasol.

Barredo, Antonio, Aquino, and Santos, JJ., concur.

Concepcion, Jr., J., did not take part.

[1] Petition, Annex A.

[2] *Ibid*, Annex K.

[3] *Ibid*, Annex B.

[4] *Ibid*, par. 10, Annex J.

[5] *Ibid*, par. 12.

[6] *Ibid*, pars. 13 and 14.

[7] *Ibid*, pars. 18-20.

[8] *Ibid*, par. 21.

[9] *Ibid*, par. 22, Annex U.

[10] *Ibid*, par. 27. The order setting aside the dismissal is included in the petition, but either through carelessness or inadvertence, it was not marked as an annex, forming part of the records of this case.

[11] Resolution of October 18, 1976.

[12] Reply to Comment, 10.

[13] *Ibid*, 12.

[14] Resolution of December 8, 1976.

[15] Rule 17, Section 3 of the Rules of Court.

[16] Rule 30, Section 3 of the 1940 Rules of Court.

[17] Section 127 of Act 190 (1901).

[18] 14 Phil. 352.

[19] L-34897, July 15, 1975, 65 SCRA 46.

[20] 101 Phil. 701 (1951).

[21] 96 Phil. 791 (1954).

[22] 90 Phil. 813 (1952).

[23] 104 Phil. 319 (1958).

[24] 107 Phil. 773 (1960).

[25] Ibid, 778. Cf. *Smith Bell & Co., Ltd. v. American President Lines, Ltd.*, 94 Phil. 879 (1954); *Matias v. Teodoro*, 102 Phil. 701 (1957); *Benares Montelibano v. Benares*, 103 Phil. 106 (1958).

[26] Petition, Annex U.

[27] Ibid, Annex V.

[28] Petition, unmarked Annex which as noted previously, could have been due to carelessness or inadvertence. It should have been Annex Y.

[29] 105 Phil. 1239 (1959).

[30] Ibid, 1240-1241.

[31] Petition, unmarked Annex, 4.

[32] 107 Phil. 773, 778.

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