

**VALENTINA ROSARIO, ACCOMPANIED BY HER HUSBAND
ESTANISLAO FIESTAN, AND MATILDE ROSARIO, ACCOMPANIED BY
HER HUSBAND MACARIO ABERO, PLAINTIFFS AND APPELLEES, VS.
JUANA ALONZO, QUIN...**

G.R. No. 17330. June 29, 1963

Ponente: PADILLA, J.

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PADILLA, J.:

This is an action for partition of two parcels of land situated in the barrio of Taguipuro, municipality of Bantay, province of Ilocos Sur, accounting of the products thereof, and damages brought by the plaintiffs against the defendants.

The plaintiffs claimed that the two parcels of land described in the complaint belonged to the conjugal partnership of their late father Hilario Rosario and Juana Alonzo, his second wife.

The defendants, on the other hand, alleged that they had acquired by purchase the first parcel of land with the proceeds of the sale of cattle they had inherited from their deceased father Eleno Manzano, had been in possession of the same as owners for more than twenty years and paying the realty tax thereon; that Juana Alonzo and Roberto Rosario had acquired by occupation and homestead the second parcel of land and had been in possession thereof as owners for more than twenty years and paying realty tax thereon; that Hilario Rosario, the second husband of Juana Alonzo, prior to his demise was blind for thirty years and could not have earned money to purchase any parcel of land; and that the action by the plaintiffs, if any, was reckless, groundless and barred by the statute of limitations; and upon those grounds they prayed for the dismissal of the complaint, damages in the sum of P300 and costs.

On 27 October 1954 the parties submitted a partial agreed statement of facts and reserved the right to present evidence. The hearing of the case was set for the 18th day of March 1955. On that date the defendants and their attorney failed to appear. After introducing Exhibits A, B, C and D the attorney for the plaintiffs rested his case. On 11 April 1955 the court rendered judgment against the defendants, as prayed for by the plaintiffs except the amount of damages. The defendants moved for reconsideration of the judgment thus rendered but on 4 June 1955 the motion was denied. On 6 August, the defendants filed another motion praying for the setting aside of the judgment and leave to present evidence. On the same ground as the denial of the first motion that no affidavit of merit had been attached to or had accompanied the motion, the latter was denied. The defendants appealed. On 12 April 1957 the Court of Appeals dismissed the appeal (CA—G. R. No. 16192-R). On petition for certiorari docketed as G. R. No. L-12309, on 30 April 1959 this Court set aside the resolution of the Court of Appeals of 12 April 1957 and remanded the case to the Court of Appeals for judgment on the merits. On 13 May 1960 the latter certified the case to this Court on the ground that the two errors assigned by the appellants in their brief raise legal questions only.

The errors assigned by the appellants in their brief are the following:

The lower court erred, with abuse of discretion, in refusing to give due consideration to lift order of default and set aside judgment rendered in pursuance thereof.

The lower court, in refusing to relieve appellants' counsel from the effects and consequences of his failure to appear and defend appellants' case, committed a grave injustice to the prejudice of the substantial rights of the herein defendants-appellants, thereby barring them from defending their case and presenting evidence thereof sufficient to overcome the proof adduced by plaintiffs-appellees during the trial of the case.

Having answered the complaint filed by the appellees, the appellants were not and could not be in default. The appellants complain that in refusing to relieve their counsel from the effects and consequences of his failure to appear and defend their case, the lower court committed a grave injustice to their prejudice, for they contend that such failure was due to his forgetfulness and oversight.

Although the two motions for reconsideration were sworn to by the attorney for the appellants, still such motions were not "accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be, which he may prove if his petition be granted," as provided for and required in section 3 of Rule 38, Rules of Court.

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

Bengzon, C.J. , Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Paredes, Dizon, Regala and Makalintal, JJ., concur.

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