

**LOURDES ARCUINO, ELEUTERIA LAUDE, FLORENCIA PATOMBON
AND ANGELITA PATOMBON, PLAINTIFFS-APPELLANTS, VS. RUFINA
APARIS AND CASIANO PURAY, DEFENDANTS-APPELLEES.**

G.R. No. L-23424. January 31, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal from an order of the Court of First Instance of Leyte.

On May 26, 1964, Lourdes Arcuino, Eleuteria Laude, Florencia Patombon, and Angelita Patombon - hereinafter referred to as plaintiffs - commenced the present action in said court, for the "recovery of possession, damages and legal redemption." In their complaint, filed by Attorneys Bruno A. Villamor and Vicente Rodriguez, plaintiffs alleged that they are co-owners pro indiviso of shares aggregating about 13/24[1] of a residential land of about 332 square meters, known as Lot No. 355 of the Cadastral Survey of Ormoc City, which lot is covered by original Certificate of Title No. 13672 of the Province of Leyte; that in 1946, defendant spouses, Casiano Puray and Rufina Aparis - hereinafter referred to as the Purays - took possession of said lot, "thereby unlawfully and illegally excluding the plaintiffs from their lawful possession of their respective shares," which the Purays refused to return to the plaintiffs, despite repeated demands by them made "for several years;" that on April 29, 1964, plaintiffs learned that some of the co-owners had sold their respective shares in said lot to the Purays, in view of which they (plaintiffs) offered, shortly thereafter, to redeem said shares, but the Purays rejected the offer; and that, consequently, plaintiffs suffered damages. Plaintiffs prayed, therefore, that judgment be rendered ordering the Purays to deliver to them (plaintiffs) their respective shares and sentencing the Purays to permit them (plaintiffs) to redeem the shares sold to them (Purays), as well as to pay damages, in addition to attorney's fees and costs.

In their answer to the complaint, the Purays denied the alleged share of the plaintiffs in said Lot No. 355, and averred that the same belongs to them (the Purays), having acquired it in good faith, for value, in 1946, from Marciano Melgar and Pilar Melgar, his (Marciano's) daughter by his deceased wife, Pilar Laude, pursuant to a deed of conveyance, copy of which is appended to said answer, as Annex 1 thereof; that Marciano Melgar and Pilar Laude had, in turn, purchased it on May 16, 1938, from the registered owners of said lot, as attested to by a deed of absolute sale attached to the answer, as Annex 2 thereof, executed by Gaudioso Arcuino and Teresa and Diosdado Patombon; that plaintiffs' right of action, if any, is barred by the statute of limitation; and that plaintiffs are guilty of laches. The Purays, likewise, set up a counterclaim for damages.

Upon the filing of plaintiffs' answer to the counterclaim, the lower court ordered the case set for pre-trial on June 17, 1964; but neither the plaintiffs nor their counsel appeared on that date. Thereupon, on motion of Purays' counsel, said court issued an order dismissing the case.

It would seem that, immediately thereafter, Atty. Villamor informed the Court that Atty. Rodriguez, who, he (Villamor) intimated, was handling the case for the plaintiffs, could not be present because he was then in Mindanao. Moreover, Atty. Villamor asked that the pre-trial be postponed, but the Court did not grant such

request. Hence, Atty. Villa-mor filed a motion for reconsideration, alleging that, while he was in the courthouse, in Ormoc City, on June 10, 1964, as counsel for one of the parties in Civil Case No. 633-0 of said court, notice of the pre-trial in the case at bar was served upon him; that he placed said notice inside his envelope of the aforementioned Case No. 633-0; that, after the hearing thereof, he went to his office, and, after placing the aforementioned envelope inside a drawer, he returned home; that, it being late in the afternoon, he forgot to advise Atty. Rodriguez of said pre-trial; that Atty. Rodriguez left Ormoc City the next day and proceeded to Iligan City via Cebu City, leaving on his office calendar a note to the effect that the pre-trial in the present case would be held on June 19, 1964; that Atty. Rodriguez was evidently under the honest belief that the date set for the pre-trial was June 19, not June 17, 1964; that when Atty. Villamor heard, on June 17, 1964, that the pre-trial would then be held, he remembered that notice thereof had been served upon him while he was attending the hearing of said case No. 633-0; that, there-upon, he examined his envelope of that case and found there-in said notice; and that the failure of Atty. Rodriguez to appear at the pre-trial was due, therefore, to excusable mistake.

