

REMEDIOS M. VDA. DE MIRANDA, PLAINTIFF AND APPELLEE, VS. URBANO LEGASPI, ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. L-4917. November 26, 1952

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On May 3, 1949, plaintiff filed an action against defendants, forty-nine (49) in number, seeking to recover from them the possession of two parcels of land situated in the district of Paco, City of Manila, and the sum of P1,200 as monthly rental from January 1946, until the land is returned.

On May 21, 1949, defendants filed a motion for bill of particulars, suspension or dismissal of the complaint. This motion was denied, the court stating that the complaint contains sufficient allegation that the defendants are occupying approximately 4,000 square meters of the land described in the complaint, and that the proceedings of this case cannot be suspended because Commonwealth Act No. 538, invoked by the defendants, only applies to cases of ejectment and not to an ordinary action for recovery of possession.

On July 8, 1949, defendants filed their answer wherein they set up several special defenses which are practically a reiteration of those they had set up in their motion to dismiss. In addition, they alleged that they are possessors in good faith in that they took possession of the land with the knowledge and consent of the plaintiff who allowed them to erect their houses thereon and fixed the rentals to be paid by them and that they continued occupying the land unmolested until only recently when a Chinese who had a lumber yard in the adjoining lot signified his intention to occupy the premises in question. Defendants also set up a counterclaim for the value of the improvements they had made on the land which amounted to a total of P56,500.

When the case was called for hearing on August 23, 1949, plaintiff appeared assisted by her counsel. Neither the defendants, nor their counsel, appeared, whereupon the court allowed the plaintiff to present her evidence. On September 9, 1949, the court rendered its decision granting the relief prayed for in the complaint with the exception of the claim for damages. The counterclaim of the defendants was dismissed.

On September 14, 1949, defendants filed a motion in which they prayed that the decision be set aside and a new trial ordered alleging therein that their failure to appear at the trial was due to inadvertence or mistake of one Dominador Villafuerte, the stenographer and filing clerk of their counsel, as fully explained by him in an affidavit which was attached to the motion as appendix "A". Defendants likewise alleged that they have a good and valid defense which they could prove if given a chance as shown in the answer they had filed in the case. To this motion plaintiff filed an opposition wherein it was stressed that even if the case be reopened the defenses set up by the defendants could not have the effect of altering the decision of the court.

On October 6, 1949, the court denied the motion for a new trial, and on October 11, 1949, the defendants brought the case to the Court of Appeals. The case was later certified to this Court on the ground that the appeal involves only questions of law.

In this instance, appellants make the following assignment of errors:

"I

"The lower court erred in denying defendants' motion for bill of particulars or dismissal.

"II

"The lower court erred in denying defendants' motion for suspension of the proceedings as provided in Commonwealth Act No. 538.

"III

"The lower court erred and abused its discretion when it proceeded with the trial of the case ex-parte in the absence of all the 49 defendants and their attorneys thereby depriving them of their substantial rights to present their respective evidence and to be represented by attorney.

"IV

"The lower court erred in denying defendants' motion to set aside its decision and for new trial on the merits of the case".

The first assignment of error is not well taken. This is but a reiteration of the motion filed in the lower court wherein defendants asked for a specification of the allegation of the complaint as regards the portion of land allegedly occupied by them, and the lower court resolved the question holding that such specification was not necessary because it is already clearly alleged in the complaint that the defendants were occupying approximately 4,000 square meters of the land in controversy. The complaint alleges that the defendants occupied a portion of the land without the knowledge and consent of the plaintiff and such allegation sufficiently apprises the defendants of the nature of the complaint to enable them to prepare their defense. This is a substantial compliance with the rule.

With regard to the second assignment of error, defendants invoke in their favor Commonwealth Act No. 538 which provides for the automatic suspension of an action for ejectment against tenants occupying lands which the Government desires to acquire through purchase or expropriation proceedings. But this Act cannot properly be invoked by the defendants for the reason that it only applies to an action for ejectment. Said Act cannot apply to the present action which is in the nature of "accion publiciana", or a plenary action in an ordinary civil proceeding, different from the summary action of forcible entry and detainer (II Moran, Comments on the Rules of Court, p. 290, 1952 ed.).

With regard to the third assignment of error, we notice that the appellants based their motion for new trial on section 1(a), of rule 37 which provides that a party may ask for a new trial on the ground of fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against by reason of which such party has probably been impaired in his rights. They have not predicated their motion on rule 38 which gives to an aggrieved party the right to obtain relief when for similar reasons he has been unjustly deprived of a hearing. In any event, we consider immaterial the remedy pursued by the defendants for in our opinion both remedies have the same purpose. The important question is whether the reasons advanced to obtain relief are such that would justify the reopening of the case with a view to giving them an opportunity to present their evidence. We are of the opinion that those reasons are valid and justifiable and are enough to warrant a reopening of the case, specially so when the failure of the defendants to appear took place on the first day of the case was called for trial. But it should be noted that the granting or denial of a motion for new trial is, as a general rule, discretionary with the

courts, whose judgment should not be disturbed unless there is a clear showing abuse of discretion. In the instant case, we find that the lower court did not abuse its discretion. While it is true "that the failure of the defendants to appear is due to inadvertence or mistake on the part of an employee which ordinary prudence could not have guarded against, we should not lose sight of the fact that the lower court deemed it wise to deny the motion because it considered futile and unsubstantial the defenses set up by the defendants which, even if proven, could not have the effect of altering the nature of the decision. In this respect we agree with the trial court. It should be noted that the defendants do not claim any title over the land other than that of mere tenants who claim to have been allowed by the plaintiff to occupy it at certain rental a month, which defense cannot be seriously taken because even if true it would not justify their indefinite continuance in the property. The plaintiff is the owner of the land and as such has the right to reoccupy it if she so chooses, her only duty being to give to defendants the notice required by law. With this the plaintiff has complied. The defendants failed to heed her bidding upon the claim that the Government would expropriate the land. But we have already said that this pretense is untenable.

Considering the surrounding circumstances, we are of the opinion that the lower court did not err in denying the motion for new trial subject of the present appeal.

The order appealed from is affirmed, without pronouncement as to costs.

Paras C. J., Pablo, Bengzon, Padilla, Montemayor, Jugo, and Labrador, JJ., concur.

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