

DIONISIO FENIS, ET AL., PLAINTIFFS AND APPELLEES, VS. ANDRES F. CORDERO, ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. L-8962. May 30, 1956*

Ponente: MONTEMAYOR, J.

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This is an appeal from the order of the Court of First Instance of Ilocos Sur dated February 5, 1951, dismissing the petition for relief from judgment filed by the defendants-appellants on February 9, 1949, in Civil Case No. 3502 of the Court of First Instance of Ilocos Sur. Said case dates back to the year 1938 when on January 15th of that year plaintiffs-appellees filed a complaint later amended on March 3, 1938, for damages and injunction to recover the sum of P4,000 representing the value of approximately 10,000 maguey plants allegedly destroyed by defendants, on a large parcel of land belonging to plaintiffs which defendant entered, and the additional sum of P400 for other damages and expenses. Defendants-appellants represented by Atty. Lazaro Abigania answering the complaint alleged that they may not be sued in their private capacities but rather as representatives of the municipal council of Narvacan, Ilocos Sur, because with the exception of defendant Andres F. Cordero, they were all members of a special committee appointed by Municipal Mayor Andres F. Cordero to investigate a proposed road connecting the barrios of Banglayan and Cadoog of said municipality, pursuant to a municipal resolution, and that the property alleged to have been illegally entered by them was actually part of the road being investigated. About two years later or rather on August 2, 1940, the municipality of Narvacan commenced condemnation proceedings, docketed as Civil Case No. 3849, to expropriate said land of the plaintiffs.

On the occasion of a pre-trial held on February 4, 1943, the trial court ordered that the case be tried jointly with Case No. 3849 for expropriation. On October 5, 1943, the present case was calendared for trial on November 9, 1943 and Atty. Abigania was duly notified of this hearing. On the day of the trial, however, Atty. Abigania failed to appear and the trial court allowed plaintiffs to present their evidence in his absence, but continued the hearing to the next day in order to give defendants' counsel an opportunity to present his evidence and to explain why he should not be punished for contempt. The next day Atty. Abigania appeared and presumably failing to give a satisfactory explanation for his non-appearance in court the day before, he was fined P5. The trial was postponed for November 15, 1943. On that day Atty. Abigania informed the court that despite his telegrams and letters to the defendants they failed to come. He asked to be allowed to withdraw as their counsel, alleging among other things that he had already delivered the papers of the case to one Atty. Serrano. In view of the court's denial of his petition for withdrawal, Atty. Abigania presented some documents as exhibits for the defendants after which the case was submitted for decision. On November 19, 1943, the trial court rendered judgment in favor of plaintiffs, ordering defendants to pay to them the sum of P4,100 with interest from the filing of the complaint and declaring permanent the writ of preliminary injunction previously issued, with costs. Atty. Abigania received copy of the decision on December 15, 1943, but according to defendants he failed to notify them of the same.

On October 18, 1948, plaintiffs filed a motion for execution of the judgment and on December 27, 1948, the corresponding writ of execution was issued, and it was served on Andres F. Cordero, one of the defendants, on

January 15, 1949. The writ was returned by the Sheriff on February 25, 1949 with a notation that defendants had no property, real or personal, subject to execution.

On February 29, 1949, that is, more than five years after Atty. Abigania had received copy of the decision on December 15, 1943, defendants-appellants filed a petition for relief from judgment. The trial court ordered plaintiffs to answer said petition. Instead of answering, plaintiffs filed a motion that the petition be stricken from the records on the ground of prescription. After hearing, the trial court issued an order or resolution dismissing the petition on the ground of laches and negligence. As already said, defendants are appealing from that resolution. It may not be out of place to go, though not deeply, into the merits of the case as may be gathered from the reasons given by the trial court in awarding damages in the sum of P4,100 to the plaintiffs in its decision of November 19, 1943. It would appear that the defendants actually cut down 10,000 maguey plants on the land of plaintiffs, but that judging from the exhibits presented by their counsel Atty. Abigania at the hearing, they tried to justify the trespass on the land and the destruction of maguey plants by the condemnation proceedings instituted by the municipality of Narvacan. But as observed by the trial court, that expropriation case was instituted two years and seven months after the trespass and the destruction committed by the defendant, so that the acts of defendants were not warranted.

As to the merits of the petition for relief filed in 1949, and the propriety or justification of the resolution of the court denying the same, no lengthy discussion is necessary. It is sufficient to reproduce the following observations of Judge Hilario in his resolution denying the petition for relief:

"Es bastante inconcebible que un litigante no hubiere indagado por su propia cuenta y por espacio de unos 5 anos el estado de su asunto, no recibiendo ya informacion de su abogado sobre el mismo. Por lo menos, durante dicho tiempo hubiera buscado a su abogado para cerciorarse de la causa del silencio de este. La solicitud no alega explicaciones sobre la omision de los demandados de hacer las ordinarias indagaciones.

"Es tambien inconcebible que un abogado de gran prestigio profesional como el Sr. D. Lazaro Abigania, que ha perdido bajo las circunstancias mencionadas en el parrafo 2 de la solicitud la causa de sus clientes, sabiendo que en la decision se condenaba a estos al pago de la suma de P4,100 con sus intereses legates desde la presentacion de la demanda hasta su complete pago, no hubiera hecho ningun esfuerso durante cualquiera de los anos 1944, 1945, 1946, 1947 y 1948 por notificar semejante fallo a sus clientes y solicitar el reraedio correspondiente. De haber sido realmente negligente durante dichos 5 anos, su negligencia no puede ser considerada excusable."

Counsel for the appellants claims that the trial court erred in not declaring the decision rendered against defendants on November 19, 1943, null and void for the reason that they were unreasonably and arbitrarily denied their day in court, and in not holding that said decision was entered against them due to the honest mistake and excusable negligence of their attorney of record, Atty. Abigania. The reason given by said attorney for not appearing on the day of the trial on November 9, 1943 was that he had asked the Clerk of court for postponement because he thought the case would be heard jointly with the condemnation case of course, that was no reason for not appearing on the day set. for hearing because it was for the court and not for him to decide whether postponement was to be granted. Then, when he appeared the following day he asked to be relieved as counsel for the defendants on the ground that he had already delivered the papers of the case to Atty. Serrano. His petition was denied by the court. His clients, the defendants herein, never agreed in court to his withdrawal as their counsel, and Atty. Serrano never filed his appearance for them and in substitution of Atty. Abigania. We do not forget the conditions obtaining during the Japanese occupation, but it is of public knowledge that in 1943, and during the greater part of 1944, the courts were open and functioning, and mail and other means of communication were available, though perhaps not daily, especially in northern Luzon and there was no reason for Atty. Abigania to fail to notify his clients, the defendants, of the decision rendered against them, and as

observed by the trial court there was no reason for these same defendants to fail to make inquiries from their counsel and from the court as to what had become of the case filed against them.

In view of the foregoing, the order or resolution appealed from is hereby affirmed, with costs.

In view of the manifestation of Atty. Pablo C. Sanidad, counsel for defendants-appellants in their appeal, that defendants-appellants Cordero, Velasco, Peralta and Ginez are now dead, their legal representatives shall be substituted in their place in accordance with Rule 3, section 17, of the Rules of Court.

Paras, C. J., Bengzon, Padilla, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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