

BEATRIZ MERCADO GUINEA, CARIDAD MERCADO VDA. DE GALLEGO, ESTRELLA MERCADO IRENEO, SUSANA G. VDA. DE MERCADO, VENUS MERCADO ABELLA, NILDA MERCADO ARUBAN, ASILA MERCADO CURVERA, S...

G.R. No. L-38659. February 20, 1975

Ponente: AQUINO, J.

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AQUINO, J.:

This special civil action of certiorari was instituted by the petitioners to annul the orders of respondent Judge dated June 28, 1973 and January 14 and February 22, 1974 in Civil Case No. 2766 of the Court of First Instance of Misamis Oriental on the ground that they were issued allegedly with grave abuse of discretion amounting to lack or excess of jurisdiction.

Civil Case No. 2766 is a litigation between the petitioners, the plaintiffs therein, and Matilde S. Vda. de Ramonal over Lot No. 2059 of the Cagayan de Oro cadastre with an area of 43,690 square meters. The plaintiffs alleged in paragraph 9 of their complaint that they have been in possession of the lot "since their birth up to now disturbed only during the war up to February 1966 when plaintiffs through their attorney-in-fact took legal possession again of the said land." They meant that they did not possess the lot during wartime and up to February, 1966.

During the trial they presented seven witnesses to prove their possession "since 1940 up to 1966, interrupted only during the last World War." They presented an eighth witness named Isabelo Bllo allegedly to prove the same point but respondent Judge in his aforementioned order of June 28, 1973 sustained the objection to that testimony. He noted that according to paragraph 9 of the complaint the plaintiffs were not in possession of the lot from 1940 to 1966. He implied that Mrs. Ramonal was in possession of the lot during that period. He held that paragraph 9 could no longer be amended at that stage of the trial. In his order of January 14, 1974 he denied petitioners' motion for reconsideration.

The continuation of the hearing was scheduled in the morning of February 22, 1974. According to respondent Ramonal, petitioners' counsel was late. When he arrived, instead of going to trial, he moved that the hearing be cancelled in order that he could file a certiorari proceeding in this Court for the purpose of annulling the order of January 14, 1974. Respondent Judge denied the motion in a lengthy written order. He noted that petitioners' counsel could have filed the certiorari proceeding before February 22nd because he received a copy of the order on January 16th.

However, respondent Judge granted petitioners' motion that the hearing be transferred in the afternoon: two o'clock, according to the respondents, or two-thirty according to the petitioners (they have conflicting versions as to the hour fixed by respondent Judge).

When the case was called at two o'clock, petitioners' counsel was not in court. Mrs. Ramonal and her counsel were present. A recess was called after the Judge was informed that petitioners' counsel might have understood

that the hearing was scheduled at two-thirty.

When the case was again called at two-thirty, petitioners' counsel had not arrived. Upon motion of Mrs. RamonaFs counsel, respondent Judge terminated the presentation of petitioners' (plaintiffs') evidence and ordered defendant Mrs. Ramonal to present her evidence. That is one of the orders sought to be reviewed in this case (it was the second order issued by respondent Judge on that day, February 22nd).

While Mrs. Ramonal was testifying, petitioners' counsel arrived at two forty-five. He moved for the reconsideration of respondent Judge's order, closing the presentation of plaintiffs' evidence. He explained that he was late because he attended a meeting of the Kiwanis Club of which he was the president.

Respondent Judge denied the motion. He issued another lengthy order, justifying the denial of the motion for reconsideration (it was his third order). Petitioners' counsel then asked for five days within which to file a written motion for the reconsideration. Respondent Judge denied petitioners' motion in another lengthy order dictated in open court (his fourth order in the case on that same day). He directed that Mrs. Ramonal should proceed with the presentation of her evidence. Later, the continuation of the hearing was set on May 23 and 24, 1974.

The petitioners filed their instant petition for certiorari only on May 21, 1974 instead of in February, 1974. The petition was given due course because of the Court's impression that an injustice might have been committed when respondent Judge refused to allow plaintiffs' eighth witness to testify on the issue of possession and when the presentation of their evidence was curtailed without their consent allegedly because their counsel was fifteen minutes late.

After a painstaking perusal of the record, we have come to the conclusion that the trial court did not abuse its discretion in not allowing Isabelo Ello to testify on the issue of possession and in terminating the presentation of petitioners' evidence.

If, according to the petitioners, Ello would testify that they were in possession of the lot from 1940 to 1966, except during wartime, then that testimony would be merely cumulative because, according to the petitioners, seven witnesses had already testified to the same effect. Petitioners' assertion that Ello's testimony would be "corroborative" is incorrect.

As Ello's testimony would be merely cumulative, the trial court did not err in rejecting it. The trial court is invested with the prerogative of stopping "further testimony upon any particular point when the evidence upon it is already so full that more witnesses to the same point cannot be reasonably expected to be additionally persuasive" (Sec. 6, Rule 133, Rules of Court).

Moreover, Ello's testimony, like that of the preceding seven witnesses, would be at variance with the admission in the aforequoted paragraph 9 of the complaint that the plaintiffs were not in possession of the disputed lot from 1940 to February, 1966. As noted by the respondents, paragraph 9 was reproduced in the first, second and third amended complaints which, like the original complaint, were verified.

The respondents, contradicting petitioners' claim, counter that Ello would testify that the plaintiffs possessed the lot from 1940 to February, 1966 without any interruption. If that were so, then that testimony would directly nullify plaintiffs' admission in paragraph 9 that they did not possess the lot from 1940 to February, 1966. That anomalous consequence was taken into consideration by respondent Judge.

Regarding the other branch of the case, which deals with the events that transpired on February 22, 1974, it is at once manifest that the petitioners displayed a conspicuous lack of candor in their version of what occurred at the morning and afternoon hearings on that day.

That circumstance, together with the other deficiencies and suppressions of facts in their pleadings as well as petitioners' dilatory tactics, indicates that their petition is bereft of merit.

WHEREFORE, the case is dismissed with costs against; the petitioners.

SO ORDERED.

Fernando (Chairman), Antonio, and Fernandez, JJ., concur.

Barredo, J., concurs on the ground that there is no showing of denial of substantial justice.

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