

**CIRILO VENTURA, ET AL., PLAINTIFFS AND APPELLANTS, VS.
ANASTACIA BAYSA, ET AL., DEFENDANTS AND APPELLEES.***G.R. No. L-12960. January 31, 1962*

Ponente: BAUTISTA ANGELO, J.

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This is an action for partition of two parcels of land situated in the municipality of Paniqui, province of Tarlac, brought by plaintiffs against defendants before the court of first instance of said province on May 12, 1950.

It is, alleged that Agaton Claridad was the owner of Lots Nos. 5186 and 5047 of the Paniqui cadastre, his title thereto being evidenced by Original Titles Nos. 39522 and 38628; that Agaton Claridad died leaving two children, Juana Claridad and Isidro Claridad, who are also deceased; that Juana Claridad was survived by plaintiffs, Her children, while Isidro Claridad was survived by his wife, children, and his grandchildren, who are named as defendants; that both plaintiffs and defendants inherited the lands belonging to their common predecessor-in-interest share and share alike, one-half belonging to the plaintiffs and the other half to defendants; and that defendants are now in possession of said lands, having enjoyed their fruits since 1917. Hence, plaintiffs pray for the partition of the lands, for an accounting of their crops, and for damages.

Defendants in their answer allege that the two parcels of land were not owned by Agaton Claridad, though they admit that Lot 5186 was registered in the name of "heirs of Agaton Claridad, deceased" in Original Certificate of Title No. 39522, and Lot 5047 was registered in the name of "estate of Agaton Claridad, deceased" in Original Certificate of Title No. 88628; that plaintiffs are the children Of Juana Claridad while defendants are the wife, children, and grandchildren of Isidro Claridad; and that defendants are in possession and enjoyment of the lands in question. Defendants set up the defense that Isidro Claridad was the true owner of the lands in question though he has claimed them in the name of his father Agaton Claridad in the cadastral proceedings for sentimental reasons to perpetuate the name of his father; that defendants are the sole heirs of their father Isidro Claridad; that plaintiffs were estopped from claiming any right thereto since their right had already prescribed, hence, they pray that they be declared the absolute owners of the properties in question to the exclusion of the plaintiffs.

After issues were joined, the case was set for hearing for the first time on March 12, 1951. On said date, the court issued an order giving the parties 15 days within which to file a written agreement of their announced amicable settlement subject to the condition that if no settlement is reached the hearing will be had on March 27, 1951. On this date, for failure of the parties to submit the proposed settlement, the case was to have been heard but the court issued an order transferring the hearing to the April calendar for lack of material time. On October 11, 1951, the clerk of court issued a notice getting the trial of the case for November 19, 1951, but when this date came the court issued an order postponing the hearing to a new assignment because it was discovered that no notice of hearing was served on defendants' counsel. On March 2, 1956, the court *motu proprio* dismissed the case because it found that it has been pending for almost six years without any move on the part of plaintiffs thus showing lack of interest on their part to prosecute the case to final termination. On March 26, 1956, plaintiffs filed a motion for reconsideration, and when this was denied, plaintiffs appealed. The case was certified to this Court by the Court

of Appeals on the ground that it involves only questions of law.

The grounds on which the lower court dismissed this case for lack of interest on the part of plaintiffs to prosecute it to its final termination are:

"This case was originally instituted in this Court on May 12, 1950, that is almost six years ago. The case was first set for hearing on March 12, 1951; but, in view of the announcement made by the parties on that day that they were on the way to amicably settling this case, they were given fifteen days from thence within which to file in Court their announced amicable settlement. The records do not show that the parties came to effect the settlement of this case, so the case was finally set for hearing for November 19, 1951. The hearing set for the latter date was postponed due to the fact that counsel for defendants was not duly notified of the hearing of this case.

"The record shows further that from the last postponement of the hearing of this case up to the present, more than four years have elapsed, without the plaintiffs having taken any steps to have this case set again for hearing on the merits, which circumstance shows that plaintiffs have no longer interest in prosecuting this case to final determination."

Considering that this case was originally instituted on May 12, 1960, was first set for hearing on March 12, 1951, was finally set for hearing on November 19, 1951 in view of the failure of the parties to come to an amicable settlement as they announced in open court, as well as the failure to serve notice of hearing on defendants' counsel, and that since that date (November 19, 1951) no further move was taken by plaintiffs to prosecute the case to its final termination thus allowing more than four years to elapse, we are of the opinion that the lower court acted properly in *motu proprio* dismissing the case upon the assumption that plaintiffs have already lost interest in prosecuting it to its final termination.

This action finds support in Section 3, Rule 30, of the Rules of Court which provides, among other things, that the court may on its own motion dismiss a case when it appears that plaintiff has failed to prosecute the same "for an unreasonable length of time." Indeed, a lapse of more than four years from the date the case has been set for hearing after several postponements on grounds not of the court's own making can be said to be unreasonable when plaintiffs have not taken any step to further prosecute it as found by the lower court. Rather than affirming that the lower court has not exercised proper discretion in dismissing the case as counsel for appellants seems to insinuate, such an attitude shall be commended for it is in keeping with the spirit of the law which commands that a case should be disposed of with the least possible delay.

While it is true that under the rules it is the duty of the clerk of court to include a case in the trial calendar after issues are joined, to fix the date for trial, and to cause notice to be served upon the parties, this does not relieve the plaintiffs of their own duty to prosecute the case diligently and to call the attention of the court, if necessary, to the necessity of putting the case back to its calendar if that has been neglected by the court because of the numerous cases it has to attend to (*Smith, Bell & Co., Ltd., et al. vs. American President Lines, Ltd., et al.*, 94 Phil., 879). It is, therefore, preposterous for plaintiffs to now claim as excuse that if they have not taken any further move to prosecute their case it is due to their belief that that duty devolves upon the clerk of court. Their claim that they have not lost interest in prosecuting their case is betrayed by their own inaction.

Under our rules, a dismissal of a case on the ground that plaintiff has failed to prosecute it for an unreasonable length of time has the effect of an adjudication upon the merits unless otherwise provided for by the court (Section 3, Rule 30). No such provision was made by the lower court in its order of dismissal. However, considering that the lands in question are covered by torrens titles wherein they appear registered in the name of the common ancestor of both plaintiffs and defendants, although the latter claim that they were merely placed in the name of their predecessor-in-interest for sentimental reasons, it is the sense of the Court that the claim of

plaintiffs is meritorious and should not be allowed to be defeated on a mere technicality. And so we hold that plaintiffs should be given another opportunity to bring the matter to court by declaring that the dismissal of the case should be without prejudice.

Wherefore, the order of the trial court dated March 2, 1956 is hereby modified by declaring that the dismissal is without prejudice. No costs.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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