

**FRANCISCO, PATRICIO AND ROMAN, ALL SURNAMED MARTIR,
REPRESENTED BY THEIR GUARDIAN, GERTRUDES A. MARTIR,
PLAINTIFFS AND APPELLANTS, VS. AMADO P. JALANDONI AND PAZ
RAMOS, DEFENDAN...**

G.R. No. 12870. March 25, 1960

Ponente: LABRADOR, J.

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LABRADOR, J.:

This action was instituted by plaintiffs praying that they be declared owners and possessors of the undivided one-half of three lots of the Murcia Cadastre and two lots of the Bago Cadastre and that said lands be reconveyed to them by the defendants. The complaint is signed by the guardian of the minor plaintiffs. Upon defendants' being summoned, their attorneys filed a motion to dismiss, which was opposed by the attorney for plaintiffs, Jose Y. Torres of Roxas City. The motion to dismiss was heard and thereafter denied, and thereupon defendants presented their answer.

In their answer, defendants deny that the predecessor-in-interest of the plaintiffs, from whom they claimed to have inherited the undivided one-half portion of the properties, had been in possession of said lands, or that he was the owner of said lands because he had sold them on September 4, 1940 and on April 5, 1941 to the defendants. They also alleged that the predecessors-in-interest of the plaintiffs himself had filed a motion, jointly with the defendants, for the issuance of a certificate of title in the name of the defendant spouses over the Murcia properties, etc. Copies of the deeds of sale executed by Hermogenes Martir in favor of the defendants were registered with the Register of Deeds of Negros Occidental and are attached to the answer. Also attached is the joint motion of said Hermogenes Martir and Amado P. Jalandoni declaring themselves owners share and share alike of the three parcels of land. The order of the court approving the subdivision plan of the lots and the giving of numbers for each lot is also attached to the answer.

On August 3, 1956, when the case was called for hearing defendants and their counsel appeared, but neither plaintiffs nor their attorney on record appeared, so the court dismissed the case for failure of plaintiffs to prosecute. Upon motion of Atty. Medel, another counsel for the plaintiffs, the order of dismissal was reconsidered. The court warned counsel that the case will be dismissed again if plaintiffs and their attorneys would not appear when the case is called.

In accordance with said order the case was scheduled for hearing on September 15, 1956, but when the day came, for the trial Atty. Medel again asked for postponement, alleging that the principal witness for the plaintiffs was sick. The court again granted the motion for postponement. The case having been called for hearing on October 29, only Atty. Medel appeared, and he again moved for continuance because Atty. Torres was in Capiz. Objection to this motion for continuance was interposed by counsel for defendants. The court found there was no reason for postponing the trial because Gertrudes A. Martir was in court. A motion to reconsider the order of dismissal issued by the court was presented by Atty. Medel, claiming that he could not proceed with the case because all his

efforts were concentrated in the study and preparation of a criminal case. This motion for reconsideration was, however, denied. Hence this appeal.

Counsel for plaintiffs-appellants argue that the court a quo erred in denying the motion for postponement of the hearing on October 29, 1956 and in dismissing the case. It is a rule continuously adhered to by us that matters of postponement are addressed to the sound discretion of the trial court, and that we will not interfere with such discretion unless it has been abused. We do not find that there was abuse of discretion by the trial court in dismissing the case, such as would authorize us to reverse the order of dismissal in this case. Plaintiffs have been guilty of neglect, because if Atty. Medel was not ready for the trial of the case as he was then engaged in another case, he should have advised the court thereof by presenting a motion for postponement at least three days before the trial and should have stated therein that Atty. Torres would not be available during the hearing. Without going further into the discussion of the merits of this appeal, we are satisfied from the above proceedings that have taken place in the lower court, that said court has not abused its discretion when it ordered the dismissal of the case.

Wherefore, the order appealed from is hereby affirmed, with costs against appellants.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, and Gutierrez David, JJ., concur.

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