

GERONIMO DE LOS REYES, PLAINTIFF AND APPELLANT, VS. SIMEON CAPULE, ET AL., DEFENDANTS AND APPELLEES.

G. R. No. L-8022. November 29, 1957

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This case was originally appealed to the Court of Appeals, but was certified to this Court as involving only questions of law.

The appeal is taken from an order of the Court of First Instance of Palawan dismissing appellant's complaint for failure of the appellant and his counsel to make an appearance in court on the day set for the trial; and from a subsequent order of the same court denying appellant's motion for reconsideration.

The circumstances that led the court below to decree the dismissal complained of are stated in its order of March 3, 1952:

"On August 2, 1948, this was set for trial. On September 6, 1948, after the consideration of the motion to dismiss was postponed, the plaintiff presented an opposition to the motion to dismiss. Then, on March 4, 1949, this was set for hearing, but it was postponed by the court upon petition of the plaintiff. Again, this was set for hearing on August 3, 1949, and on motion for postponement, the court postponed the same 'provided that this will be the last time for the plaintiff to ask for postponement.' On March 6, 1951, this case was again set for hearing and upon petition of the plaintiff, the court postponed this case 'provided that, this will be the last time that tile hearing be postponed.' On August 7, 1950, this case was set for hearing and the plaintiff presented a petition for postponement and the defendants presented objection. The court postponed the case with the understanding 'that with or without any substitution of any of the parties it will proceed with the hearing- of the same to avoid further delay'. On March 6, 1951, this case was again set for hearing and the plaintiff presented a petition for postponement, to which petition the Director of Mines presented objection. This was postponed on the Order of the Court on March 31, 1951, in view of the fact that the court commenced its session on the 14th of March while the parties were cited to appear on March 5th. Lastly when this case was called for hearing on March 3, 1952, neither the plaintiff nor his attorney appeared.

The court believes, and so holds, that the plaintiff has lost interest in the further prosecution of the case perhaps due to the fact that he has already assigned his rights to another party coupled with the fact that a decision by the Department of Agriculture and Natural Resources was unfavorable to him. The court believes further that this ease should be terminated at the earliest possible time specially so when the other party has been presenting objections to all the motions for postponement made by the plaintiff The court presided by the former Judges, for three times, made a warning; that it would not postpone any further the hearing of the case. Postponing this case for the fourth time after those warnings would appear to be a weakness on the part of the court.

Premises considered, in view of the non-appearance of the plaintiff or his attorney, the case is dismissed, without special pronouncement as to costs." (Ree. App. pp. 36-38)

The plaintiff sought reconsideration of this order on the ground that when notified of the trial set for March 3, 1952, counsel had sent a verified petition for postponement, as well as a telegram to the same effect, on the ground that they had received a previous notice of the Court of First Instance of Manila setting a criminal case where counsel was a private prosecutor for trial on the same date; that a motion in a civil case where the same counsel appeared, had been set for hearing in Bacolod, Negros Occidental on March 1st, and that the notice of the trial in Coron, Palawan, did not afford sufficient time to leave for Coron and locate the witnesses. The motion for reconsideration was denied and the plaintiff appealed to this Court.

We find no merit in the appeal. The dismissed case was but a renewal of a suit on the same subject initiated long before, in 1938, and not reconstituted despite notice of the destruction of the records. The new case, filed in April of 1948, had been set for hearing six times; had been postponed five times upon request of the plaintiff; and in three times (August 3, 1949, March 6, 1950, and August 7, 1950), the court had served, warning to the plaintiff not to delay the case further. Even assuming that the other cases had been set for March 1 and 3, 1952, before the notice was received setting the present case for hearing in Coron on March 3, it was the plain duty of counsel to give preference to the case at bar, considering that its hearing had been repeatedly postponed, and the reiterated admonitions of the court to proceed to its trial. Moreover, the law firm that acted for the plaintiff had other members who could have attended to the other trials. As to the excuse that there was no time to locate witnesses for the trial of March 3rd, the same is plainly unmeritorious; it was not the time to begin looking for witnesses after six postponements, and they should have been kept in readiness many months before.

Finally, the record of appeal shows no trace of the alleged verified petition for the postponement of the hearing set for March 3, but only a telegram asking for continuance. This telegram did not comply with the rules, nor were the defendants notified thereof, and the court acted within its discretion in disregarding it.

The decision appealed from is affirmed. However, considering that the case was not tried on its merits, and that the negligence was on the part of counsel rather than the plaintiff, we believe that, in the interest of justice, the dismissal of the case should be decreed without prejudice to the filing of a new action. Costs against appellant. So ordered.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Endencia and Felix, JJ., concur.

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