

GENEROSA TORREFIEL AND JUAN TORREFIEL, PLAINTIFFS AND APPELLANTS, VERSUS ANASTACIO TORIANO, ET ALS., DEFENDANTS AND APPELLEES; PAULINA TORREFIEL, INTERVENOR AND APPELLANT.

G.R. No. L-4367. May 02, 1952

Ponente: TUASON, J.

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TUASON, J.:

This is an appeal from an order of Honorable Jose Teodoro, Judge of the Court of First Instance of Negros Occidental, dismissing the case and a complaint in intervention.

The action was for partition of a lot and was filed on May 19, 1949. After the defendants answered with counterclaims, Paulina Torrefiel filed a complaint in intervention claiming compensation for alleged services rendered to the defendants.

The case having been set for September 20, 1950, Attorney Lozada for the plaintiffs and intervenor on September 16 filed a motion for indefinite postponement, with the conformity of the defendants' counsel, on the grounds that Generosa Torrefiel, one of the plaintiffs, "would not be able to attend the trial." Taking for granted, so it seems, that the motion would be granted, none of the parties, except plaintiffs' and intervenor's counsel, were on hand when the case was called at the scheduled hour. Attorney Lozada must have called the court's attention to his motion but the court refused to postpone the hearing beyond 10:00 o'clock a.m. of that day. Taken aback, counsel for plaintiffs notified the opposing counsel by telephone of the court's unwillingness to continue the case, and Attorney Carbonel rushed to the court. In the meantime Attorney Lozada had gone out to look for and bring his clients, and came back at 10:20 with the intervenor, but then the case had already been dismissed, "due to non-appearance of the plaintiffs and their counsel when the case was called * * * at 10:10."

On September 26, Attorney Lozada filed "a motion for reconsideration, new trial and relief from the court's order dated September 20, 1950," in which he recited the above facts and stated that Juan Torrefiel was sick and Generosa Torrefiel "busy". The court would not budge from its previous order, hence this appeal.

The matter of adjournments and postponements of trials lies within the sound discretion of the courts, and such discretion will not be interfered with unless a grave abuse thereof is shown. (*Pellicena Camacho vs. Gonzales Liqueste*, 6 Phil., 50; *Olsen v. Fressel & Co.*, 37 Phil., 121; *Samson vs. Naval*, 41 Phil., 838; 1 Moran's Comments on the Rules of Court, 528.) Upon the facts above stated we can not say that the lower court's action was arbitrary. The adverse party's conformity was not binding on the court. The trial of cases with reasonable dispatch is as much the concern of the judges' as of the parties'.

The case was more than one year old, and no reason other than that Generosa Torrefiel "would not be able to attend the trial" was alleged in support of the plaintiffs' motion. Why this plaintiff was not able to come was not revealed, and neither did the motion say that her attendance was necessary. If Generosa Torrefiel was sick it

should have been shown by affidavit that her presence was indispensable and that the character of her illness was such as to make her attendance impossible. (Rule 31, Section 3, of the Rules of Court.)

Inasmuch, however, as it did not appear that the motion for postponement was due to any deliberate desire on the part of the plaintiffs and intervenor to delay the proceedings, or that the action was frivolous, at least as far as Juan Torrefiel was concerned, and inasmuch, moreover, as defendants' attorney had expressly agreed to plaintiffs' motion, the interest of justice and of the court could have been served with a dismissal of the case without prejudice.

The appealed order will be affirmed with the modification that the dismissal will not be a bar to the filing of a new action and a new complaint in intervention upon the same subject matters, without special finding as to costs.

Paras, C. J., Pablo, Montemayor, Reyes, and Labrador, JJ., concur.

Padilla, J., no part.

DISSENTING

FERIA, J.:

I am sorry to dissent from the majority.

The granting or denial of a motion for adjournment or postponement or for a new trial lies within the sound discretion of the courts. (Section 4, Rule 31 and Sec. 3, Rule 37; Quiros vs. Carman, 4 Phil., 722; Estrella vs. Zamora, 5 Phil., 415; U. S. vs. Raymundo, 14 Phil., 416; Muerteguy & Aboitiz vs. Delgado, 22 Phil., 109; Soriano vs. Aquino, 31 Phil. 176; Lavitoria vs. Judge of the Court of First Instance of Tayabas, 32 Phil., 204; Cordovero vs. Villaruz, 46 Phil., 473; Tan Sen Guan vs. Go Siu Sam 47 Phil., 89; Philippine Engineering Co., vs. Argosimo, 49 Phil., 109; Villegas vs. Roldan, 76 Phil., 549). And such discretion will not be interfered with in appeal unless a grave abuse of discretion is shown (Pellicena vs. Camacho, 6 Phil. 50; Olsen vs. Tressel & Co., 37 Phil., 121 Samson vs. Naval, 41 Phil., 838).

The question whether or not the court a quo in the present case has abused its discretion in dismissing the case or plaintiffs' complaint and the complaint in intervention of the Intervenor, is a question of fact, and therefore the court having appellate jurisdiction over this appeal is the Court of Appeals and not this Supreme Court.

"Discretion of Lower Court. I. Power to Review,—(a) In General * * *. In a legal sense, discretion is abused whenever, in its exercise, a court exceeds the bounds of reason,—all the circumstances before it being considered." (13 C. J. pp. 796-798.)

"Footnote 16. * * * (b).—In Massachusetts a distinction is drawn between legal and equitable actions.—(1) All appeal on the law side of the court brings before the appellate court only questions of law. Questions of discretion are not reviewable. Goss Printing Press Co., v. Todd, 202 Mass. 185, 88 NE 780; Com. v. National Contracting Co., 201 Mass. 248, 87 NE 590; Electric Welding Co. v. Prince, 200 Mass. 386, 86 NE 497, 128 A.S.R. 434. (2) Questions of discretion are, in their essence, questions of fact, and in an action at common law a judge of the Superior Court or a single justice of this court has no authority under the statute to report to this court a question of fact or a question of discretion . . ." (4 C. J., pp. 797.)

In the case of Zasi vs. Santos, G. R. No. L-5608 in which the appellant assigned that the trial court erred in denying the petition of the attorney for the appellant to set aside the lower court's order dismissing the plaintiffs' complaint and declaring plaintiff in default on defendants' counterclaim, because of his failure to appear at the trial and produce evidence in support of the facts alleged in the complaint on the ground of a slight shock of

influenza, and the lower court denied the appellants' petition for relief, on appeal, this Supreme Court, to which the Court of Appeals certified the case as involving a question purely of law, remanded the case to the Court of Appeals for further proceedings for the reason that the question involved in the appeal is not purely of law but of fact.

The same rulings were laid down in the cases of Santos vs. Rustia, promulgated on October 31, 1951, and of Ciriaca Canlas vs. Severino David, G. R. No. L-4003, promulgated on April 17, 1952, both of which were also returned to the Court of Appeals which erroneously certified the case to this Court on the ground that the question involved in the appeal was purely of law.

In view of the foregoing, it is obvious that this Court has no appellate jurisdiction over this case, and the same should be certified to the Court of Appeals for proper action in accordance with the provision of Section 3, Rule 52 of the Rules of Court. The fact that the appeal to this Supreme Court was erroneously given due course, cannot confer appellate jurisdiction upon this court to affirm with modification the lower court's order appealed from. So Ordered.

Bengzon, and Bautista Angelo, JJ., concur.

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