

ALIPIO N. CASILAN AND PURITA GALANARA, PETITIONERS, VS. SANTIAGO GANCAYCO, ET AL., RESPONDENTS.

G. R. No. L-10525. August 29, 1958

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This is a petition for review of the decision of the Court of Appeals affirming that of the Court of First Instance of Samar.

For purposes of reference, we reproduce the pertinent portions of the appealed decision of the Court of Appeals which narrate the facts and issues involved and state the reasons of said appellate court in affirming in toto the judgment of the trial court:

"This is an appeal filed by the plaintiffs against the decision rendered on September 5, 1953 by the Court of First Instance of Samar, the dispositive part of which reads as follows:

"In view of the foregoing, the Court renders judgment requiring the plaintiffs Alipio N. Casilan and Purita Galanara to pay, jointly and severally, to the defendant Raymond Tomasi indemnity and damages in the sum of P8,325; to the defendants Santiago Gancayco and Manuel Gancayco attorney's fees and expenses of litigation in the sum of P700; and to defendant Manuel Gancayco damages in the sum of P210, with legal interest on all said sums; and to pay the costs of this action."

After enumerating the errors assigned by plaintiffs-appellants (petitioners herein), the Court of Appeals continued:

"From the foregoing assignment of errors, it appears clearly that there is no issue as to the probative value of the evidence submitted by the defendants and appellees. The question to be resolved in this appeal is whether the court a quo was correct in denying the plaintiffs' last petition for postponement of the trial in this case, and in dismissing the plaintiffs' complaint, and in condemning said plaintiffs to pay damages and costs to the defendants and appellees.

"It appears from the record that there is no dispute on the following facts: On February 13, 1950, the plaintiffs and appellants riled their complaint against the defendants and appellees, praying: (1) that after previous filing of a bond, a writ of preliminary injunction be issued ordering the defendants, their attorneys, agents and other persons who act in their name to desist from dismantling and removing certain "munition depository huts"; (2) that the plaintiffs be declared the owners of 39 munition quonset huts situated within the Naval Base, Lot 1, Barrio Carapdapan, Salcedo, Samar; and (3) that the defendants be ordered to pay, jointly and severally, to the plaintiffs the amount of P3,000 as damages plus the costs. On February 17, 1950, an order of preliminary injunction against the defendants was issued; and on March 4, 1950, the court approved a counterbond and dissolved the preliminary injunction. On April 14, 1950, the plaintiffs and appellants filed an amended complaint in which they prayed that the defendant be ordered to pay them the amount of P23,400 as damages plus the costs. On July 29, 1950, the court rendered its decision in favor of the defendant Raymond Tomasi, declaring him the lawful owner of the ammunition huts in question; and ordering the plaintiffs Alipio N. Casilan and Purita Galanara to pay, jointly andl severally, to the defendant Raymond Tomasi, indemnity and

damages in the amount of P9,033 plus legal interest; and to both defendants, the costs of the action. The plaintiff appealed from said decision, and the Court of Appeals set aside the same and remanded this case to the court of origin for new trial. In that first decision, it is stated that the complaint was dismissed for failure of the plaintiffs to prosecute.

"It is also beyond dispute that after this case was remanded to the Court of First Instance of Samar, this case was set for hearing on July 23, 1953 (should be July 29, 1953), and the necessary notifications were issued. On July 23, 1953, upon petition of both parties contained in a telegram, the trial of the case was set for August 26, 1953. However, when the case was called for hearing on that date, plaintiffs' counsel moved for the postponement of the trial on the ground that one of his witnesses, Mr. Alfredo Eugenio, was sent to Indonesia by the Philippine government and that another witness, Mrs. Mercedes T. Casilan, could not be present due to physical inability to travel. The petition was opposed by defendants' counsel who came from Tacloban City and Manila and whose witnesses came from other provinces. The court denied the petition for postponement of the trial and announced that the trial would proceed, but counsel for the plaintiffs left the session hall and could not be found when the court ordered the commencement of the trial, so the plaintiffs' complaint was dismissed and the court proceeded to receive the evidence of the defendants in support of their counterclaim.

