

ELENA PERALTA VDA. DE CAINA, PETITIONER, VS. HON. ANDRES REYES, JUDGE OF THE COURT OF FIRST INSTANCE OF PASIG, RIZAL, AND FLAVIANO T. DALISAY, JR., RESPONDENTS.*G.R. No. 15792. May 30, 1960*

Ponente: LABRADOR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-15792/>**LABRADOR, J.:**

This is a petition for a writ of certiorari to review the order of the Court of First Instance of Rizal, dated March 23, 1959, dismissing the complaint in intervention for failure of counsel for the intervenors and/or the latter to appear at the pre-trial scheduled on the said date.

The record discloses the following facts: On June 28, 1956, Flaviano T. Dalisay, Jr., brought a complaint for ejectment in the Justice of the Peace Court of Caloocan, Rizal against Lorenzo A. Yutuc, alleging that he is the owner of a piece of land situated at Baisa, Caloocan, Rizal, which land was formerly registered in the name of Valeriano Caina, and praying that defendant be ordered to vacate the same for failure to pay the monthly rentals since July, 1955 and up to the time of the filing of the complaint, notwithstanding repeated demands. During the trial and on September 3, 1957, Elena Peralta Vda. de Caina, representing her three children, filed a complaint in intervention, which was duly admitted by the justice of the peace court on October 25, 1957. The complaint in intervention alleges that intervenor is the surviving spouse of Valeriano Caina; that the parcel of land on which defendant Yutuc built his house is a part of the land inherited by intervenor and her children from her deceased husband; that the supposed title plaintiff Dalisay has over said land was acquired through fraud, deceit, and machination, the intervenor not having made or executed any deed of sale over the land in favor of plaintiff; that defendant Yutuc has not paid the rentals for the use of the land from January to August 1957 and despite several demands defendant refuses to pay said rentals. Intervenor prayed, among others, for an order dismissing plaintiff Dalisay's complaint against Lorenzo Yutuc, requiring Yutuc to vacate and remove his house from the land in question, and to pay to intervenor and not to plaintiff Dalisay the sum of P49.00 as back rentals for the period from January to August, 1957, with legal rate of interest, until he vacates the premises.

On March 25, 1958, the justice of the peace court rendered judgment in favor of plaintiff Dalisay and against defendant Yutuc and his spouse, and also against the intervenor Elena Peralta Vda. de Caina and her children, who were ordered to pay the sum of P500 as attorney's fees and the expenses of litigation. Upon receipt of this decision, intervenor perfected her appeal and the case was elevated to the Court of First Instance of Rizal, and docketed therein as Civil Case No. 5108. In this court defendant Yutuc reproduced his answer to the complaint, but plaintiff Dalisay did not file his answer to the complaint in intervention nor did reproduce the answer which he filed before the Justice of the Peace Court of Caloocan. In the meantime, the Court of First Instance set the case for pre-trial on March 23, 1959. On the day of the pre-trial, neither intervenor nor her counsel appeared, so the court, on plaintiff's motion, dismissed the complaint in intervention in an order dated March 23, 1959. A motion to set aside this order was denied, and so was the motion for reconsideration of the order denying the motion to set aside. Hence, the present petition for certiorari.

In praying for a writ of certiorari before this Court, petitioner Elena Peralta Vda. de Caina claims that the respondent judge, in issuing the order of March 23, 1959, dismissing her complaint in intervention, acted arbitrarily and with grave abuse of discretion amounting to lack or excess of jurisdiction, the order being contrary to and not authorized by the provisions of Rule 25 of the Rules of Court; that her failure and that of her counsel to appear at the pre-trial was due to mistake or excusable negligence, as the clerk in her counsel's office forgot to deliver the notice thereof due to pressure of work in the office; that dismissal of the complaint in intervention under these circumstances would be tantamount to depriving petitioner, of her right to due process and to have her day in court; and that if the order of March 23, 1959 were carried out, petitioner would be subjected to grave and irreparable loss, damage and injury, and there is no other plain, speedy, and adequate remedy in the ordinary course of law, except this petition for certiorari.

On September 7, 1959, respondent Flaviano T. Dalisay, Jr., filed in this Court his answer to the petition, alleging that intervenor's complaint in the court below is malicious and intended to embarrass the respondent, because in October, 1956, petitioner testified before the Justice of the Peace Court of Caloocan that she had already transferred the ownership and possession of the land in question to respondent Dalisay, way back in April, 1955; that although it is true that he failed to reproduce in the Court of First Instance his answer to the complaint in intervention, he was never declared in default for such failure, that the petitioner's defense of excusable negligence in failing to appear at the pre-trial is malicious and flimsy, the reason given therefor being unbelievable and highly questionable; that under Rule 25 of the Rules of Court, the respondent judge had the power and authority to dismiss the case of intervenors in a pre-trial if they do not appear thereat or comply with his order, or when the court finds that their case is baseless, manifestly for delay or is clearly malicious and unfounded; that petitioner has a plain and proper remedy by appeal, and not by certiorari, and therefore the petition should be dismissed.

