

**PEOPLE'S HOMESITE & HOUSING CORPORATION,
PLAINTIFF-APPELLEE, VS. CORAZON MOBO, ET AL., DEFENDANTS.
CORAZON MOBO, DEFENDANT-APPELLANT.**

G.R. No. L-22736. July 09, 1971

Ponente: DIZON, J.

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DIZON, J.:

Appeal from a decision of the Court of First Instance of Quezon City in Civil Case No. Q-6497 ordering the therein defendants and all persons claiming rights under them to vacate, and restore to the plaintiff the possession of the land described in the complaint, and further ordering each of them to pay the plaintiff the sum of P25.00 monthly from the date of their respective occupation until possession is restored to the latter, plus the costs of suit.

The People's Homesite & Housing Corporation, hereinafter referred to as PHHC, commenced this action to recover from the defendants the possession of Lot 11, Block E-144, East Avenue Subdivision, which formed part of a bigger tract of land covered by TCT No. 1356 of the Land Records of Quezon City, issued in its name, further praying for an order for the removal and/or demolition of all constructions and improvements introduced by the defendants on the land aforesaid, and sentencing them further to pay the monthly rental of P25.00 from January 1969 until they have vacated the premises, plus attorney's fees and costs.

Defendant Corazon Mobo was the only one who answered the complaint admitting that the plaintiff was the owner of the land described therein but interposing the following special defenses and counterclaim:

"6. That defendant Corazon Mobo avers: that because of the failure or refusal of the plaintiff to notify her that the property in question has already been awarded to another person, who has never occupied the premises prior to or after such award, and in whose favor a Conditional Contract to Sell has been executed by the plaintiff corporation in utter disregard and in sheer violation of the People's Homesite Housing Corporation standing policy to award similar lots to the actual occupants thereon by reason of priority or preference; that the defendant, having no knowledge or information of the above development further introduced improvements, hoping in good faith that the said lot will ultimately be awarded to her; and that she was never notified in writing or otherwise that her mentioned application was not or cannot be acted upon;

7. That the award and subsequent execution of the "Conditional Contract to Sell" in favor of Felipe A. Gahol are both irregular and improper, inasmuch as the said Gahol should not have been given the priority over and above the application of Corazon Mobo, under ordinary and usual circumstances; and as

COUNTERCLAIM

8. Defendant Corazon Mobo alleges: That long before the award and subsequent execution of the mentioned "Conditional Contract to Sell" in favor of Felipe Gahol, she has been in the possession of the premises and the refusal or failure in bad faith of the plaintiff in not acting upon her application and its subsequent refusal and failure in bad faith to notify her of the same, has incurred her in damages in the amount of One Thousand Five

Hundred Pesos Only (P1,500.00) by way of actual or compensatory damages; that by reason of this action, the defendant was compelled to employ services of counsel for the sum of Five Hundred Pesos (P500.00)."

The other defendants were declared in default.

The case was first set for trial on November 27, 1963, at 8:30 a.m., the corresponding notice having been served upon and received by Atty. Ben Hur Z. Mobo, appellant's counsel, on November 22. The following day, Atty. Mobo filed a motion for postponement of trial alleging that on November 27 he had to attend the trial of Criminal Case No. 058984 entitled "People vs. Carlos Panadero" before the City Court of Manila, Branch VII. The motion was not set for hearing on any specific date but contained a request that it be "submitted for consideration of the court as soon as possible."

When the case was called for trial in the morning of November 27, 1963, only the plaintiff and its attorney appeared. In view thereof, upon motion of the latter, the court issued an order authorizing plaintiff to present its evidence before the clerk of court.

On December 16, 1963, defendant's counsel moved for the reconsideration of the court's order of November 27 and for a re-trial of the case, claiming that his failure to attend the trial was due to his appearance at the trial of the criminal case mentioned in his motion for postponement, and claiming further that defendant's case was highly meritorious. But before the motion for reconsideration could be heard, the court rendered the appealed judgment on December 11, 1963 on the basis of evidence presented by plaintiff.

