

**VICTORINA A. DE GAERLAN AND SALVADOR GAERLAN,
PLAINTIFFS-APPELLEES, VS. CARMEN BERNAL, RAMON BERNAL
AND MARIA VILLONGCO, DEFENDANTS-APPELLANTS.**

G.R. No. L-4039. January 28, 1952

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

Plaintiffs Victorina A. de Gaerlan and her husband Salvador Gaerlan as owners of the building known as Nos. 611-613 Arlegui Street, Manila, filed an ejectment suit in the Municipal Court of Manila to recover possession of the property from their tenants, the defendants herein, as well as rentals, including P80.00 for electric light bills. Plaintiffs obtained judgment in their favor ordering defendants to vacate the property in question, to pay plaintiffs P500.00 as back rentals for August, 1947, P700.00 a month from September, 1947 up to the time they vacated the place, and to pay the amount of P80.00 for electric fluid, plus costs. Defendants appealed to the Court of First Instance of Manila. In said court, after hearing where neither defendants nor their attorney appeared, another judgment dated November 4, 1948, was obtained by the plaintiffs-appellees ordering the defendants to pay to the former the sum of P5,013.33 with legal interest from March 12, 1948, plus costs. This amount includes the P80.00 to cover the electric light bills. There was no need for ordering defendants to vacate the premises inasmuch as they had already left the property on March 11, 1948. We are reproducing the decision of Judge Conrado V. Sanchez, making it of our own. It correctly states the facts of the case:

Appeal from a judgment of the Municipal Court in a case, of ejectment and rentals.

Defendants occupied plaintiffs' premises known as Nos. 611-613 Arlegui Street, Manila, at a monthly rental of P700.00 or P350.00 for each of the two doors. (See Exhibit A.) Under the terms of the lease agreement, defendants should likewise pay the electric, light bills.

The evidence shows that defendants were occupying the premises in question during the period from August, 1947, to March 11, 1948, when they vacated the same. For the month of August, 1947, defendants made a payment of P200.00 on account of the rental for that month, leaving a balance of P500.00. Defendants failed and neglected to pay the rentals for the ensuing months up to the time they left the premises on March 11, 1948. It thus results that defendants are indebted to plaintiffs by way of unpaid rentals as follows:

August, 1947

P500.00

September, 1947 to February 1948 or six months at P700.00 per month

4,200.00

March 1-11, 1948

233.33

P4,933.33

To the foregoing figure of P4,933.33 should be added the sum of P80.00 which defendants owe plaintiffs for electric light consumption during the period of occupancy of the premises by the said defendants. The final figure, accordingly, is P5,013.33, ordering defendants Carmen Bernal, Ramon Bernal and Maria Villongco to pay plaintiffs, the spouses Victorina A. de Gaerlan and Salvador Gaerlan, the sum of P5,013.33 with legal interest thereon from March 12, 1948, until the date of full payment thereof, and the costs.

Defendants who were represented by the law firm of Francisco, Jacinto & Santillan, were notified of this decision on November 8, 1948, and on November 29th of the same year, thru their attorneys they filed a motion for new trial claiming that their failure to attend the hearing was due to the excusable negligence of their principal attorney, Augusto Francisco, who was handling the case, said failure on his part to attend the trial being due to the illness of parent his father who was his only surviving parent and of his only motherless son, on or about the day of the hearing.

This motion for new trial was denied by Judge Oscar Castelo in his order of December 4, 1948. The case is now here on appeal from that order of denial.

We agree with counsel of appellees that what the defendants should have done in the lower court was to file a petition for relief from the judgment rendered against them on November 4, 1948, and then when said petition was denied, they should have appealed from the order of denial. Even the appeal being prosecuted herein is rather confusing. According to the record on appeal filed by defendants, they were appealing from the decision rendered against them. That is the reason why this case first went to the Court of Appeals for the reason that an appeal from the decision herein would naturally involve questions of fact. However, after the pleadings were filed in said Court of Appeals it was found by the Third Division thereof, and stated in its Resolution of May 27, 1950, certifying the case to up that altho the notice of appeal filed by the appellants announce 'their Intention to appeal from the decision rendered on November 4, 1948' (Record on Appeal, p. 112), the fact is that, in their brief, they submitted only the following assignment of errors, which raise no other question but one of law:

"I. THE COURT A QUO ERRED IN DENYING APPELLANTS' MOTION FOR NEW TRIAL DATED NOVEMBER 29, 1948.

"II. THE COURT A QUO ERRED IN NOT CONSIDERING THAT THE APPELLANTS HAD A VALID AND MERITORIOUS DEFENSE TO THE COMPLAINT."

"At page 5 of their brief the appellants admit that the only question raised in this appeal is whether or not the failure of the undersigned to appear at the trial maybe considered as excusable negligence so as to warrant the opening of the case, which we believe is but a legal issue."

In order to simplify this appeal and be able to go into the merits of the case we are willing to regard as we now do the motion for new trial filed in the court below as a petition for relief, and the present appeal as one from the order of denial of such petition.

In support of the appeal and to persuade us to regard as excusable negligence the failure of Atty. Augusto Francisco to appear at the trial in the lower court in representation of the defendants, said attorney states in his brief that previous to the hearing, his father, his only surviving parent, was operated upon at the University of Santo Tomas Hospital for the removal of stones from his bladder; that because of his father's advanced age, he being 74 at the time, his condition became worse after the operation, and that the night before the trial, Atty. Francisco "stayed overnight in the hospital." He also claims that his only son, 8 years old, was sick at the time with a temperature that reached 40° and it was feared by the doctors that the child might be suffering from typhoid fever.

Much as we sympathize with Atty. Francisco for the misfortune that had befallen him as regards the illness of his father and son, and the mental anguish involved, we are unable to find any excuse for his failure to attend the hearing. He could well have asked for a postponement of said hearing and for this he should have filed the corresponding motion; or as counsel for the appellees correctly contends, his two partners or companions in the law firm, at his request could have taken his place and appeared at the trial in representation of the defendants; or he could have made arrangements with his clients for them to employ another attorney. Furthermore, as stated by the Court of Appeals in its resolution and as shown by the record on appeal, the motion for new trial filed by Atty. Francisco in the lower court "was not accompanied by affidavits of merits showing the existence of good and valid defense on the part of the movants."

In view of the foregoing, we find this appeal to be without merit. We equally find that the lower court did not err in denying the motion for new trial even if we regard said motion for new trial as a petition for relief. Said order of denial is hereby affirmed, with costs against appellants.

SO ORDERED.

Paras, Pablo, Bengzon, Padilla, Tuason, Reyes, Jugo, and Bautista Angelo, JJ., concur.
Feria, J., took no part.

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