

RIZALINO SOSA, IN HIS OWN BEHALF AND IN BEHALF OF ANTONIA SOSA DE RIVERA AND ABRAHAM SALVA, PLAINTIFFS AND APPELLANTS, VS. DOMINGO YU CHU AND YU CHU INVESTMENT CORPORATION, DEFE...

G.R. No. L-21057. June 30, 1970

Ponente: DIZON, J.

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DIZON, J.:

Appeal taken by Rizalino Sosa, Antonia Sosa de Rivera and Abraham Salva from three orders of the Court of First Instance of Marinduque in Civil Case No. 1166: the first dismissed the complaint they had filed against Domingo Yu Chu and Yu Chu Investment Corporation, and the second and third denied their motions for reconsideration and for new trial.

On June 25, 1959, appellants filed the complaint mentioned above to recover from appellees the ownership and possession of one-half of the land described therein or its value, to compel them to render an accounting of the fruits and other benefits received by them, and to pay attorney's fees and costs. The complaint alleged that the spouses Casto Sosa and Victorina Soleta de Sosa were the owners of a parcel of coconut land situated in barrio Dawis, Municipality of Gasan, Marinduque, contain-ing an area of approximately 42,147 square meters; that upon the death of Victorina Soleta de Sosa in 1927, her children (appellants Rizalino Sosa and Antonia Sosa de Rivera) and grandson by her deceased daughter, Maria Sosa de Salva, (appellant Abraham Salva), as sole heirs, in-herited her one-half share of the land aforesaid; that on November 15, 1928, Casto Sosa executed a deed of sale with pacto de retro over the entire land in favor of appellant Domingo Yu Chu, both parties having full knowledge and information of the rights and interests of appellants therein; that said pacto de retro sale was registered in the Office of the Register of Deeds of Marinduque on June 22, 1929; that thereafter appellant Yu Chu took possession of the entire land, reaping the fruits thereof until 1958 when he sold the same to co-appellee Yu Chu Investment Corporation, a private corporation owned and controlled by him, both parties also with knowledge of the defect in the title of the vendor as to one-half of the land; that appellee corporation had since then been in possession of the land, enjoying its fruits and, despite repeated demands made by appellants, read refused to deliver one-half of the land and its fruits to them.

Within the reglementary period, appellees filed their answer alleging, among other things, that the whole land in question was purchased in 1928 by Yu Chu from the then ex-clusive owner and possessor, Casto Sosa; that Yu Chu, in turn, sold the land to Yu Chu Investment Corporation, an innocent purchaser for value, in whose name the property was titled afterwards.

The case was set for trial on October 30, 1962, but on the 10th of the same month appellants moved for the post-ponement of the trial to another date, preferably between December 20 and December 31, 1962. Granting said motion, the court reset the date of trial for December 20, 1962 at 8:00 a.m., on which date the court issued the following order:

"When this case was called for trial, one of the plaintiffs appeared without their lawyer and informed the Court that Atty. Cecilio L. Pe, plaintiff's counsel, could not appear today as per telegram which said plaintiff showed to the court. According to the telegram, Atty. Pe could not appear because it was only yesterday that he received the notice of hearing. Said lawyer did not even inform the Court that he was not coming and did not even take the trouble of requesting for the postponement of the hearing of this case. The defendants, on the other hand, appeared with their lawyer, Atty. Ernesto R. Rondolo. The Court asked the said plaintiff who was then present if he could present their evidence without their lawyer and he answered in the negative, so the hearing of this case could not take place. For the inability of the plaintiffs to present their evidence, the defense counsel prayed for the dismissal of the case for non-suit. Finding the petition of the defendants to be well-founded and meritorious, plaintiff's complaint is hereby ordered dismissed with costs against the said plaintiffs.

"IT IS SO ORDERED.

"Boac, Marinduque, December 20, 1962."

Notice of the above order of dismissal was received by appellants on January 14, 1963. On the 16th of the same month they filed a motion for reconsideration thereof and prayed that the case be reset for trial, preferably on three successive days in April or May 1963, claiming that the failure of their counsel to appear on the date set for the trial was due to his having received the notice therefore, in Manila, only the day before the trial. Appellees filed their opposition and on January 23 of the same year the court denied the motion for reconsideration. Having received notice of this order of denial, appellants, eight days later, filed a verified motion for new trial, reiterating that the non-appearance of their attorney of record on the date set for the trial was due to accident, mistake or excusable negligence; that said attorney received the notice of trial only on December 19, 1962, that is, only one day before the date set for said trial (December 20, 1962); that with only one day notice, it was physically impossible for their attorney of record, who was residing and had his law office in Manila, to be physically present on the date set for the trial. The motion for new trial was supported with Annex A, an affidavit of Atty. Cecilio L. Pe, appellants' attorney of record, to prove the accident, mistake or excusable negligence relied upon as ground for new trial, and Annex B, an affidavit of the same attorney which, in part, stated the following:

