

**ANSELMA PENDON, SANTIAGO PENISTAN, ET AL. PETITIONERS, VS.
HON. JOSE R. CABATUANDO, IN HIS CAPACITY AS PRESIDING JUDGE
OF THE COURT OF AGRARIAN RELATIONS, SEVENTH REGIONAL
DISTR...**

G.R. No. L-21299. September 27, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.

Original action for certiorari, to set aside a decision and a resolution of the Court of Agrarian Relations, and to restrain the issuance of the corresponding writ of execution.

The record shows that Anselma Pendon is the owner of a tract of land, of about 3.5 hectares, situated in Balocot, Tambulig, Zamboanga del Sur, which Blas Trabasas had begun to cultivate in November 1960, as her tenant. Alleging that, on November 17, 1961, she had arbitrarily ejected him from said land, without just cause, on December 18, 1961, Trabasas filed, with the Court of Agrarian Relations, 9th Regional District, Cotabato City, through Atty. Ramon P. Mabanag, CAR Case No. 30, Zamboanga del Sur, against Mrs. Pendon, for reinstatement as her tenant, reliquidation of their accounts and damages. On or about June 8, 1962, Trabasas, then represented by Atty. Edilberto LT. Coronado, of the TCU, Tenancy Mediation Commission, amended his petition to include as defendants the alleged new tenants of Mrs. Pendon, namely, Santiago and Dominador Penistan and Maximo Orencio. In the answer to the original petition and, later, to the amended Petition, Mrs. Pendon, in the former, and, together with the other defendants, in the latter, alleged that Trabasas had voluntarily abandoned the land in dispute that Santiago Penistan is working, not on said land, but on another land; and that Dominador Penistan is not her tenant, but merely helped his brother Santiago Penistan. A counterclaim for damages was, also, set up in the answers to said petitions.

The issues having been joined, on September 20, 1962 the case was set for hearing on October 17 of the same year, at the "Sala of the Justice of the Peace Court of Molave, Zamboanga del Sur". Upon receipt of notice thereof, Atty. Exaltacion A. Navarro, of said Tenancy Mediation Commission, acting as counsel for Trabasas moved for postponement of the hearing to November 6, 1962, upon the ground that she could not be at Molave, Zamboanga del Sur on October 17, 1962, because the next day she had to be at Dumanjug, Cebu, to attend the hearing of CAR Case No. 415Cebu, which had been set for hearing earlier. Copy of said motion for postponement was served upon Atty. Benjamin S. Rallon, counsel for Mrs. Pendon and her aforementioned codefendants, who, together with Mrs. Pendon, are hereinafter referred to as petitioners.

The latter allege under oath that Atty. Navarro, moreover, informed Atty. Rallon that the hearing scheduled for October 17 would definitely be postponed, because owing to said CAR Case No. 415 Cebu, to be heard in Dumanjug, Cebu, she (Atty. Navarro) could not Possibly be in Molave, Zamboanga del Sur, on said date; that, relying upon said motion for postponement and the assurance thus given by Atty. Navarro, herein petitioners and their counsel not appear at the premises of the justice of the Peace Court of Molave, Zamboanga del Sur, until

November 6, 1962; that, to their surprise, Trabasas, his counsel, and the CAR Commissioner or Judge did not show up; and that, upon his return to Cebu City, where he resides and has his office, on November 11, 1962, Atty. Rallon was informed by CAR Commissioner Alinsug that he (Alinsug) had heard Case No. 30 at Molave, Zamboanga del Sur, on October 17, 1962, Trabasas and his counsel, Atty. Mabanag, having been present then.

Thereupon, or on November 15, 1962, Mrs. Pendon filed a motion to set aside the proceedings thus held on October 17, upon the ground that she had not attended the same for the reasons already adverted to. This, notwithstanding, on December 24, 1962, Mrs. Pendon received copy of the decision of Judge Jose R. Cabatuando of the Court of Agrarian Relations, commanding her to reinstate Trabasas as her tenant, ordering her codefendants to vacate the landholding in question, should they be in possession thereof, sentencing her (Mrs. Pendor) to pay to Trabasas the sums specified in said decision, and dismissing the counterclaim of petitioners herein.

On January 4, 1963, the latter filed a motion for reconsideration and new trial, which was denied in a CAR resolution date February 15, 1963, notice of which was served upon the petitioners on March 12, 1963. Soon thereafter, or on April 2, 1963, petitioners commenced the present action for certiorari against Judge Cabatuando and Trabasas, to annul the aforementioned decision and the resolution denying petitioners' motion for reconsideration and new trial, and to restrain the execution of said decision, upon the ground that respondent judge had acted with grave abuse of discretion, amounting to excess of jurisdiction, in rendering said decision and in issuing the aforementioned resolution.

Upon the other hand, respondents maintain that petitioners' predicament is due to their own counsel, for having allegedly relied upon the motion for postponement of Atty. Navarro and the assurance said to have been given by her, to the effect that the hearing scheduled for October 17 would definitely be postponed, for no order granting said motion had been issued, apart from the fact that petitioners had a plain, adequate and speedy remedy in the ordinary course of law, which was to appeal from said decision and resolution.

