

FELIPA ARANICO-RABINO, MARCELO ARANICO AND MELITON ARANICO, PETITIONERS, VS. HON. NARCISO A. AQUINO, AS PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF PANGASINAN, THIRD JUDIC...

G.R. No. L-46641. October 28, 1977

Ponente: SANTOS, J.

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SANTOS, J.:

The records of this case--docketed as Civil Case No. 287-R in the Court below--were forwarded to this Court from the Court of First Instance of Pangasinan, Branch XIV at Rosales, Hon. Judge Narciso A. Aquino, presiding, in view of the appeal interposed by the plaintiffs (petitioners herein) on pure questions of law.

Considering that Republic Act 5440 is applicable, as only questions of law are raised, this Court in its Resolution of June 29, 1977, required "the plaintiffs-appellants to pay the docket and legal research fund fees and to file petition for review on certiorari, filing and serving the same in the form required for petitions for review on certiorari of the decision of the Court of Appeals, both within fifteen (15) days from notice hereof." Pursuant thereto, herein petitioners (plaintiffs below) paid the docket and legal research fund fees and filed the required petition, both in due time. No proof of service of a copy thereof to the Court of First Instance and to the adverse party accompanied the petition. However, the required proof of service was posted three (3) days later and was actually received by the Court on October 10, 1977.

It appears that petitioners-co-owners filed a complaint in the court below to recover from private respondent possession of the lot in controversy. In his answer, the latter resisted the action on the ground, inter alia, that the property is owned by the late Pedro Meimban and his successors-in-interest, private respondent being one of them. At the conference on January 10, 1977, in the chambers of respondent Judge attended by petitioners' counsel, Atty. Eugenio Ma. Mosuela, private respondent and his counsel, Atty. Hugo B. Sansano and Jacob Meimban, who is one of the heirs of the late Pedro Meimban, it was agreed that the complaint be amended to include all the heirs of the late Pedro Meimban "in order that there will be a final adjudication of the rights of the parties in this case." When Atty. Mosuela, as counsel for petitioners, received the order requiring him to amend the complaint within a period of thirty (30) days, he filed instead a motion to set aside said order. The motion was denied and counsel was given another period of ten (10) days within which to file the amended complaint. A motion to reconsider the order of denial was filed by Atty. Mosuela, who contended that the heirs of the late Pedro Meimban are not indispensable parties in the instant case for ejectment; that, even if they are, they have already appeared in the case through their counsel; and prayed that the order requiring him to amend the complaint be reconsidered and, instead, the other heirs of Pedro Meimban be "required to file their answer in intervention." Respondent Judge denied the motion for reconsideration and again gave petitioners another period of ten (10) days from notice within which to file the required amended complaint. Instead of complying with latest order, Atty. Mosuela filed a motion for clarification of the same. Respondent Judge ruled that the order "is clear and explicit" and, as the petitioners did not amend the complaint within the extended periods given them, he ordered

"the case DISMISSED without prejudice."

The motion to reconsider the dismissal order having been denied, petitioners filed the instant petition for review to set aside the order of dismissal and to order the lower court to reinstate their complaint.

The petition is clearly without merit. Section 2, Rule 17 of the Revised Rules of Court expressly empowers the trial court to dismiss the action "upon motion of the defendant or upon the Court's own motion" if the plaintiff "fails x x x to comply with these rules or any order of the court." The trial court gave petitioners no less than a total of fifty (50) days to amend the complaint to include all the heirs of the deceased Pedro Meimban who are indispensable parties "in order that there will be a final adjudication of the rights of the parties in their case." (Rule 3, Section 7, RRC). Not only did petitioners' counsel refuse to comply with the order of the trial court but, instead, he would have the trial court require the other heirs of Pedro Meimban "to file their answer in intervention", which is unprocedural because under Section 2, Rule 12 of the Revised Rules of Court, intervention is purely a voluntary act on the part of a person who "has legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both."

WHEREFORE, the petition is DENIED due course for obvious lack of merit.

Fernando, (Chairman), Barredo, Antonio, Aquino, and Concepcion, Jr., JJ., concur.

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