

AMADEO LINIS, PETITIONER, VS. LEOPOLDO ROVIRA, JUDGE OF FIRST INSTANCE OF CAVITE, ET AL., RESPONDENTS.*G.R. No. 43013. January 23, 1935*

Ponente: IMPERIAL, J.

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In cadastral proceeding No. 6, Record No. 1166, of the Court of First Instance of Cavite, Lot No. 1111 was claimed by the petitioner in an answer which he filed therein; it was likewise claimed by Jose, Rosalia and Policarpa Malimban. On December 1, 1934, the petitioner engaged Attorney Oscar S. Aguilar to prosecute his claim and the latter now represents him in this proceeding. On the same date said attorney accepted the case and filed a motion for the postponement of the hearing thereof, which the court had set for trial on the 4th of "the same month, alleging that he had to appear at the trial of a criminal case, the hearing of which was set previously, and that it would be impossible for him to appear in the Court of First Instance of Cavite on that date. The motion for postponement was not filed in the office of the clerk until the third. The hearing of lot No. 1111 was called on the following day, and the court, being informed of the motion for postponement, denied it on the ground that it was presented out of time and, furthermore, that the reason alleged therein was insufficient and not meritorious. The trial was had and on the same date, December 4th, judgment was rendered adjudicating the land in favor of the Malimban brothers, and the petitioner's claim dismissed.

The petitioner, instead of appealing from the decision and order thus rendered, interposed the writ of certiorari herein, alleging that the respondent judge exceeded his jurisdiction and abused his discretion in denying his motion for the postponement of the case, and in rendering judgment without first hearing the evidence which said petitioner could have presented had he been present.

There is no need of a lengthy discussion in order to show that the petition is unreasonable and frivolous. It was the fault of the petitioner in having entrusted his case to an attorney who could not appear in court on the date set for the hearing thereof. Neither had the attorney any right to presume that the hearing would be postponed to another date for his convenience and that of his client, to the damage and prejudice of the other parties litigant. The most prudent and reasonable solution of such a case, where the client and the attorney both knew that the latter had to appear in another case on that date, would have been, for the former, to engage the services of another attorney, or, for the latter, to decline to accept the case.

The postponement of the hearing of a case, which had been previously set and of which the parties and their attorneys had already been notified, is not an absolute right of the litigants nor of their attorneys. The granting of a motion for postponement depends entirely upon the discretion of the courts, in the exercise of which all the attending circumstances and the rights of all the parties appearing therein should be taken into account. If the postponement would manifestly prejudice some of the parties, or, if the motion for postponement had been presented too late to prevent them from notifying their witnesses not to appear, thus causing them considerable trouble and expense, as probably would have happened in the present case, it is the duty of the courts to deny it.

An attorney who accepts a case, knowing that the hearing thereof is set for a date on which he can not appear, because of the trial of another case, which was set previously, has no right to presume that the court will necessarily grant his motion for the postponement of the hearing. In such a situation the most ethical thing to do would be to inform the client of such facts in order that he might employ another attorney. If the client, having full knowledge of such circumstances, entrusts the case to the attorney, he assumes the risk himself and can not later complain of the consequences of his negligence and imprudence.

The petition for the writ of certiorari is denied, with costs. So ordered.

Malcolm, Villa-Real, Butte, and Goddard, JJ., concur.

Writ denied.

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