Upon consideration of all the circumstances obtaining in this case, we find that petitioners herein have been denied due process and that the aforementioned decision and resolution are, therefore, null and void.[1]

It is not denied that Atty. Navarro, on behalf of Trabasas, as plaintiff in CAR Case No. 30, filed a motion for postponement of the hearing scheduled to take place in Molave, Zamboanga del Sur, on October 17, 1962, upon the ground that she had to be in Dumanjug, Cebu, on October 18, 1962, to attend to CAR Case No. 415 Cebu, which had been set for hearing earlier. Atty. Navarro was a member of the staff of the Tenancy Mediation Commission and, hence, a public Officer, whose word petitioners' counsel had no reason to doubt. In fact, she did not appear at Molave, Zamboanga del Sur, on October 17, 1962. Atty. Mabanag, who had signed the original petition of Trabasas, as well as the latter, were, however, present at Molave, Zamboanga, on said date. If Mabanag was then available, the allegations made in said motion for postponement were, not merely misleading, but, also, deceptive. Indeed, it is implied therein that Trabasas would have no counsel to assist him at the hearing of CAR Case No. 30 unless the motion was granted, for, otherwise, it would have been unnecessary to seek its postponement.

At this point, we must not overlook the fact that the CAR had its share in placing Atty. Rallon in a difficult situation, because the motion for postponement was filed on October 2 and was set for hearing on October 6, and, yet, it was not resolved by the court, although it had sufficient time to do so before October 17; that, in the language of Justice Tuason:

" x x x While Hodges' counsel had no right to assume that Atty. Guerrero's motion to postponement would be granted, and good practice perhaps demanded that they should have made an inquiry about the matter, yet the court was not entirely justified in expecting the claimant's attorneys to come over from a distant province for a

trial which through no fault Of theirs could not be carried out as the court knew or ought to have known. At the least, the court might have promptly denied the motion for continuance and informed the parties that the hearing would take place on the date originally set.”²

that Atty. Rallon is a resident of Cebu City; and that, he was morally bound to avoid the expenses necessary to make a trip to Molave, Zamboanga del Sur, for a hearing he was reasonably justified in believing it was not likely to take place, especially considering that this was the first postponement sought in the case; that it was asked by the very plaintiff therein; that it was filed over two (2) weeks before the scheduled hearing; that the property involved in the case is a small parcel of land, barely 3.5 hectares: and that his main client (Mrs. Pendon) does not appear to be particularly well off financially.

Even though petitioners counsel may not have been entirely blameless for having accepted on its face value the allegations made and those implied in the motion for postponement by an officer of the Republic who represented Trabasas, it was a grave abuse of discretion on the part of respondent Judge, amounting to excess of jurisdiction, to deny petitioners’ motion for reconsideration and new trial, because Trabasas was thereby allowed to profit by and take advantage of a mistake committed by petitioners’ counsel due to his (Trabasas) aforementioned motion. This cannot be sanctioned or tolerated by courts of justice without violating the elementary principles of fair play and due process, which go to the very roots of our legal system, and without impairing the people’s faith in the inherent validity and soundness thereof or undermining the very foundation of the Rule of Law.

It is true that petitioners could have appealed from the decision and the resolution complained of and that, as a general rule, the writ of certiorari may be availed of to offset one’s failure to appeal,³ In the case at bar such failure was due, however, to accident and excusable neglect on the part of petitioners’ counsel.

In This connection it should be noted that copy of the decision complained of was received by Atty. Rallon on December 24, 1962. Eleven (11) days later, or on January 4, 1963, Atty. Rallon filed his motion for reconsideration and new trial. Notice of the order of the lower court denying the motion was received by him on March 12, Having previously consumed 11 of the 15 days he had to appeal from said decision, Atty. Rallon had 4 days or up to March 16, 1963, within which to perfect the appeal. Meanwhile, his office in Cebu was however, destroyed by fire, which, likewise, consumed his records, including those of CAR Case No. 30. Upon the other hand, the CAR records thereof were not available for examination to Atty. Rallon unless he went to Cotabato where the records are kept,⁴ and this he could not do without loss of time, which was vital to his client. So, Atty. Rallon did the best he could, by filing his notice of appeal as soon as possible, or on March 18, which turned out to be two (2) days late. Thereafter, he prepared petition in the case at bar, which he finished on March 25, and air mailed it, together with 11 copies thereof and a P40.20 money order for the filing fees, on March 27, 1963, to the Clerk of Court of the Supreme Court, who received, the same on April 2, 1963.

Considering that the aforementioned fortuitous event,⁵ could have had no effect upon petitioners herein were it not for Trabasas’ misleading and deceptive motion for postponement, which is the basic cause of the situation confronting us, we feel that the equities in this case are sufficient to warrant its exclusion from the operation of the rule adverted to above, as an exception thereto.

WHEREFORE, the aforementioned decision and resolution of respondent Judge are hereby declared null and void, without special pronouncement as to costs.

IT IS SO ORDERED.

Reyes, J.B.L., Makalintal, Sanchez, Castro, Angeles, Fernando, and Capistrano, JJ., concur

Dizon, J., did not take part

Zaldivar, J., on official leave, did not take part.

[1] Dais v. Court of First Instance, 51 Phil. 396; Cavan v. Wislizenus, 48 Phil. 632.)

2 Hodges v. Barrios, 80 Phil. 751, 753. See also, Siochi v. Tirona, 99 Phil. 460.

3 Yucuanseh Drug Co. vs. National Labor G.R. No. L-9909, April 30, 1957; Caisip, et al. vs. The Honorable Domingo M. Cabañon, et al., G.R. Nos. L-14684-86, August 26, 1960; Montejo vs. Hon. Domingo M. Cabañon, etc., et al., G.R. No. L-17977, May 30, 1962; Santos vs. Lopez Vda. de Cerdeñola, et al., G.R. No. L-18412, July 31, 1962.

4 Respondents intimate they are in Ozamis City.

5 The fire.

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