

RUPERTA VILLEGAS VDA. DE KONAHAH AND ALFREDO M. KONAHAH-VILLEGAS, PLAINTIFFS-APPELLEES, VS. ALEJANDRO DEL OLMO, ROMANA ALBANO, AND IGNACIO DEL OLMO, DEFENDANTS-APPELLANTS.

G.R. No. 48832. September 27, 1943

Ponente: OZAETA, J.

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OZAETA, J.:

This appeal from the Court of First Instance of Agusan has been certified to this Court by the Third Division of the Court of Appeals in a resolution which reads as follows:

"On February 28, 1938, Ruperta Villegas Vda. de Konahap and Alfredo M. Konahap-Villegas instituted an action before the Court of First Instance of Agusan (Civil Case No. 467) to recover the value of a promissory note for P8,000, attorney's fees for P2,000, and damages for P5,000, plus costs. The defendants did not deny the execution of the promissory note in question but as a special defense alleged the following facts:

"1. That on June 13, 1937, Ruperta Villegas Vda. de Konahap on her own behalf and in representation of her children, Alfredo M. Konahap-Villegas and Antonra M. Konahap V. de Briones, sold to Ignacio del Olmo and Francisca del Olmo three parcels of land for the sum of P18,000. The deed of sale stated that the vendors had received the full amount of P18,000, but in reality they had only been paid P10,000, and for the balance, they were given a promissory note for P8,000 signed by Ignacio del Olmo and his parents, Alejandro del Olmo and Romana Albano.

"2. That of the three parcels sold, the plaintiffs had delivered to the defendants only two parcels; the largest parcel had not been delivered in spite of the repeated demands that had been made on the plaintiffs; and that, in truth, plaintiffs cannot deliver the same for they did not own and possess it.

"3. That the P8,000 represented by the promissory note on which plaintiffs seek to recover, can be considered as the proportionate value of the parcel that has not been delivered.

"Wherefore, defendants prayed that they be absolved from the complaint.

"On March 24, 1939, the case was called for hearing. After the plaintiffs had submitted their evidence, counsel for the defendants verbally asked the Court to reserve to him the privilege of presenting the deposition of the defendants and their witnesses some of whom were living in Oriental Negros and others in Occidental Negros, and on March 27, 1939, said counsel filed a written motion asking the Court 'to grant the defendants a continuance and to allow the taking of the deposition of certain witnesses, and 'to issue to the said justice of the peace of the municipality of Vallehermoso a commission authorizing him to administer oath to the said witnesses; to take their depositions etc.

"On April 20, 1939, the Court rendered a decision denying the petition for continuance and condemning the defendants to pay the value of the promissory note with legal interest; P2,000 for attorney's fees, and costs.

"From said decision this appeal has been prosecuted.

"Soon after the institution of the above-mentioned complaint in the province of Agusan, or to be more exact, on March 25, 1938, Ignacio del Olmo and Francisca del Olmo, the purchasers of the lands sold by Ruperta Villegas Vda. de Konahap, and their parents, Alejandro del Olmo and Romana Albano, the last of whom had signed the promissory note for P8,000 in question, instituted in the Court of First Instance of Oriental Negros an action against Ruperta Villegas Vda. de Konahap, Alfredo M. Konahap-Villegas, Antonia M. Konahap V. de Briones and her husband, Francisco N. Briones (Civil Case No. 1285), alleging practically the same facts stated in the special defense of the defendants in the Agusan case, to wit: that the plaintiffs (in the Oriental Negros case) had purchased from the defendants three parcels of land for P18,000, under a partial payment of P10,000 in cash and the issuance of a promissory note for the balance of P8,000; and the non-delivery of the third parcel of land; and requesting the partial rescission of the deed of sale and the cancellation of the plaintiffs' liability on said promissory note for P8,000.

