

**TOMAS RAMOS, PETITIONER, VS. GENESIS L. DELIZO, A MINOR
REPRESENTED BY HIS MOTHER, ILUMINADA L. DE JACOBÉ AND
HON. TOMAS PANGANIBAN, JUDGE, COURT OF AGRARIAN
RELATIONS, SALA I, ...**

G.R. No. L-14173. August 31, 1961

Ponente: BARRERA, J.

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BARRERA, J.:

This is an original petition for certiorari asking that the decision of the Court of Agrarian Relations (in CAR Case No. 653-NE '57) dated April 30, 1958, ordering herein petitioner to vacate the landholding allegedly owned by herein respondent Genesis L. Delizo and to deliver possession thereof to the latter, be set aside and the proceedings which gave rise to it annulled, on the ground that the same was rendered with grave abuse of discretion and in utter disregard of the fundamental right of petitioner to be heard:

The records disclose that on June 29, 1956, respondent Genesis Delizo, a minor represented by his mother Iluminada L. de Jacobe, claiming to be the owner of the landholding of about 2 hectares being worked by petitioner Tomas Ramos, notified the latter of his (Delizo's) intention to personally cultivate the land beginning the following year. A similar notice was filed with the Court of Agrarian Relations on June 30, 1956. After the year had elapsed, and Ramos refusing to leave the land, Delizo filed on September 12, 1957, a formal petition with the Court of Agrarian Relations, to dispossess the tenant, naming the latter and the Heirs of Agustin Delizo and Juana Dallo as defendants (CAR Case No. 653-NE '57). On September 26, 1957, summons was served on the defendants, and on the following day, Atty. Felicidad D. Delizo, one of the impleaded heirs, filed a motion to dismiss, alleging that there existed no tenancy relationship between the complainant and the respondents, the land in question being her property and in her actual possession, and the defendant Tomas Ramos, being her tenant since 1951 and that, with respect to the Delizo heirs, the petition stated no cause of action. By order of November 5, 1957, the complaint was dismissed except with respect to Tomas Ramos, as to whom, the case was set for hearing for November 21, 1957. A copy of this order was received by counsel of Ramos on November 16, 1957. Two days later, or on November 18th, Ramos engaged a new counsel, Atty. Iluminada Monteverde-Dasil, who prepared and posted by registered mail, an answer with counterclaim. The following day, November 19th, the same new counsel sent by special delivery, a motion for postponement of the hearing for November 21, on the ground that she needed more time to coordinate her evidence and that the issues had not yet been joined, the plaintiff not having so far replied to the counterclaim contained in the answer which probably would not yet be in the hands of the court at the time of the hearing. A copy of the answer with counterclaim was attached to the motion.

At 10:00 a.m. of November 21, 1957, Ramos' motion for postponement of the hearing set for that date with a copy of the answer attached to it, was received in court.[1] The motion for postponement must have been denied for the hearing was held as scheduled, and the commissioner received petitioner's evidence. The said hearing, however, was ordered continued to November 29, 1957 "to enable respondents to prosecute their defense".

On November 29, 1957, for lack of material time, the hearing was postponed to December 10, 1957. Copy of the order was received by Atty. Felicidad Delizo, the tenant's original attorney. "For Atty. Delizo and Atty. I. Dasil".

At the hearing of December 10, 1957, counsel for therein plaintiff Delizo did not appear and no evidence was taken. Atty. Dasil, who was present, manifested in open court her appearance for Tomas Ramos, and moved for the setting aside of the proceedings of November 21, 1957, on the ground that when said hearing was held, the issues of the case were not yet joined, Ramos' answer with counterclaim having been received in court only on November 26. The commissioner then required said counsel to put her motion and manifestation in writing. Thus, on December 16, 1957, Atty. Dasil filed a written motion to nullify the proceedings taken on November 21, 1957, reiterating her reasons and manifestations orally given in court on December 10th. In the meantime, therein plaintiff Genesis Delizo prayed the court to declare Ramos in default, his answer having been allegedly filed out of time, and that the lawyer who filed the same not being his attorney of record.

In his order of December 16, 1957, the commissioner, among others, upheld the validity and regularity of the proceedings of November 21, 1957, in view of the fact that copy of defendant's answer was received in court one hour and forty-five minutes before the start of the hearing, and the issues, consequently, were already joined when said hearing was commenced. In the same order, continuation of the hearing was set for January 8, 1958, with the warning that should the parties fail to appear therein, the case would be submitted for resolution on the pleadings and the evidence already presented. Copy of the order was, however, sent by registered mail not to Atty. Dasil, who had taken over the case for the tenant Ramos, but to Atty. Delizo who, notwithstanding two postal notices, failed to claim the letter at the post office.

