

MARIANO GONZALES, PLAINTIFF AND APPELLANT, VS. DONATO AMON, DEFENDANT AND APPELLEE..*G.R. No. L-8963. February 29, 1956*

Ponente: REYES, A., J.

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This is an appeal from a denial of a motion from reconsideration of an order of the Court of First Instance of Zambales, dismissing appellant's complaint. The appeal has been certified to this Court by the Court of Appeals because the question involved is purely legal.

The complaint in question was for the recovery of two parcels of land which plaintiff-appellant alleged he had purchased from defendant subject to redemption within a specified period, but which notwithstanding defendant's failure to redeem within the said "period and despite the fact that absolute title had already passed to plaintiff, defendant, refused to deliver despite repeated demands. Answering the complaint, defendant admitted the sale a retro but alleged as a defense that the lands in question had already been redeemed as evidenced by receipt signed by plaintiff acknowledging payment made for that purpose. Defendant also set up a claim for damages "by reason of the unwarranted, unjustified and malicious filing of this suit."

For failure of plaintiff or his attorney to appear at the trial notwithstanding due notice, the court ordered the complaint dismissed and authorized the clerk of court to receive defendant's evidence. Three days later, plaintiff moved for a reconsideration of the order of dismissal, alleging that the failure of himself and his attorney to appear at the trial was due to the fact that the attorney's clerk, who received the notice of hearing, forgot to notify them thereof. The motion for reconsideration having been denied, plaintiff filed a notice of appeal from the order of denial, and this is the appeal that is now before this Court. , But the record on appeal also included, by order of the court, the decision subsequently rendered on defendant's claim, finding that the lands in question had already been redeemed by defendant, declaring plaintiff's suit unjustly filed and awarding to defendant moral damages in the sum of P200 and attorney's fee in the sum of P250, in addition to the cost of suit.

We see no merit in the appeal. The motion for reconsideration, though supported by the affidavit of the clerk to the effect that, through inadvertence, she forgot to bring to the knowledge of attorney and client the notice of hearing that she had received, is not accompanied by an affidavit or merit, that is, a sworn declaration that plaintiff has a good and valid cause of action against the defendant, notwithstanding the latter's defense that he had already redeemed the lands in question. Even supposing therefore, that the failure of the plaintiff and his attorney to appear at the hearing was really due, as they alleged, "to excusable error or accident," still plaintiff would not be entitled to a reopening of the case in the absence of a reasonable assurance supported by proper affidavit that he had a just and valid cause, which, if proved, would entitle him to a judgment in his favor. (Remedios M. Vda. de Miranda vs. Urbano Legaspi et al., 92 Phil., 290, 48 Off. Gaz., 4819.) In the circumstances, the lower court did not commit any error or abuse its discretion in denying a reopening.

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

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

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