

VICENTE MENDOZA, ET AL., PLAINTIFFS AND APPELLEES, VS. TIBURCIO DUAVE, DEFENDANT AND APPELLANT.

G.R. No. L-21336. February 18, 1967

Ponente: REGALA, J.

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REGALA, J.:

The summary nature of proceedings for forcible entry has all been lost because of the time taken in trying this case. As if the delays were not enough, the case is here because the trial court denied one more request for postponement from the defendant and rendered judgment against him.

This case was filed on May 22, 1958 in the Justice of the Peace Court of Palauig, Zambales, on the complaint of the plaintiffs that in June, 1957, defendant, by the use of "force, intimidation, threat, strategy or stealth," deprived them of possession of a piece of land described in the complaint.

Defendant filed an answer, denying the allegations of the complaint and claiming ownership of the land.

Thereafter, judgment was rendered ordering defendant to restore possession of the land to the plaintiffs and to pay them P100 for attorney's fees.

Defendant appealed to the Court of First Instance of the province where, for failure to file an answer, he was declared in default. Hence, after receiving plaintiffs' evidence, the court considered the case submitted and on November 18, 1959, rendered judgment, ordering defendant to vacate the premises and to pay to the plaintiffs the sum of P250 for attorney's fees, plus the costs of the suit.

On motion of defendant, however, the court set aside its decision and order of execution, as well as its earlier order declaring defendant in default, after finding that defendant's failure to file an answer was due to ignorance of legal procedure, the notice of docketing of the appeal having been served on defendant, instead of his counsel. The court gave defendant 15 days to file his answer and reserved to him the right to cross examine plaintiffs' witnesses.

Defendant did not file a new answer; instead, he in-wormed the court that he was adopting his answer in the Justice of the Peace Court.

The case was set for hearing on January 12, 1961. The day before, defendant's counsel filed a motion for postponement but the court denied the motion on the day of the hearing and, as the parties and their lawyers did not appear, the court dismissed the case. Plaintiffs' counsel later explained that he was not able to come on time for trial because the bridge at Bagsit, Liozon, Palauig, Zambales, was impassable and finding the explanation plausible, the court set aside its order of dismissal and reset the case for hearing.

But the case still had a long way to go. The hearing on September 12, 1961 was postponed to October 17 as defendant's new lawyer, Atty. Amor Deloso, with address at 82 South Gate, Balara, Quezon City, wired the court that he had just recovered from illness and he could not make a trip to Iba, Zambales. And when the new date of

hearing (October 17) arrived, the case had to be reset for lack of time. The new date appointed was November 28, but, as stated in the beginning, as if the hearing of the case had not suffered enough delays, defendant's counsel asked again for a postponement of the hearing set for November 28 on the pretext that he had to secure certain documents from his client.

The court denied the motion, considered the case submitted and reinstated its decision of November 18, 1959. In that decision, the court found that the land in question was inherited by the plaintiffs from their mother, Emiliana Tuason, and that as a matter of fact it was declared for taxation by the plaintiffs; that in June, 1957, defendant "grabbed from the plaintiffs the possession of the land in question, and thereafter, plowed it, planted it with palay and built (on it) a house;" and that despite plaintiffs demand, defendant refused to vacate the premises.

Defendant asked for a reconsideration and, failing to secure one, appealed to this Court. He contends that the trial court arbitrarily denied his motion for postponement of the hearing on November 28, 1961 and that it could not reinstate its former judgment by default because the court had earlier lifted its order of default.

It is claimed that defendant's present counsel, Atty. Amor Deloso, is actually the third to represent the defendant and that when he entered his appearance in the trial court, his client had not given him certain papers needed to prepare for trial. But, as the trial court observed, there was time enough to do this because Atty. Deloso entered his appearance on September 12, 1962 and hearing was not to be held until November 28, 1962—more than two months after. We may add that Atty. Deloso is presumed to have discussed the case with defendant when he accepted it and that if he did not have all the papers he could not have announced his readiness for trial. On October 17 since, as already stated, the case was originally scheduled for hearing on October 17 and only the lack of time prevented it from being heard.

Even on technical grounds the denial of defendant's motion for postponement appears to be correct, considering that under the Rules of Court such a motion must be supported by an affidavit showing the materiality of the evidence and due diligence in securing that evidence. (Rule 22, sec. 4 E.E. Elser, Inc. vs. De la Rama Steamship Co., 94 Phil. 812 [1954]; Ricohermoso vs. Enriquez, 85 Phil. 88 [1949]) Here, defendant has not even said a word as to what papers he needed to be able to go to trial.

Nor did he take care to attend the hearing. As this Court said in one case:

"Postponements of trial are addressed to the sound discretion of the Court, and this discretion should not be interfered with unless it has been abused. While petitioner's request for postponement was not entirely groundless, he had no reason to assume that the court would grant it, and that he could, therefore, afford to be absent at the trial. Plaintiff was consequently guilty of carelessness and neglect when he failed to appear at the trial. We were not prepared, therefore, to find that the trial judge abused his discretion in refusing to grant the postponement." (Sarreal vs. Tan, 92 Phil. 689, 692 [1953]).

Nor should the nature of this action as one for forcible entry be lost sight of. We had occasion in the past to admonish lawyers to cooperate with the courts in the prompt trial of cases by refraining from filing motions for continuance unless there are sufficient and strong reasons for doing so. (Salvador vs. Romero, 96 Phil. 34, 36 [1954]). We reiterate this admonition today in the light of the nature of the action in this case. (See Ricohermoso vs. Enriquez, 85 Phil. 88 [1949]).

Still it is claimed that the trial court was in error in reinstating its decision of November 18, 1959 because that was a default judgment and defendant is no longer in default. This is mere technicality. Except for the portion which states that defendant was in default, the decision of November 18, 1959 could not have been any different were the court to render a new decision, with further delay in the disposition of the case. We think the trial court acted correctly in reinstating its former decision instead of preparing a new one with consequent delays.

Wherefore, the orders of November 28, 1962 and January 15, 1963 are affirmed with treble costs against the defendant.

Concepcion, C. J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

Orders affirmed.

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