Upon denial of this motion for reconsideration, plain-tiffs interposed the present appeal, directly to the Supreme Court.

It is not disputed that, owing to the failure of plaintiffs and their counsel to appear at the pre-trial of this case, notice of which had been duly served upon the parties, the lower court had the authority to dismiss the case.[2] It is, likewise, settled that the determination of whether or not an order of dismissal issued under such conditions should be maintained or reconsidered, rests upon the sound discretion of His Honor, the Trial Judge.[3] The issue, in this appeal, hinges on whether or not such discretion has been so abused as to warrant a reversal of said order.

Upon a review of the records, we are fully satisfied that the answer must be in the negative, for:

1) The explanation given in plaintiffs' motion for reconsideration is far from satisfactory. Atty. Villamor would have us believe that he had been unable to transmit to Atty. Rodriguez the notice of pre-trial served upon the former. Yet there was, on the office calendar of Atty. Rodriguez, a note - seemingly written by him - to the effect that said pre-trial would take place on June 19, 1964. Atty. Rodriguez knew, therefore, that there would be such pre-trial. In other words, the notice thereof must have reached him, although his associate, Atty. Villamor, believes that he (Rodriguez) must have committed an honest mistake regarding the date of the pre-trial.

2) Both lawyers were counsel for plaintiffs herein. In the absence of his associate, Atty. Villamor could have and should have appeared, therefore, on behalf of the plaintiffs, at the pre-trial.

3) The very complaint of plaintiffs herein shows that the Purays had been in adverse possession of Lot No. 355 continuously since 1946, and that plaintiffs were aware of such fact. When the present action was filed on May 26, 1964, plaintiffs had been, therefore, in such possession, adversely for about eighteen (18) years. Moreover, the Purays had acquired the land from Marciano Melgar and his daughter Pilar Melgar, as heir to the interest therein of her deceased mother, Pilar Laude, who, together with Mariano Melgar, had bought it, on May 16, 1938, from Gaudioso Arcuino and Teresa and Diosdado Patombon. Hence, together with the possession of their predecessors in interest, the Purays had altogether 26 years of adverse possession in their favor. It is true that lands registered under the Torrens system may not be acquired by prescription; but, plaintiffs herein are not the registered owners. They merely claim to have re-quired, by succession, their alleged title or interest in Lot No. 355. At any rate, plaintiffs herein are guilty of laches.[4]

In fact, the order complained of, denying the motion for reconsideration above referred to, was predicated, mainly, upon the futility of reinstating the case owing to the insurmountable obstacles facing plaintiffs herein.

WHEREFORE, the order appealed from is hereby affirmed, with costs against the plaintiffs.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] It is alleged that Lourdes Arcuino has 3/12 or 6/24; Eleuteria Laude 1/8 or 3/24; Florencia Patombon 1/12 or 2/24; and Angelita Patombon 1/12 or 2/24.

[2] Peralta Vda. de Caina v. Reyes, L-15792, May 30, 1960.

[3] Smith Bell & Co., et al. vs. American Pres. Lines, Ltd., 94 Phil., 879; Matias vs. Teodoro, 54 Off. Gaz., 619; Benares Montelibano vs. Benares, 54 Off. Gaz., 3787; Adorable vs. Bonifacio, L-10698, April 22, 1959; Flores vs. Phil. Alien Property Administrator, L-12741, April 28, 1960; Vernus-Sanciangco vs. Sanciangco, L-16219, April 28, 1962; People vs. Cloribel, et al., L-20314, August 31, 1964; and Inter-Island Gas Service, Inc. vs. De la Cerna, L-17631, October 19, 1966.

[4] Mejia de Lucas vs. Gamponia, 53 O.G. 677, 679.

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