

JOSE BENARES MONTELIBANO, ET AL., PLAINTIFFS AND APPELLANTS, VS. CARLOS BENARES, DEFENDANT AND APPELLEE.*G.R. No. 10824. February 28, 1958*

Ponente: PADILLA, J.

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In an amended complaint filed in the Court of First Instance of Occidental Negros, the plaintiffs pray for an order declaring that they and the defendant are co-owners of 3,000 shares of stock of the Capitol Subdivision, Inc., issued in the name of the defendant; directing the latter to account for all such shares, the dividends received by him, and the rights, interests and participation therein; dividing and distributing among the co-owners the shares of stocks, the dividends, received by him, and the rights, interests and participation therein; and directing the defendant to pay them damages in the sum of P450,000 (civil No. 1914). The defendant answered the amended complaint denying co-ownership with the plaintiffs in the shares of stock referred to in the amended complaint. After several postponements, mostly upon motion of the plaintiffs, the Court finally set the case for hearing on 18 and 19 February 1954. On 9 February 1954, or nine days before the first day set for the hearing of the case, the plaintiffs filed a motion alleging that, in view of the withdrawal of Attorney Pedro Lopez as chief counsel, which was allowed by the Court, they had to confer with him in Manila before engaging the services of another lawyer; that the latter would have no material time to appear at the hearing of the case set for 18 and 19 February 1954; and that as Attorney Amado B. Parreño, who was handling the plaintiffs' case in collaboration with Attorney Lopez had been engaged as private prosecutor in the murder case against Rafael Lacson to be tried in another branch of the same Court, he would not be able to appear at the hearing of the case set for 18 and 19 February 1954. For that reason they prayed "that the hearing of this case be set for the April Calendar of this Court." On 13 February 1954, the Court heard the motion for postponement, but did not act upon it because the defendant had not yet received notice thereof and, upon receipt thereof he might object to the motion for continuance. On 18 February 1954, the first day set for the hearing of the case, neither the plaintiffs nor any of their attorneys of record appeared. Counsel for the defendant appeared and informed the Court that he had not received notice of the motion for postponement, objected to the postponement of the hearing of the case, and complained that the hearing of the case had been continued several times at the instance of the plaintiffs to the damage and prejudice of his client. The Court dismissed the case without pronouncement as to costs.

On 20 April 1954 the plaintiffs filed an amended petition for relief from the order dismissing the complaint on the ground of mistake or excusable neglect. The Court directed the defendant to answer the petition for relief, and in compliance therewith, on 23 September 1954 the defendant filed his answer, denying that the plaintiffs' failure, to appear was due to mistake or excusable neglect and claiming that it was due to gross and culpable negligence, if not prompted by a malicious design to delay the case and cause him continued and irreparable injury. On 6 January 1955 the Court denied the petition for relief.

The plaintiffs appealed to the Court of Appeals which certified the case to this Court for the reason that the amount involved exceeds P50,000 and the appeal raises questions of law only.

It appears that the hearing of the case had been postponed not less than five times at the instance of the plaintiffs. Twice the Court had warned that each postponement was the last. Nevertheless, on 9 February 1954 the plaintiffs filed another motion for postponement, and neither they nor any of their several attorneys of record appeared in Court on 18 February 1954, the first day set for the hearing of the case. Hence the Court dismissed the case. Section 3, Rule 30 provides:

When plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of ;an adjudication upon the merits, unless otherwise provided by court.

"The dismissal of an action pursuant to this rule rests upon the sound discretion of the court and will not be reversed on appeal in the absence of abuse." [1]

The fact that the plaintiffs had filed a motion for continuance and that the Court did not act upon it immediately after the hearing thereof, because the defendant had not yet received notice of the motion and upon receipt thereof he might object to it, does not entitle the plaintiffs to presume that their motion for continuance would be granted. Motions for postponement are left to the sound discretion of the trial court and unless there be an abuse of such discretion this Court will not interfere with the exercise of that discretion. The reasons given by the plaintiffs, to wit: that in view of the withdrawal of their chief counsel, who was in Manila, they lacked material time to confer with him before engaging the services of another and that their other attorney was busy handling another case in another branch of the same Court, were not deemed by the trial court sufficient reason for the granting of the motion for postponement of the hearing of the case which had already been continued several times. The fact that as early as 12 January 1954, the Court granted the motion of Attorney Lopez to withdraw as counsel for the plaintiffs, a copy of which order allowing his withdrawal was sent by airmail to him and another copy must have been received by Attorney Parreño not long thereafter; the fact that the plaintiffs were duly notified thereof; and the further fact that aside from Attorney Parreño there were other attorneys of record who could appear for the plaintiffs at the hearing of the case, justify the denial by the Court of the motion for continuance.

Petitions for relief under Rule 38 are also addressed to the sound discretion of the court and the grant or denial thereof should not be reversed in the absence of abuse.[1] The grounds relied upon by the plaintiffs in their petition, to wit: mistake, because they thought the Court would grant their motion for postponement, heard on 13 February 1954, but did not act on it since the defendant had not yet received notice thereof as to enable him to object to the motion upon its receipt; and excusable neglect, because Attorney Parreño, one of their attorneys of record was unable to appear on the day set for the hearing of the case as he was busy attending the trial of the murder case against Rafael Lacson in another branch of the same Court, were not considered by the trial court sufficient justification for the grant of the relief prayed for. A court does not abuse its discretion when it defers resolution of a motion for postponement of the hearing of a case and denies it on the day set for the hearing of the case.

The fact that the amount of the property involved in this case is no trifle and that the plaintiffs stand to lose the case on a procedural question have not been overlooked. But, as already stated, the dismissal of a case for failure to prosecute lies within the sound discretion of the trial court which should not be reversed on appeal in the absence of abuse.

The orders appealed from are affirmed, with costs against the appellants.

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

[1]Matias vs. Teodoro 101 Phil., 701, citing Smith Bell & Co., Ltd. vs. American President Lines Ltd., 94 Phil., 879.

[1]Coombs vs. Santos, 24 Phil., 446; Mapua vs. Mendoza, 45 Phil., -321; Felismino vs. Gloria, 47 Phil., 967; Philippine Guaranty Co. vs. Belando, 53 Phil., 410; LaO vs. Dee, G. It. No. L-3890, 23 January 1952; Jose vs. Consolidated Investments, Inc., 93 Phil., 752.

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