"On April 22, 1939, the Court of First Instance of Oriental Negros rendered a decision declaring that the defendants had failed to deliver the largest of the three parcels of land which they sold to the plaintiffs, ordering the rescission of the deed of sale with respect to the parcel not delivered and cancelling the plaintiffs' obligation to pay the P8,000 covered by the promissory note which has been the object of the action in the Agusan Court of First Instance, on the ground that the reasonable value of the land not delivered, was over P8,000.

"Thus we have two Courts of First Instance rendering contradictory decisions on the same subject matter. The Agusan Court condemns Ignacio del Olmo, Alejandro del Olmo and Romana Albano to pay to Ruperta Villegas Vda. de Konahap and Alfredo M. Konahap-Villegas the value of the promissory note in question, whereas the Oriental Negros Court relieves them of all obligation to pay the same. We have inquired from the Clerk of Court of this Court whether an appeal has been prosecuted from the decision of the Oriental Negros Court, but we have been informed that no appeal has so far been prosecuted.

"Under our consideration is the appeal from the decision of the Court of First Instance of Agusan. As it appears on the pleadings, the defendants do not deny having executed the promissory note in question. Neither do they deny the allegation that it had not been paid. Indeed they admit not having paid it but allege as a reason the non-delivery to them of the third parcel of land which they had purchased from the plaintiffs. The appeal has been prosecuted primarily to raise the question of whether or not the lower Court has abused its discretion in not granting the continuance asked for the purpose of obtaining the depositions of the defendants and their witnesses to substantiate the special defense which has been raised in their pleading. The Court, of course, had the discretion in granting or denying the petition for continuance. Counsel for the defendants have had ample time to obtain the necessary depositions if he had attended more properly to his duties. As a lawyer, he should have known that he did not need to ask permission from the Court to obtain the depositions of his clients and their witnesses. His failure to submit at the proper time their depositions was entirely due to his fault. Notwithstanding all this however, the trial Court knew or should have known the nature of the special defense. It knew or should have known that if the plaintiffs really had failed to deliver the largest of the three parcels of land which they had sold to the defendants, they were not with very clean hands demanding the payment of the promissory note in question. The Court should have known that regardless of the fault of the defendants' counsel it would have been more expedient to have given him an opportunity to prove his side of the case in order that the case may be completely and equitably decided. Knowing all these, did the lower Court abuse its discretionary power in refusing to grant the continuance? As this is purely a question of law, let the records of this case be forwarded to the Honorable Supreme Court for final decision."

Instead of relying solely upon their special defense before the Court of First Instance of Agusan, the defendants-appellants contrived to submit also their side of the case to the Court of First Instance of Oriental Negros by subsequently commencing a separate action there, in utter disregard of the elementary rule against multiplicity of suits, particularly of paragraph 3, section 91 of the Code of Civil Procedure, now paragraph (d), section 1, Rule 8 of the Rules of Court; and to cap the irregularity, their attorney resorted to stratagems and tactics

presently to be noted.

After the Agusan case was set for trial on March 24, 1939, notice of which was sent out by the clerk of court on or about February 1 of the same year, the attorney for the appellants procured, or at least consented to, the setting of the Negros case for trial on March 27, 1939, knowing that it would be physically impossible for both parties in the two cases and their respective attorneys to be present in Butuan for the trial of the Agusan case on March 24, 1939, and in Dumaguete for the trial of the Negros case three days later, or on March 27, 1939, due to the lack of transportation facilities between the two distant places. The attorneys for the herein plaintiffs-appellees filed a motion in the Negros court for the postponement of the trial of the case there, alleging that the Agusan case, of which the Negros court had knowledge, was to be tried on March 24, 1939. The attorney for the appellants went to Butuan, leaving Cebu on March 21, 1939, on board the s. s. Bolinao—the same boat taken by the attorney for the plaintiffs-appellees—ostensibly to attend the trial of the Agusan case on March 24, 1939. Upon arriving at Butuan on the afternoon of March 22, 1939, he entrusted his case to a local attorney, Mr. Roque V. Andaya, instructing him to appear for the defendants, to cross-examine the witnesses for the plaintiff, to serve on the attorney for the latter a pre-prepared notice of the taking of depositions of the witnesses for the defendants on April 24, 1939, and to ask for the continuance of the trial until those depositions could be produced and offered in evidence. Then at midnight of the same day, March 22, 1939, he took the same boat on her return trip to attend the trial of the Negros case in Dumaguete on March 27. When that case was called for trial, in the absence of the attorney for the therein defendants (plaintiffs in the Agusan case), the attorney for the herein appellants objected to the adverse party's motion for continuance and insisted on going ahead with the trial, and the court (Judge Sotero B. Cabahug presiding) denied the motion for continuance on the ground that counsel for the herein plaintiffs had been served with notice thereof not by registered mail but by ordinary mail. So His Honor tried and decided the Negros case, disregarding the crucial fact that the same cause between substantially the same parties had been pre-commenced and tried and was then pending decision before the Court of First Instance of Agusan, and taking the narrow and rather strange attitude that (to quote his own words):