One of the issues to be resolved in this petition is whether or not the lower court could dismiss the complaint in intervention for failure of the intervenor and her counsel to appear at the pre-trial. Petitioner argues that failure of the parties to appear at a pre-trial does not authorize the dismissal of the complaint by the court; that a pre-trial is not a trial on the merits and has for its purpose merely to simplify the issues, to have the parties arrive at an amicable settlement, etc.; that Section 3 of Rule 30 which authorizes the court to dismiss a complaint for failure of plaintiff to appear at the trial, refers to a trial on the merits of the case.

Petitioner's arguments can not be sustained. Under Rule 25 of the Rules of Court, the court is given the discretion to hold a pre-trial of a case for the purposes enumerated in Section 1 of said rule, which are principally intended to prevent lengthy trials. When the court chooses to exercise its discretion to order a pre-trial it may avail itself of all means necessary to carry its order into effect (Rule 124, section 6) and may compel obedience to its judgments, orders, and process (Id., section 5[c]). And to this end it may dismiss a complaint or any other action brought before it. Likewise, failure to appear at a pre-trial may be considered as failure to prosecute, which is a ground to dismiss an action under Section 3 of Rule 30 of the Rules of Court, which reads:

"Sec. 3. Failure to prosecute.—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." (Italics supplied.)

American courts, interpreting Rule 16 of the Federal Rules of Civil Procedure (from which our rule on pre-trial has been adopted), have held the view that where plaintiff fails to appear at a pre-trial conference ordered by the Court, advance notice of which was given to the attorneys for both parties, the same shall be considered as a failure to prosecute and failure to comply with the Rules, and defendant's motion to dismiss the action on the

merits shall be granted (*Wisdom vs. Texas Co.*, 27 F. Supp. 992, cited in 1 Moran 397, 1957 ed.)

That the Court of First Instance had the power to dismiss petitioner's complaint in intervention is, therefore, beyond question.

However, petitioner claims that the lower court acted arbitrarily and with grave abuse of discretion in dismissing her complaint in intervention, because her counsel's as well as her failure to appear at the pre-trial was due to excusable negligence. In the affidavit supporting the motion to set aside the order of March 23, 1959, Ernesto Virtucio, a clerk in the office of her counsel, states that he had received the notice of pre-trial but forgot to bring the same on time to the attention of intervenor's counsel because of too much work in the office. But said affidavit is not accompanied by an affidavit of merits stating that intervenor has a good and valid cause of action against both plaintiff and defendant which, if proved would entitle her to judgment against both of them. The necessity of such an affidavit of merits has been stressed in the case of *Gonzales vs. Amon*, 99 Phil., 587; 52 Off. Gaz. (8) 1445; wherein this Court held:

"The motion for reconsideration, though supported by the affidavit of the clerk to the effect that, through inadvertence, she forgot to bring to the knowledge of attorney and client the notice of hearing that she had received, is not accompanied by an affidavit of merit, that is, a sworn declaration that plaintiff has a good and valid cause of action against the defendant, notwithstanding the latter's defense that he had already redeemed the lands in question. Even supposing, therefore, that the failure of the plaintiff and his attorney to appear at the hearing was really due, as they alleged 'to excusable error or accident,' still plaintiff would not be entitled to a reopening of the case in the absence of a reasonable assurance supported by proper affidavit that he had a just and valid cause, which, if provided, would entitle him to a judgment in his favor. (*Remedios M. Vda. de Miranda vs. Urbano Legaspi, et al.*, 92 Phil., 290; 48 Off. Gaz. 4819.) In the circumstances, the lower court did not commit any error or abuse its discretion in denying a reopening." (*Gonzales vs. Amon*, 98 Phil., 587; 52 Off. Gaz., 1445).

Hence, because of intervenor's failure to present the required affidavit of merits, the lower court may not be said to have committed a grave abuse of discretion when it dismissed petitioner's complaint in intervention.

In her memorandum submitted before this Court, petitioner argues that the setting of the case for pre-trial was premature because respondent Flaviano T. Dalisay had not yet filed his answer to the complaint in intervention and, therefore, all the issues had not yet been joined. This contention cannot be entertained as this matter was never raised in the court below and it is brought up here for the first time.

For the foregoing considerations, the order appealed from should be affirmed, the petition for certiorari denied and the preliminary injunction issued by us dissolved, with costs against petitioner.

Paras, C. J., Bengzon, Bautista Angelo, Concepcion, Barrera, and Gutierrez David, JJ., concur.
Montemayor, Reyes, J.B.L., and Endencia, JJ., took no part.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.