

FRANCISCA JOVELO, PETITIONER, VS. NAZARIA VDA. DE BAUTISTA AND THE COURT OF AGRARIAN RELATIONS, RESPONDENTS.

G.R. No. L-16610. May 31, 1963

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Petitioner seeks a review of the order of respondent Court of Agrarian Relations (Sixth Regional District, Naga City) dismissing the case she filed against respondent Nazaria Vda. de Bautista and of the resolution denying her subsequent motion to lift the order of dismissal.

Petitioner's complaint before respondent court, dated December 17, 1968, charged respondent Bautista with having illegally dispossessed petitioner of a piece of land worked by her under tenancy, situated at Bautista, Labo, Camarines Norte. After the answer was filed, the case was set for hearing on March 17, 1959. Neither party then appeared, hence the court dismissed the case for failure to prosecute. On March 30, 1959, petitioner moved to lift the order of dismissal, alleging that her failure to appear was due to her ignorance of court procedure, as she believed that she would be represented at the trial by the Agricultural Tenancy Commission,. The case was reinstated on April 27, 1959. Notices dated June 4, 1959 were sent to the parties through their respective lawyers - petitioner was then already represented by counsel de oficio-setting the case for hearing on June 23, 1959, with the warning that no further postponement would be granted. The notice was received by petitioner's counsel on June 9, 1959. On the same day she filed a motion for leave to file an amended petition, with the amended petition itself attached to the motion. This was granted by the court in an order dated June 17, 1959, which also stated that the hearing would proceed on June 23 as previously scheduled. Upon receiving, that very day, a copy of the order, petitioner filed a motion for continuance. The case was called for trial nevertheless, and both parties as well as their counsel having again failed to show up, the court dismissed the case for lack of interest to prosecute. On July 3, 1959 petitioner moved to lift the order of dismissal. This was denied on July 14, 1959. Petitioner moved for reconsideration, and after the motion was likewise denied she perfected the instant petition for review.

Respondent Court's order of June 17, 1957, is as follows:

"Finding the reasons in support of petitioner's "motion for leave to file amended petition" under date of June 8, 1959, to be well taken and there being a previous order of this Court dated April 27, 1959, reinstating this case for hearing, motion to file amended petition is hereby granted and the attached amended petition admitted. As per notice of hearing dated June 4, 1959, hearing of this case on the merits shall proceed as scheduled at the JP Session Hall, Labo, Camarines Norte at 9:00 o'clock a.m., June 23, 1959. Attention of counsel for respondent is called to the fact that his answer to said amended petition be filed within the reglementary period provided for by the rules of this Court or reproduce his previous answer dated January 3, 1959."

The Rules of the Court of Agrarian Relations provide that the defendant or respondent shall file his answer within five (5) days after summons (Rule 6, Sec. 1), and that after the answer is filed or after the expiration of the period allowed therefor "the case shall be set for hearing on the first available date immediately following the seventh day after the filing thereof" (Section 1, Rule 7). The hearing is thus scheduled only after the issues are joined with

the submission of the answer. The procedure outlined, however, contemplates a case where the petition has not been amended. Where there has been such amendment, the Rules of the Court of Agrarian Relations do not provide for the time when the hearing should be scheduled, nor the method of determining when the issues may be considered as joined. The Rules which govern proceedings in the Court of First Instance should therefore be applied in a suppletory character (Section 1, Rule 17, Rules of the Court of Agrarian Relations).

Under the Rules of Court the issues are deemed joined upon the filing of the last pleading, in which event the case shall be included in the trial calendar (Section 1, Rule 31). In this connection, Chief Justice Moran commented:

"The case may be said to be ready for trial and, therefore, should be included in the trial calendar when the issue is joined. And the issue is joined when all the parties have pleaded their respective theories and the terms of the dispute are plain before the court." (Moran's comments on the Rules of Court, Vol. I, third edition, p, 573, cited in *Principe vs. Eria*, 90 Phil., 684.)

Where a complaint is amended after the defendant has answered, then his answer shall stand as such to the amended complaint unless he files another answer within ten days from notice of admission of the amended complaint (Section 3, Rule 9). The issues are thus joined either upon the filing of a new answer to the amended complaint or after the expiration of ten days from notice of the amendment if no new answer is filed. Evidently with this in mind, the Agrarian Court, in its order of June 17, 1959, admitting the amended petition, directed respondent's counsel to answer the same within the reglementary period provided for by the Rules of that Court, that is, five days from notice, or to reproduce his previous answer to the original petition. In the same order, however, the Court announced its intention of proceeding with the hearing as originally scheduled (June 23, 1959) without waiting for respondent's new answer to be filed or for the expiration of the time referred to by it as the "reglementary period." On the date of the hearing not only was no such answer yet filed but the period to file it had not even started, for copy of the Court's order of June 17 was received by respondent Bautista only on the following July 13. Consequently, the hearing called on June 23, 1959, was premature and improper.

In any event, it is manifest that petitioner's counsel had reasonable grounds to believe that the hearing of the petition as scheduled would not proceed, especially so because as alleged by him in his verified motion to lift the order of dismissal he had been made to understand by the Clerk of Court that the trial on the merits would be held in abeyance until his motion for the admission of the amended petition had been resolved. And when petitioner received notice of the favorable resolution (order dated June 17, 1959), on June 23, she did not have sufficient time to prepare for trial on the same day, for which reason she immediately filed a motion for continuance. Under the circumstances the motion should have been granted and the case placed on the calendar for trial only after respondent had filed a new answer or after the period within which to do so had expired.

The orders appealed from are set aside and the case is remanded for further proceedings. Cost against respondent Bautista.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, and Regala, JJ., concur.

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