

CRISTINA CHINGAY, PETITIONER, VS. GABRIEL LA GUARDIA, AND HON. TOMAS P. PANGANIBAN, PRESIDING JUDGE OF THE COURT OF AGRARIAN RELATIONS, RESPONDENTS.

G. R. No. L-20739. June 30, 1966

Ponente: BARRERA, J.

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BARRERA, J.:

This is a petition to review on certiorari the decision of the Court of Agrarian Relations in CAR Case No. 333-TP-61, denying petitioner's motion to reopen the case and for new trial.

On October 11, 1961, respondent Gabriel La Guardia, as tenant, filed with the Court of Agrarian Relations a petition against petitioner Cristina Chingay, as landholder, asking, among others, for a reliquidation of their past harvests. To this petition, petitioner on October 18, 1961 filed an answer admitting respondent La Guardia's allegations as to his status as tenant, the harvests from the land, and the parties' contributions to the production. As defense, she alleged that she is the owner of only one-half of the land in question.

Issues having been joined, the case was set for hearing for December 13, 1961 and January 17, 1962. On both dates, petitioner and her counsel failed to appear in spite of due notice, so that the trial court, upon motion and through an order dated January 17, 1962, allowed respondent La Guardia to present his evidence, after which the case was considered submitted for decision. Petitioner thereupon moved for reconsideration and the trial court, in the interest of justice, reopened the case. After several postponements, the case was again set for hearing for June 8, 1962. Again, petitioner failed to appear and the trial court, after allowing respondent La Guardia to present his evidence ex-parte, for the second time considered the case submitted for decision. On September 7, 1962, the court rendered the decision now subject of the present petition for review. On October 18, 1962, petitioner filed a motion for reconsideration asking for another reopening of the case, alleging that she received the notice of hearing of June 8 only on June 14, 1962, and, hence, could not be present thereat. Her motion for reopening of the case was unaccompanied by the required affidavit of merit. Respondent Judge, therefore, denied her motion. Hence, this petition for review.

Petitioner claims that respondent Judge erred in refusing to reopen the case despite the fact that her failure to attend the hearing of June 8, 1962 was caused by lack of timely notice to her. The claim is unmeritorious. The hearing of June 8, 1962 was not the first that petitioner failed to attend. On two previous occasions, December 13, 1961 and January 17, 1962, she and her counsel did not appear for reasons not shown in the record. In fact, the trial court, on the latter date, considered the case submitted for decision. However, upon her representation, and to give her an opportunity to be heard, the respondent Judge reopened and reset the case for trial. After several postponements, the case was finally re-scheduled on June 8, 1962. As already stated, she again failed to appear. Even granting that she received notice of this last assignment of the hearing on June 14, 1962 or 6 days after the date set for the hearing, still she took no steps to inquire what happened on that date and waited until the decision was rendered on September 7, 1962. This is negligence that is not excusable, considering the antecedents of the

case.

Additionally, petitioner's failure to attend on the date of hearing due to lack of appropriate notice, supposing it to be true, would not suffice to justify the relief provided in Section 1, Rule 37 of the Rules of Court, as Section 2 thereof requires that an affidavit or affidavits of merit must be attached to the motion as a condition sine qua non. Petitioner failed to comply with such requirement of Section 2, and this is fatal.[1] The trial court, therefore, correctly refused to reopen the case.

Petitioner also asserts that respondent Judge erred in not considering her special defense of ownership of only one-half of the land in question. Again, the assertion is devoid of merit. In her answer, petitioner alleged that she is the owner of only one-half of the area in dispute. This allegation, however, was not substantiated by evidence. On the contrary, the evidence on record clearly established the tenancy relationship between respondent and petitioner, and no one else. It was duly proven that it was the petitioner who took respondent as tenant to work the land in question. From the inception of their relationship up to the filing of this case in the court below, petitioner alone had been sharing the produce with respondent La Guardla.

For all the foregoing, the writ applied for is hereby denied, with costs against the petitioner.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Barrera, Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, and Sanchez, JJ., concur.

[1] *Prisco vs. CFI*, 97 Phils., 153; *Coombs vs. Santos*, 24 Phil. 446; *McGrath vs. Del Rosario*, 49 Phil. 330; *Gonzales vs. Francisco*, 49 Phil. 747; *Villanueva vs. Alcoba*, 101 Phil., 277; *Nuguid vs. Cariño*, 104 Phil., 263.

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