

MIGUEL AMANDO A. SIOJO, SUBSTITUTED BY PEDRO SIOJO, PLAINTIFF AND APPELLEE, VS. RUPERTA TECSON, ET AL., DEFENDANTS AND APPELLANTS.

G. R. No. L-2807. April 23, 1951

Ponente: BENGZON, J.

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BENGZON, J.:

This is an appeal from a decision of the court of first instance of Bulacan ordering the annulment of a deed of sale executed by Miguel Amando A. Siojo and Maria Remedios A. Siojo in favor of Ruperta Tecson. The decision was rendered after a hearing in which the plaintiff and his witnesses testified in the absence of the defendants and their counsel. After failing in a motion for new trial, the defendants appealed to the Court of Appeals, which in turn forwarded the record to us because only questions of law are involved.

Plaintiff, in his complaint, alleged that the deed of sale had been signed by him without consideration. Defendants in their answer denied the allegation and asserted that the contract was valid. On January 17, 1947, an order was issued setting the case for hearing on March 5, 1947. Under date of February 26, 1947 Attorney Padilla, for defendants, filed a motion for postponement on the ground that he had another case for trial on the same date in the Court of First Instance of Manila. He set the motion for hearing and resolution for March 5, 1947.

On March 5, 1947 the litigation was called, and having probably been asked about the request for postponement the attorney for plaintiff objected for the reasons (a) that the attorney for defendants had other associates who could have appeared for his clients, (b) it was unfair to set the motion for postponement on the same date of trial and (c) his witnesses were in court ready to testify.

The Court denied the motion to postpone and heard the case. Thereafter it granted the relief requested by the plaintiff, stating in its decision that,

"The evidence for the plaintiff shows that Miguel Amando A. Siojo and Maria Remedios Siojo who are legitimate brother and sister of the first marriage inherited from their father the land and the house in question together with Pedro Siojo, John Siojo and Emelda Siojo, who are brothers and sisters of the second marriage; that the brothers and sisters of the second marriage did not respect the first two as elder brother and sister for which reason in order to prevent them from inheriting their respective share in case they die they (Miguel Amando A. Siojo and Maria Remedios Siojo) executed the deed of sale, Exhibit B, in favor of Ruperta Tecson without valuable consideration, because the amount of P3,000 was not paid therefor; that on account of the act that said contract of deed of sale was fictitious, the plaintiff destroyed the original copy, after the brothers and sisters of the second marriage and the plaintiff herein had made up their misunderstanding; that Ruperta Tecson presented in the office of the Register of Deeds of Bulacan the duplicate copy of the said contract of deed of sale, and it was entered in the Primary Entry Book, although its registration was not effected due to the non-payment of the registration fees; and that Ruperta Tecson has never been in possession of the property, neither has she claimed possession thereof before the destruction of the original copy."

In this appeal, the appellants insist that the trial judge erred or abused his discretion in refusing to continue the

case, in permitting the plaintiff to introduce his evidence in their absence and in thus depriving them of their day in Court.

The pertinent rulings in the matter of continuance are condensed in the Comments of former Chief Justice, Dr. M. V. Moran as follows:

"The matter of adjournments and postponements of trials lies generally within the discretion of courts and such discretion will not be interfered with either by mandamus or by appeal, unless a grave abuse thereof is shown * * *." [1]

"Whether a trial may be continued because a party's attorney is engaged in another trial on the same date, is a question to be determined in the discretion of the court according to the peculiar circumstances of each case. Continuance may be granted if the attorney is without fault, or it causes no undue prejudice either to the adverse party or to the interest of a prompt administration of justice. A practitioner may have two cases in two different courts set for trial on the same date without his previous knowledge and consent, and under this circumstance it is but fair to grant him postponement of one of the trials if petition to that effect is presented at such time as is practicable to prevent the adverse party from coming to court with his witnesses on the day set for trial thus incurring unnecessary expenses otherwise, he may be made to pay for such expenses as a pre-requisite to continuance. But, an attorney retained in a case the trial of which is set for a date on which he knows he cannot appear because of his engagement in another trial set previously for the same date, has no right to presume that the court will necessarily grant him continuance. The most ethical thing for him to do in such situation is to inform the prospective client of all the facts so that the latter may retain another attorney. If the client, having full knowledge of all the facts, still retains the attorney, he assumes the risk himself and cannot complain of the consequences if postponement is denied and finds himself without attorney to represent him at the trial [2] * * *."

"* * * And a party moving for postponement should be in court on the day set for trial if the motion is not acted upon favorably before that day. He has no right to rely either on the liberality of the court, [3] or on the generosity of the adverse party [4]." (Comments on the Rules of Court, Third Ed., pp. 577-580.)

The last portion of the above quotation counts heavily against the appellants. They and their counsel should not have assumed that the trial would be, postponed. Even if their counsel received no written opposition from plaintiff's advocate, as the date is not shown when the said advocate had received the motion for postponement the argument based on his silence lacks sufficient basis. Furthermore, no rule required him to file a written opposition; on the contrary, he had a right to believe that his objection could be orally interposed on March 5, 1947, the date set for the submission of the motion and the argument thereon.

In this connection a general idea may be outlined for the benefit of practicing attorneys. If defendants' advocate received the trial notice of January 17, 1947, after he had gotten notice of hearing in the Manila court, he should have lost no time to seek postponement of the case in Bulacan. One month (January 17—February 26) was too long. If, on the other hand, the Manila case was set after the Bulacan case, counsel should have first asked continuance from the Manila court, and if that petition, was denied then he should have informed the Bulacan court of his inability to secure postponement. This is on the principle that both courts are of the same category, and to undue preference should be shown for the work in one as against the other. We repeat that this rule applies under ordinary circumstances. Exceptional situations might develop requiring a different course of action.

Looking at the equitable side of this litigation, we notice that although defendants repeatedly assert a valid consideration for the deed of conveyance they do not specify such consideration and have not dared to attach any affidavit of merit to their "motion for reconsideration and new trial," which pleading, whether filed under Rule 37 or under Rule 38 must needs be supported by sworn allegations of meritorious or substantial defense.

Probably 'conscious of the above shortcoming, appellants' attorney adroitly attempted to divert our attention to the precepts of the Constitution that no one shall be deprived of his property without due process of law, without being afforded his day in court. This plea, impressive at first glance, has heretofore been overruled by our holding that where a party is duly notified of the trial and fails to attend it without sufficient cause, he cannot thereafter claim that he was deprived of his day in court. (*Sandejas vs. Robles*, 41 Phil., 421; 46 Off. Gaz., [No. 1] 203.) The appealed judgment will be affirmed, with costs.

Paras C. J., Feria, Pablo, Tuason, Montemayor, Jugo and Bautista Angelo, JJ., concur.

[1] *Samson vs. Naval*, 41 Phil., 838.

[2] *Linis vs. Rovira*, 61 Phil., 137.

[3] *Macondray & Co. vs. Paradies*, G. R. No. 38255, Sept. 5, 1933.

[4] *Sunico vs. Villapando*, 14 Phil., 352.

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