

SEVERO JOSUE, PLAINTIFF AND APPELLEE, VS. FAUSTO DIAZ, DEFENDANT AND APPELLANT.

G. R. No. 41697. October 30, 1936

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Plaintiff and appellee brought an action against the defendant and appellant in the Court of First Instance of Ilocos Norte for the recovery of certain parcels of land and of the sum of P1,680 by way of damages. Defendant filed his answer containing a general denial and praying for the dismissal of the suit. When the case was called for trial plaintiff appeared with his counsel, but the defendant failed to appear personally, and in view thereof his counsel prayed for the postponement of the hearing. Upon objection of counsel for the opposite party, the court denied the petition and proceeded to hear the plaintiff's evidence. Upon the evidence thus presented a judgment was rendered declaring the plaintiff to be the owner of the parcels of land described in the complaint. The decision was rendered on December 27, 1933, and on January 24, 1934, the defendant filed a motion praying that the judgment by default be set aside on the ground that his failure to appear at the trial was due to illness. With his motion there were filed a medical certificate showing that the defendant was under treatment for acute gastritis on the date that the case was called for trial, and an affidavit showing that he had a meritorious defense.

Under section 113 of the Code of Civil Procedure the court may relieve a party from a judgment taken against him through mistake, inadvertence, surprise, or excusable neglect, provided that application therefor be made within a reasonable time, but in no case exceeding six months after such judgment was taken., In construing this section this court has held that where it appears that a judgment was rendered against a person through mistake, inadvertence, surprise or excusable neglect, and it further appears on the record that he has a meritorious defense, the judgment should be set aside with leave to answer and defend on the merit. (Bank of the Philippine Islands vs. De Coster, 47 Phil., 594.)

In the case at bar, the record shows that the failure of the defendant to appear at the trial was not due to any negligence on his part, but to a circumstance over which he had no control. There is also sufficient showing that he has a meritorious defense. His motion to set aside the judgment by default should have been granted.

It results that the judgment appealed from must be set aside, and the case remanded to the court below for further proceedings in accordance with this opinion. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, and Laurel, JJ., concur.

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