

**MOISES OLIVARES AND JUANITA T. OLIVARES,
PETITIONERS-APPELLANTS, VS. THE HONORABLE CARLOS V.
GONZALES, AS JUDGE OF THE COURT OF FIRST INSTANCE OF
ILOILO (BRANCH VI) RESPONDENT A...**

G.R. No. L-34500. March 18, 1988

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

The Disputed Property is a piece of unregistered land located at Tigbauan, Iloilo, identified as Assessor's Lot No. 343. It was previously owned by respondents-appellees Jacinto Tuvilla and Ceferino Tuvilla (the Tuvillas, for short) both of Tigbauan, Iloilo.

Sometime in 1955, the Tuvillas executed a "Deed of Sale with Right to Repurchase" in favor of respondent-appellee Juan Tumabini, over the Disputed Property in consideration of the sum of P1,350.00. The document was duly acknowledged before a Notary Public but was not recorded in the Registry of Property.

Sometime in 1959, the Tuvillas executed a "Deed of Sale with Pacto de Retro" over the Disputed Property in favor of petitioners-appellants, Moises Olivares and Juanita T. Olivares (the Olivareses, for short). This document was acknowledged before a Notary Public and registered with the Registry of Deeds. In 1966, the Tuvillas also executed in favor of the Olivareses a "Deed of Absolute Sale" covering the Disputed Property. Petitioners-appellants have been in possession of the Disputed Property since 1959.

On October 11, 1967, respondent-appellee, Juan Tumabini, filed Civil Case No. 7410 before Branch I of the then Court of First Instance of Iloilo against the Tuvillas for the consolidation of ownership over the Disputed Property by reason of the alleged failure of the Tuvillas to redeem the property from Tumabini (hereinafter referred to as the Consolidation Case). The Olivareses, however, were not included as parties to the said case.

During the pre-trial of the Consolidation Case, counsel for the parties agreed to consider the pacto de retro sale as one of equitable mortgage. Thus, the Trial Court rendered judgment in favor of Tumabini in the amount of P1,350.00, pursuant to which, the Court subsequently issued a Writ of Execution on October 23, 1968.

On November 23, 1968, the Olivareses instituted Civil Case No. 7777 before Branch VI of the former Court of First Instance of Iloilo, for Quieting of Title, against the Tuvillas, Juan Tumabini, the Provincial Sheriff and Pyramid Surety (hereinafter, the Quieting of Title Case). The said Court issued a Restraining Order to stop the sale in the Consolidation Case (No. 7410) pending in Branch I, but the said Order was lifted on February 6, 1969.

Subsequently, in the Consolidation Case (No. 7410), the Disputed Property was sold at public auction and a Writ of Possession was issued in Tumabini's favor. However, the tenant of the Olivareses refused to surrender possession, prompting a citation for contempt. Action thereon was deferred, however, pending termination of Civil Case No. 7777.

On July 7, 1970, in the Quieting of Title Case (No. 7777), the Trial Court issued an Order dismissing said case, as follows:

“Acting upon the motion for dismissal of this case filed by Atty. Enrique Arguelles, counsel for the defendants, it appearing that the instant action has been filed since November 23, 1968 and up to this time plaintiffs failed to exert effort to have the defendants summoned, for failure to prosecute and lack of interest on the part of the plaintiffs for such unreasonable length of time, as prayed, let this case be dismissed.”

No reconsideration was sought nor any appeal taken by the Olivareses.

On July 14, 1971, the same case was refiled, also in Branch VI, docketed as Civil Case No. 8698 (the Refiled Case) which, however, was dismissed by the Court on September 6, 1971 "it appearing that Civil Case No. 7777 previously filed and dismissed by the Court embraces the same subject matter and the same party litigants as the case at bar".

On September 20, 1971, the Court denied the Motion for Reconsideration filed by the Olivareses. Hence, this appeal by certiorari.

The question posed is whether the dismissal of the Quieting of Title Case (No. 7777) "for failure to prosecute" barred the institution of a subsequent suit, Civil Case No. 8698, by the same plaintiff against the same defendants on the same cause of action.

Section 3, Rule 17 of the Rules of Court specifically provides:

"Sec. 3. Failure to prosecute - If plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by the court."

Procedurally speaking, therefore, since the dismissal by the Trial Court was unqualified, it had the effect of an adjudication upon the merits.

However, the equities of the case are with the Olivareses. The first sale with pacto de retro by the Tuvillas to Tumabini was unregistered; in contrast, the sale in favor of the Olivareses was duly recorded. The Consolidation Case (Case No. 7410) instituted by Tumabini against the Tuvillas for consolidation of his ownership did not include the Olivareses as parties defendants even though they were then in possession of the Disputed Property. Justice and equity demand, therefore, that their side be heard in the Refiled Case (No. 8698). Then, too, the contempt incident and the matter of the Writ of Possession in the Consolidation Case (No. 7410) were left unresolved pending the outcome of the Quieting of Title Case (No. 7777).

In other words, it would be more in keeping with substantial justice if the controversy between the parties were to be resolved on the merits rather than on a procedural technicality in the light of the express mandate of the Rules that they be "liberally construed in order to promote their object and to assist the parties in obtaining just, speedy and inexpensive determination of every action and proceeding". The dismissal of actions is based on sound judicial discretion and such discretion "must be exercised wisely and prudently, never capriciously, with a view to substantial justice". For having failed to meet that standard it will have to be held that respondent Judge acted with grave abuse of discretion (see *Tandoc vs. Tensuan*, L-50835, October 30, 1979, 93 SCRA 880).

WHEREFORE, the questioned Order of dismissal, dated September 6, 1971, in Civil Case No. 8698, is hereby SET ASIDE and the said case REMANDED for prompt hearing and determination on the merits. This Decision shall be immediately executory upon promulgation. No costs.

SO ORDERED.

Yap, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

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