"Este Juzgado cree que el despacho de sus asuntos no debe depender del despacho de los asuntos pendientes en otros Juzgados."

as if forgetting that the primordial duty of every court is to administer justice and not merely to dispatch its cases.

The Agusan court (Judge Vicente Varela presiding) denied the motion of the attorney for the defendants-appellants for continuance of the trial with a view to taking and presenting the depositions of the defendants Alejandro del Olmo, Romana Albano, and Ignacio del Olmo, and their witnesses Mariano Logroio and Salvador M. Arellano, all of whom reside in different municipalities of the provinces of Oriental Negros and Occidental Negros, it being alleged by the attorney for the appellants "that the testimony of the witnesses above named will prove the allegations of the special defense that the said promissory note for the sum of T8,000 charged to the defendants is utterly without any consideration, and same will refute the testimony of Alfredo M. Konahap on matters of special defense."

Thus we have here the unedifying spectacle of one single cause that was coetaneously tried by halves before two different courts which by their decisions appear to checkmate each other. But only the first half of the case—that tried in Agusan—is before us on appeal. The other half—that tried in Oriental Negros—has unfortunately not been appealed because the attorneys for the herein plaintiffs-appellees, who are defendants therein, neglected and failed to present their record on appeal within the extension of time granted them by the court, which denied them a further extension.

The only question for us to decide is whether the Agusan court was justified in denying appellants' motion for continuance of the trial in order to afford them an opportunity to take the depositions of the witnesses named in

their motion to prove their special defense. Much as we condemn, as unworthy of the noble legal profession, the craftiness displayed by the attorney for the appellants in delaying the taking of the depositions of his witnesses and in procuring judgment in the meantime from the Negros court at the back of his opponent; fully as we agree with the said trial court that it should not countenance such stratagems, for we hold that a lawsuit is not a war battle that may be won by shrewd maneuvers and clever tricks for obtaining an advantage, but a judicial inquiry that must be conducted in accordance with the procedure prescribed by law to ascertain the truth and determine where justice lies; nevertheless, in view of the rendition by two different trial courts of two contradictory and mutually annulling judgments one of which has supposedly become final, with the result that should we affirm the judgment now before us an anomalous and intolerable situation would arise, derogatory to an orderly and decorous administration of justice, we find ourselves constrained, in the exercise of our supervisory power, to forestall such a situation—to set aside the judgment appealed from and to order the completion of the trial of the present case so that it may be fully decided once and for all on the merits.

Whether or not the judgment rendered by the Court of First Instance of Oriental Negros in civil case No. 1285 is void as intimated by the appellees, we cannot and do not now decide. That question is not properly before us in this appeal.

Wherefore, the judgment appealed from is hereby set aside and the case is ordered remanded to the court of origin for further proceedings as prayed for by the appellants, "para admitir las pruebas de los apelantes, ya por medio de las declaraciones de sus testigos ante el juzgado, ya por medio de deposiciones de ellos" and such other proofs as the parties may desire to adduce, without any finding as to costs in this instance.

Yulo, C. J., Moran, Paras, and Bocobo, JJ., concur.

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