

BENJAMIN DAYAO, PLAINTIFF AND APPELLEE, VS. ENRIQUE LOPEZ ET AL., DEFENDANTS. ENRIQUE LOPEZ, DEFENDANT AND APPELLANT.*G.R. No. L-17698. December 27, 1962*

Ponente: BAUTISTA ANGELO, J.

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On April 10, 1957, Benjamin Dayao filed an action against Enrique Lopez, et al. for rescission of a deed of sale with damages before the Court of First Instance of Rizal. It was alleged that several persons including Enrique Lopez executed a deed of sale over a parcel of land for a valuable consideration but when it was presented to the Register of Deeds of Baguio City it was denied registration for the reason that a portion of the property sold belonging to Enrique Lopez and his wife was already sold at public auction in 1953. The rescission was based on fraudulent misrepresentation on the part of the defendants.

After trial, the court rendered judgment in favor of the plaintiff, but alleging that he was not duly represented by his former counsel, Enrique Lopez instituted a writ of certiorari with mandatory injunction before the Court of Appeals (CA-G. R. No. 24200-R), which eventually remanded the case to the court a quo with the directive that Lopez be given another opportunity to present his evidence.

Accordingly, the court a quo set the case for hearing for that purpose on June 20, 1960, after Lopez had filed an answer to the complaint. The record shows that the notice of hearing was received by Lopez' counsel on April 12, 1960, but when the date of hearing came, he orally moved for postponement on the ground that his client was sick. He did not present any medical certificate, nor a previous motion for postponement, nor counsel has shown when his client has been sick. Counsel for plaintiff opposed the motion as it did not conform with the requirement of the rules. And finding the opposition well-taken, the court a quo denied the motion, rendering forthwith a decision stating the following in its dispositive part: "on the basis of the evidence of the plaintiff already on the record, the decision of this Court, dated January 6, 1958, is hereby revived in toto and is deemed incorporated herein by reference, as against the defendant Enrique Lopez only."

The decision was rendered on June 22, 1960. On July 16, 1960, counsel for Enrique Lopez filed a notice of appeal, as well as the appeal bond, even if he asked for an extension of time to perfect his appeal. But on August 10, 1960, he filed a motion for reconsideration of the decision on the alleged ground that on June 20, 1960, date of hearing, he moved for postponement of the trial for the reason that his client was sick as evidenced by a telegram the counsel received from him in which it is recited that he was confined in the Davao General Hospital on account of certain illness stating that the requisite medical certificate would soon be forthcoming, which in fact he received on June 22, 1960; but in said motion counsel did not state the nature of the sickness, nor the condition of his client which would show his inability to attend the hearing on the scheduled date. Counsel for plaintiff filed a vigorous opposition to this motion. After considering both the motion and the opposition, the trial court refused to reconsider its decision. Hence the present appeal.

This is the second time that appellant has resorted to the Appellate court for the alleged failure of the trial court to give him an opportunity to present his evidence, the first being in Case No. CA-G. R. No. 24200-R of the Court of Appeals wherein he alleged that his former counsel Augusto Revilla was not duly authorized to represent him in the lower court.

The notice of hearing in the instant case set for June 20, 1960 was received by appellant's counsel on April 12, 1960, but when said date of hearing came, appellant's counsel orally moved for postponement on the ground that his client was sick without however presenting any medical certificate nor stating when his client got sick or the nature of his sickness. And notwithstanding the fact that the decision was rendered on June 22, 1960, and appellant's counsel filed his notice of appeal as well as the appeal bond on July 26, 1960, he filed on August 10, 1960 a motion for reconsideration alleging therein the same reasons he had already advanced in support of his oral motion for postponement. And finding the reasons given unsatisfactory, the trial court denied the motion for reconsideration.

The question to be determined is whether the trial court abused its discretion in denying the motion for reconsideration.

Considering the facts as unfolded in the record, we are persuaded to conclude that the trial court was justified in taking the action it has taken. To begin with, it should be stated that the hearing of the case was set for June 20, 1960 and notice thereof was received by appellant's counsel on April 12, 1960. There is, therefore, an interval of over two months between the date of hearing and the date appellant's counsel was notified thereof, and yet said counsel only thought of moving for postponement in the very last minute. If there was really no desire to delay the proceeding, appellant's counsel would have filed a written motion for postponement much ahead of time to give opposing party enough time to make proper adjustment and the court to take appropriate action.

In the second place, if it is true that appellant's counsel has received the alleged verified medical certificate on June 22, 1960, it is strange that he had to wait for so long a time before he filed his motion for reconsideration, for the record shows that he filed said motion on August 10, 1960, or almost two months thereafter. And as the record shows, said motion was not accompanied by the alleged verified medical certificate of the supervising resident physician of the Davao General Hospital. There is, therefore, every reason to believe that the attempt at postponement is merely a move to delay the hearing which appellant should have known was intended precisely to give him a further opportunity to present his evidence. The failure to avail of this hearing can, therefore, be attributed only to his own fault.

On the other hand, in incidents of this nature, a factor that is important to consider is whether the party concerned has a good and valid defense which if presented may have the effect of overcoming or offsetting the adverse decision rendered against him, which is not the case here, for the record shows that appellant has sold the parcel of land in question as free from any lien or encumbrance when in fact he had already sold a portion thereof to other parties. His claim that, "the plaintiff should be blamed for his negligence and carelessness in buying a property without first ascertaining in the Register of Deeds of Baguio" is untenable, considering that the land sold is covered by a transfer certificate of title issued under the Land Registration Act. Verily, appellant's defense, if any, is flimsy and insubstantial.

Wherefore, the decision appealed from is affirmed, with costs against appellant.

Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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