On December 23, 1963, the defendant filed a motion to set aside the decision mentioned above alleging, inter alia, the following:

"I

That on November 27, 1963, this Court gave an order in open Court allowing the plaintiff to present its evidence ex parte on failure of the defendant Corazon Mobo or her counsel to appear at the mentioned initial hearing of the above-entitled case, copy of which was furnished the defendant on December 12, 1963;

II

That on December 16, 1963, counsel for the defendant filed motion for reconsideration of the said order of November 27, 1963, but before the said motion could be heard on December 21, 1963, counsel for the defendant received a copy of this Court's decision in the above-entitled case dated December 11, 1963, on December 18, 1963; consequently, the said motion for reconsideration was denied by this Honorable Court;

III

That the said decision of this Court was rendered based on this Court's order of November 27, 1963, allowing the plaintiff to present its evidence ex parte and without giving the defendant the right to cross-examine the witnesses for the plaintiff and to present her own evidence;

IV

That the reasons why defendant failed to appear in the initial hearing of this case on November 27, 1963 are as follows, to wit:

a. On October 2, 1963, the undersigned counsel, as defense counsel in the case of "People vs. Panadero" before Branch VII of the City Court of Manila agreed with the private prosecutor therein to have the hearing of the same case continued on November 27, 1963 at 8:30 A.M. He has, therefore, no knowledge that this Honorable

Court will also set for hearing the above-entitled case on the same date and hour as the case of "People vs. Panadero";

b. On October 3, 1963, the undersigned counsel went home to Kalibo, Aklan and has since then remained there until his return on November 22, 1963;

c. That while being away in the said province his secretary, Miss Clarita Flogio, did not advise him that the above-entitled case was also set for hearing on November 27, 1963 because the latter had knowledge that the undersigned counsel was coming on or about November 22, 1963;

d. That finally on November 23, 1963, the day after counsel for defendant arrived, he filed a motion for postponement of the initial hearing of the above-entitled case, (Affidavits of Merit hereto attached as Annexes "A" and "B").

V

That should the defendant be granted the right to cross-examine the witnesses for the plaintiff and to present her own evidence, the decision in this case will certainly be adverse to the plaintiff;

VI

That the granting of this motion will not in any way affect the right of the plaintiff, whereas, a denial of the same will necessarily affect the substantial right of the defendant for the same will be tantamount to a deprivation of her property without due process;"

The motion mentioned in the preceding paragraph was not under oath nor was it supported by affidavits of merit. So on January 4, 1964, the same was denied. Thereafter the defendant perfected her appeal.

While the record on appeal does not include any order issued by the trial court denying appellant's motion for reconsideration, she admits that "the said motion for reconsideration was denied" by the trial court. (Record on Appeal p. 32).

Appellant's lone assignment of error is to the effect that the trial court erred in denying her urgent motion for continuance; her motion for reconsideration, and her motion to set aside the decision rendered; all these amounting "to deprivation without due process."

Upon a review of the record We are constrained to hold that appellant's contention is without merit.

It is settled in this jurisdiction that, whether to grant or to deny a motion for the postponement of a trial is a matter addressed to the sound discretion of the trial judge, and unless it is clearly shown that such discretion was gravely abused, His Honor's resolution will not be interfered with. Moreover, even in cases where there was abuse of discretion in the denial of a motion of such nature, the case is not to be reopened, much less a decision already rendered set aside, unless the aggrieved party shows that she has a meritorious case. In the present case appellant has failed to make such showing. Indeed, she admits that appellee owns the land in question; that she occupies a portion thereof without the benefit of any contract authorizing such occupancy. Her only claim is that, having been in possession of said land for a good period of time, she was entitled to a priority right to acquire the same. This, We believe, is not a sufficient legal defense against appellee's action. Consequently, We hold that the trial court did not commit the error imputed to it.

WHEREFORE, the decision appeal from is hereby affirmed, with costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Fernando, Barredo, Villamor, and Makasiar, JJ., concur. Teehankee, J., in the result.

Ruiz Castro, J., did not take part.

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