

EMILIA MENDOZA, PETITIONER, VS. CAMILO BULANADI, RESPONDENT.*G.R. No. 13092. May 18, 1960*

Ponente: GUTIERREZ DAVID, J.

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This is a petition to review on certiorari a resolution of the Court of Agrarian Relations denying herein petitioner's motion for new trial. We granted due course to the petition and to stay the execution of the lower court's decision, upon petitioner's filing a bond of P500.00, the writ of preliminary injunction prayed for was issued by this Court.

It appears that on June 10, 1957, Camilo Bulanadi, herein respondent, filed with the court below a petition for reinstatement and reliquidation, with damages, against Emilia Mendoza, herein petitioner, and one Domingo Pelayo. The petition alleged, among other things, that complainant Bulanadi had, since the crop year 1952-53, been a tenant of landholder Emilia Mendoza on a parcel of land located at Barrio Nabaong-Garlan, San Ildefonso, Bulacan; that on June 4, 1957, he was dispossessed without lawful cause or authority from the court and Domingo Pelayo placed in possession of the landholding; and that during his tenancy he provided, aside from his labor, the work animals and farm implements and shouldered the final harrowing and one-half of the transplanting expenses, but that the produce of the land was divided only in the proportion of 55-45 in his favor.

Answering the petition, Emilia Mendoza denied all material averments thereof, and as special defenses, alleged that she "is a leaseholder"; that plaintiff Camilo Bulanadi is not the tenant in the landholding in question but was merely substituted for the original tenant, her co-defendant Domingo Pelayo, who was then physically incapacitated; that she had no tenancy contract with said plaintiff; and that their sharing basis in the division of the crops was in accordance with law. By way of counterclaim, she prayed for damages in the amount of P200.00 as attorney's fees.

Domingo Pelayo, who was duly served with summons, filed no answer. Nevertheless, notice of hearing was sent to him.

On August 14, 1957, when the case was called for hearing, only the complainant Camilo Bulanadi and his counsel appeared. Ostensibly to give the defendants Emilia Mendoza and Domingo Pelayo another opportunity to be heard, the case was re-set for hearing, with notice sent to both of them and to Emilia Mendoza's counsel of record. On September 13, 1957, the date set for hearing, Emilia Mendoza and her counsel as well as Domingo Pelayo again failed to appear, whereupon the court allowed the plaintiff, who was assisted by counsel, to present his evidence. On September 21, 1957, the lower court rendered its decision, ordering Domingo Pelayo to vacate the landholding in question, and Emilia Mendoza to reinstate plaintiff Camilo Bulanadi therein. The court also ordered Emilia Mendoza to deliver to plaintiff 14 cavans and 11 ½ kilos of palay or its money equivalent in the sum of P142.50, with interests, which she received in excess of her legal share for the crop years 1953-1954 to 1956-1957; and to pay to said plaintiff, jointly and severally with Domingo Pelayo, the sum of P150.00 for damages the former sustained as a result of the illegal ejectment, plus P100.00 nominal damages.

On October 9, 1957, counsel for Emilia Mendoza filed a motion praying that the decision be set aside and new trial ordered, it being alleged that his failure to appear at the hearing was due to his clerk's inadvertence or mistake, as explained by the latter in an affidavit attached to the motion. Counsel, likewise, alleged that his client Emilia Mendoza has good and valid defenses which she could prove if given a chance. As stated in her affidavit of merits also attached to the motion, these defenses are: (1) that Camilo Bulanadi was not her tenant but was merely a substitute for the original tenant; (2) that at the time of the alleged dispossession, she was no longer the owner or possessor of the land in question; and (3) that before the land was alienated sometime in May, 1957 and during the entire period that plaintiff was working thereon, she complied with the provisions of the Tenancy Law in the division of the produce of the land.

Acting upon the motion for new trial, the lower court, on October 22, 1957, handed down a resolution denying the same for lack of merit. From that resolution, Emilia Mendoza brought the case to this Court thru the present petition for review.

After going over the record, we are of the opinion that the motion for new trial was properly overruled.

The granting or denial of such motion is, as a general rule, addressed to the sound discretion of the court. Counsel for petitioner alleges that his failure to appear at the trial was due to the inadvertence or mistake of his clerk, who, after receiving on September 7, 1957 the notice of hearing, misfiled it in one of the envelopes containing the records of other cases, and three days thereafter, went on vacation to the province without calling his attention to said notice of hearing. Counsel, however, before his said clerk went on vacation, made no inquiries as to what court notices or papers had been received by him. Had he done so, the notice of hearing allegedly misfiled could have been discovered in time, considering that it was received three days before his clerk went on vacation. It will be remembered that counsel, for reasons known only to himself, had already failed to appear at the first hearing of the case on August 14, 1957 although he was duly notified thereof. Notwithstanding such unexplained non-appearance, the lower court re-set the case for hearing. Petitioner herself, as directed by the court, was duly notified thereof, but she also failed to appear. In the circumstances, we do not think the court below erred in not considering her failure and that of her counsel to appear at the hearing as due to excusable negligence that would justify the reopening of the case.

We are, moreover, not impressed by petitioner's pretense that she has valid and meritorious defenses which she can prove if granted new trial. She claims that respondent Bulanadi was not her tenant but merely a substitute for the original tenant, Domingo Pelayo, who was then "temporarily incapacitated." The alleged temporary incapacity, however, appears to be too long in duration for the claim to be true, the court below having found respondent, to have worked on the land in question as a share tenant since 1953. In this connection, we also find it rather strange why Domingo Pelayo, the alleged original tenant and petitioner's co-defendant in the proceedings below, did not even care to answer and contest the suit filed in the lower court. Petitioner, likewise, claims that she could prove she was no longer the owner or the possessor of the land in question at the time the dispossession complained of took place. This, we note, is a new and distinct defense, for she actually interposed as one of her special defenses in her answer below that she "is the leaseholder" of the land in dispute. Such change of theory serves only to weaken her stand and renders her claim of doubtful veracity. As to her other claim that she had in fact complied with the laws in the division of the produce of the land, suffice it to say that said claim is a mere conclusion or opinion, and as such is not valid. (*Philippine Engineering Co. vs. Argosino*, 49 Phil. 983; *Coombs vs. Santos*, 24 Phil. 446; *Cortes vs. Co Bun Kim*, 90 Phil., 167.)

In view of the foregoing, the resolution complained of is affirmed and the preliminary injunction heretofore issued dissolved, with costs against petitioner.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, and Barrera, JJ., concur.
Reyes, J.B.L., J., did not take part.

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