"In its decision, the court a quo stated that the reason for the denial of the petition for postponement of the hearing filed by plaintiffs' counsel was that neither said petition nor the information verbally given by said plaintiffs' counsel showed that the evidence intended to be adduced through the testimony of Mr. Eugenio and Mrs. Casilan, could not be adduced by the presentation of some other witnesses. We examined carefully the record of this case and we did not find any manifestation of plaintiffs' counsel that there were no other witnesses who might establish the facts that Mr. Eugenio and Mrs. Casilan would have testified on. For this reason, there is no reasonable ground to disagree with the court a quo on its reason for denying the petition of postponement presented by plaintiffs' counsel.

"We believe that under the facts mentioned above, the trial court did not act in grave abuse of its discretion in denying the aforesaid petition for postponement of the trial presented by plaintiffs' counsel. Furthermore, the plaintiffs' counsel did not state under oath in his motion for the postponement of the trial, the nature and materiality of the evidence expected to be obtained from Mr. Eugenio and Mrs. Casilan. It is necessary to so state in such a motion for postponement of the trial. (Section 5, Rule 31 of the Rules of Court). Besides, plaintiffs' counsel did not state in an affidavit that Mrs. Casilan's presence at the trial was indispensable and that her illness is of such a nature as to render her non-attendance excusable (Section 5, Rule 31 of the Rules of Court). Lastly, there is no evidence that plaintiffs' counsel exerted efforts to procure the attendance of these two witnesses, Mr. Eugenio and Mrs. Casilan."

The Court of Appeals finally disposed of the case in the following paragraphs:

"In the light of the foregoing considerations, we declare that the denial of the petition for the postponement of the trial was proper and the court a quo did not commit any error in dismissing the plaintiffs' complaint for failure to prosecute their case.

"The plaintiffs not having questioned the decision of the court a quo as to the merits of the defendants' counterclaim, we are constrained to concur with said court's conclusion regarding the same.

"Premises considered, the decision appealed from is hereby affirmed in toto without costs."

The issue involved in the present appeal is whether or not the trial court abused its discretion in denying petitioners' motion for postponement, and in allowing respondents to amend their answer to conform to the evidence presented and whether the Court of Appeals erred in confirming said action of the trial court.

The rule is well settled that motions for postponement are addressed to the sound discretion of the court,[1] and this discretion would not be interfered with unless it has been clearly abused.[2] In the case of *U.S. vs. Ramirez*,

39 Phil, 738, 742, this Court held:

"The ruling of the court will not be disturbed on appeal in the absence of a clear abuse of discretion. When the discretion of the court is exercised with a reasonable degree of judicial acumen and fairness, it is one which the higher court is loathe to review or to disturb. The trial judge must be to a certain extent free to secure speedy and expeditious trials when such speed and expedition are not inconsistent with fairness. Since the court trying the case is, from personal observation, familiar with all the attendant circumstances, and has the best opportunity of forming a correct opinion upon the case presented, the presumption will be in favor of its action. It would take an extreme case of abuse of discretion to make the action of the trial court a denial of due process of law."

In connection with the transfer of the hearing to August 26, 1953, by virtue of a request for postponement contained in a telegram signed by counsel for both parties, three days before the scheduled hearing on August 26, 1953, counsel for petitioners by telegram requested the trial court that the hearing of the case be postponed to October 21, 1953, on the ground that an amicable settlement was going on. The following day, the Clerk of Court informed petitioners' counsel by telegram that the Judge was not agreeable to the requested postponement. On the day of the hearing, August 26, 1953, counsel for petitioners submitted a written motion for postponement on the ground that his witnesses were absent, one of them, Alfredo Eugenio, being in Indonesia as a Government representative, and the other, Mercedes T. Casilan, was ill. The trial court denied the motion on the ground that it was not shown there were no other witnesses by whom petitioners could prove the facts sought to be obtained from said absent witnesses, and that with respect to Mercedes Casilan, there was no showing that her testimony was material to the determination of the case. We reproduce Sections 5 and 6 of Rule 31 of the Rules of Court, which we find pertinent and applicable:

"SEC. 5. Requisites of motion to postpone trial for absence of evidence.—A motion to postpone a trial on the ground of absence of evidence can be granted only upon affidavit showing the materiality of evidence expected to be obtained, and that due diligence has been used to procure it. But if the adverse party admits that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial must not be postponed.