Hence, at the hearing of January 8, 1958, nobody appeared for therein defendant Ramos. Therein plaintiff Delizo then moved for the submission of the case, for decision, which was granted by the commissioner.

Upon examination of the records of the case, in connection with the preparation of the decision, the Judge of the Court of Agrarian Relations noted that the hearing commissioner failed to require the parties to submit evidence on their respective contributions and expenses in connection with the produce during the agricultural year 1957-1958. Thus, the case was ordered reopened for the reception of evidence on said points. Notified this time of this order, Atty. Dasil appeared at the hearing held on February 13, 1958. Learning for the first time during the hearing that the case was submitted for decision since January 8th, Atty. Dasil manifested that she was not notified of the January 8th hearing and moved for the reopening of the case to allow her to cross-examine the witnesses of plaintiff and to present evidence for defendant tenant. This motion was denied by the hearing commissioner. A similar motion was addressed to the court, and was, likewise, denied on March 20, 1958.

On April 30, 1958, the Court of Agrarian Relations rendered a decision holding that petitioner Genesis Delizo had satisfied the requirements of the law (Sec. 50-a, Rep. Act 1199) for the dispossession of a tenant due to the landowner's desire to cultivate his landholding personally, and ordered the tenant Tomas Ramos to vacate the property. A timely motion for reconsideration urging the same grounds and pleading for opportunity to prove the tenant's defense of absence of tenancy relationship and petitioner's lack of bona fide intention to cultivate the land himself, was denied. Hence, this petition for certiorari.

We find merit in the petition. There is no dispute that on November 18, 1957, Atty. Iluminada Dasil, acting as counsel for respondent tenant, posted at Rosales, Pangasinan, by registered mail, the original of defendant's answer, with counterclaim, which was received in court on November 26, 1957. On November 19, 1957, Atty. Dasil mailed a motion for postponement, together with a duplicate copy of the answer, by special delivery, which was received in court on November 21, 1957 at 10:00 a.m. or before the hearing commenced. The aforesaid answer contains the following certification by counsel: "Original sent to CAR Cabanatuan City, under Registry

Receipt No. 1344, dated November 18, 1957, at Rosales Pangasinan, with return card." (Italics supplied.)

The receipt by the hearing commissioner of the duplicate copy of the answer accompanying or annexed to the motion for postponement could not have been the "filing" of such answer contemplated by the rules. To us it appears clear that the enclosure of such duplicate copy of the answer in the special delivery mail received by the commissioner on November 21, 1957 was only to support the movant's plea for a transfer of the date of the hearing which, if movant's theory was correct, would be premature. And it should have been noted then that, as specified therein, the original thereof was sent by registered mail on November 18, 1957. As said original of the answer was received only on November 26, 1957, and considering that there is no showing that the mailing thereof was made beyond the reglementary period, it is evident that the issues of the case were not yet joined when the hearing was held on November 21, 1957.

It is true that the case was set for hearing on December 10, 1957 to give herein petitioner Ramos opportunity to cross-examine therein plaintiff Delizo and present his (Ramos) evidence, but because Delizo's attorney did not appear then, no evidence was received on that date, although Atty. Dasil, appearing for Ramos, argued her petition to set aside the hearing of November 21st. The case was next set for hearing on January 8th, but as already stated, Atty. Dasil was not notified thereof. In other words, the failure of the tenant's counsel to cross-examine the alleged landholder and present his (tenant's) evidence was due, first, to the absence of the landholder's own counsel on December 10th and, second, to the lack of notice of the hearing of January 8th.

Considering all these circumstances and the fact that after all, the case had to be reopened by order of the trial judge to receive additional evidence, the motion of the tenant's counsel on the day of said hearing that she be allowed then and there to cross-examine therein plaintiff's witnesses and present evidence for said tenant, should have been granted. In the interest of justice, the parties should be allowed to adduce evidence to prove their respective allegations. This is especially so in the case at bar where the tenant's denial of the existence of tenancy relationship between petitioner and respondent seems not to be without merit, the landholder himself admitting that the land is part of a bigger area inherited by him and the other heirs of Agustin Delizo, originally included as defendants, and one of whom manifested in her motion to dismiss that she was the owner and possessor of the land in question and the one who placed Ramos as tenant thereon.

Wherefore, the writ of certiorari is hereby granted and the decision of the Court of Agrarian Relations appealed from is hereby set aside, and the case remanded to the said court for further proceedings. Without costs. So ordered.

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

Bautista Angelo, J., on leave, took no part.

Labrador, J., took no part.

[1] The original of said answer, sent by registered mail on November 19, 1957, from Rosales, Pangasinan, was received in Court on November 26, 1957.

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