"1. That I am the counsel for the plaintiffs in Civil Case No. 1166 of the Court of First Instance of Marinduque, entitled Rizalino Sosa, et al. vs. Domingo Yu Chu, et. al.;

"2. That I am in possession of documentary evidence which amply supports the allegations and claims of my clients, the plaintiffs in the said case, as set forth in their complaint;

"3. That the said documentary evidence includes the following:

'(a) Original Certificate of Title No. 656, Book No. A-6, Pages 295, Province of Tayabas, Case No. 11, GLRO Record No. 13565, covering the land in litigation, in the name of 'Casto Sosa married to Victorina Soleta' an owner appearing thereon. This Certificate, when considered jointly with the records of the land registration case pursuant to which it was issued, shows that the land was acquired as conjugal property and registered as such on Sept. 5, 1918 or during the marriage of Casto Sosa and Victorina Soleta, even as the term 'married' to written on the title has been interpreted by our courts to mean that the land is conjugal property.

'(b) Declaration of Real Property covering the land in question, and showing the improvements thereon.

'(c) Marriage contract between Casto Sosa and Victorina Soleta, showing that they were married on January 26, 1907.

'(d) Birth Certificate of the plaintiffs, showing that they are the children and grandchild of the marriage of Casto Sosa and Victorina Soleta, and hence their lawful heirs, and the lawful heirs of each of them.

'(e) Death Certificate of Vic-torina Soleta, showing that she died on February 22, 1927, the date when her conjugal share in the land descend-ed to her lawful heirs by intestate succession, that is, to her children and grandchild, namely, the plaintiffs.

'(f) Deed of Sale with Pacto de Retro signed by Yu Chu (the defendant Domingo Yu Chu) and Casto Sosa and his second wife Isabel Sace dated November 15, 1928, or after the death of Victo-rina Soleta, which deed is a sale of the entire land covered by Original Certificate of Title No. 656. This deed when considered together with the certificate of Title, shows that the defendant Domingo Yu Chu acquired the land in bad faith, at least with res-pect to the share of the plaintiffs therein, as he knew of the plaintiffs share which Casto Sosa and Isabel Sosa had no right to sell or convey.'

"4. That Domingo Yu Chu did not acquire the land by prescription because:

'(a) It is registered land which under the law cannot be acquired by him by prescription;

'(b) He bought it, or at least the plaintiffs' share in it, in bad faith; and

'(c) He was an alien until only re-cently who since the effectivity of the Philippine Constitution could not acquire land by prescription;'

"5. That I am executing this affidavit of merits in order to obtain a new trial of the abovementioned case by the setting aside of the Court's order of December 20 which dismissed plaintiffs' complaint for non-suit due to accident or excusable negligence."

Appellants objected to the motion for new trial and on February 4, 1963 the Court denied the same for lack of merit. Thereafter, appellants perfected their appeal.

Upon the facts set forth above, We find the appeal to be meritorious.

It is not denied that the notice setting the case for trial on December 20, 1962 was received by appellants' counsel only one day before that date. Considering that said counsel was a resident of and had his law office in Manila at the time, it was almost physically impossible for him to appear at said trial before the trial court. That instead of sending a telegram addressed to the court regarding the service of the notice of trial on him only one day before the date set therefor, he sent the telegram to one of his clients, is not fatal to appellants' case, it appearing that the addressee received the telegram and submitted it to the court when the case was called for trial. The contents thereof not having been sufficiently contradicted, there was enough reason for the court to postpone the trial and reset it for another date instead of dismissing the case.

After the denial of their motion for reconsideration but within the reglementary period, appellants filed a motion for new trial duly supported with an affidavit to prove the grounds relied upon and another affidavit showing upon its face that appellants had indubitable documents showing that the property which they sought to recover from appellees was the share of Victorina Soleta de Sosa in a bigger parcel which she and her husband, Casto Sosa, had acquired during their marriage. If this is so, the sale of the entire parcel by Casto Sosa and his second wife in favor of appellant Yu Chu was void as far as the share of Sosa's first wife was concerned. The trial court evidently erred in denying said motion for new trial.

WHEREFORE, the orders appealed from are set aside and the present case is remanded below for trial on the merits, all over again.

Reyes, J.B.L., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.
Concepcion, C.J., took no part.

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