"SEC. 6. Requisites of motion to postpone trial for illness of party.—A motion to postpone a trial on the ground of illness of a party may be granted if it appears upon affidavit that the presence of such party at the trial is indispensable and that the character of his illness is such as to render his nonattendance excusable."

In the case of *U. S. vs. Ramirez*, supra, it was held that:

"Three things are necessary to put off a trial on account of the absence of a witness: First, that the witness is really material and appears to the court to be so; second, that the party who applies has been guilty of no neglect; and third, that the witness can be held at the time to which the trial has been deferred, and, incidentally, that no similar evidence could be obtained."

The above ruling finds support in American authorities:

"The affidavit should contain a statement that the facts to which it is claimed the absent witness would testify cannot be proved by any other witnesses who are available, or by the exercise of diligence, could have been made available to the applicant at the trial. It has been held to be insufficient to state merely that the party has no other witnesses, or that there are no other witnesses in attendance or in the state. Further, an allegation that there is no other witness whose testimony can be so readily procured has been held to be insufficient." (17 C.J.S. 263).

With reference to the absence of witness Alfredo Eugenio cited by subpoena duces tecum to appear and to bring with him a copy of the resolution of the Surplus Liquidating Committee, dated May 5, 1950, regarding the 39

quon set huts, subject matter of the controversy, upon receiving said subpoena, Alfredo Eugenio addressed a letter to the Board of Liquidators, the pertinent portion of which reads:

"In view of the fact that the Surplus Property Liquidating Committee has already been abolished, and it was replaced by the Board of Liquidators of which I am not a member, I would like to recommend that a representative of the Board of Liquidators be sent with pertinent papers to Catbalogan, Samar, to represent the plaintiff at the hearing of this case." (Record on Appeal, p. 75).

From the above, it is apparent that in the place of Alfredo Eugenio, someone else, say, a representative of the Board of Liquidators, could have been subpoenaed to bring with him the resolution of the Surplus Liquidating Committee and other papers necessary, and perhaps testify on the same. In other words, the petitioners had every opportunity to procure another or other witnesses in the place of Alfredo Eugenio. With respect to witness Mercedes Casilan, we find no reason for disturbing the finding and ruling of the Court of Appeals that petitioners failed to state in an affidavit that the illness of the witness was of such a nature as to render her nonattendance excusable and her presence at the trial indispensable, as required by Section 6, Rule 31, of the Rules of Court.

With respect to the contention of petitioners that the Court of Appeals erred in affirming that part of the lower court decision granting respondents leave to file an amended answer to conform to the evidence presented by them, particularly, concerning expenses and losses incurred by them, it will be recalled that after the trial court had denied petitioners' counsel's motion for postponement, said counsel walked out of the courtroom and was nowhere to be found, despite the ruling of the trial court that the trial would proceed. It is clear that even in the absence of said counsel for petitioners, the respondents had the right to prove their cause of action in the counterclaim and amend their pleadings so as to conform to the evidence submitted by them.

"* * *. The appellant was at liberty, notwithstanding the withdrawal of the respondents, to go on with its case, and prove a cause of action against them, if it could. If it succeeded in its proofs, and the court should hold its complaint defective, its right to amend would not be affected by the absence of the respondents; on the contrary, it could amend its complaint to correspond with its proofs and take judgment against them as if they were personally present." (C. C. Belknap Glass Co. vs. Kelleher, et al., 130 Pac. 1123, 1124.)

In view of the foregoing, we find no error in the appealed decision of the Court of Appeals, and so affirm the same, with costs.

Paras, C. J., Bengzon, Padilla, Reyes, A., Bautista Angelo, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

[1]Co Changjo vs. Roldan Sychangjo, 18 Phil., 405; Rabillo vs. Tionko and Egay, 43 Phil., 317; Phil. Guaranty vs. Belando, 53 Phil., 410.

[2]Sarreal vs. Judge Tan and Samonte, 92 Phil., 689; 49 Off. Gaz., No. 2, p. 499; Arcache vs. Chainani, 99 Phil., 170; 53 Off. Gaz., (1) 105; Capitol Subdivision Inc. vs. Province of Negros Occidental, 99 Phil., 633; 62 Off. Gaz., (10) 4672.

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