

**GORGONIO TEJERO, PETITIONER, VS. HON. EULALIO D. ROSETE,
PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF MISAMIS
ORIENTAL, BRANCH IV AND FRANCISCO ARES, RESPONDENTS.**

G.R. No. 55102. June 19, 1985

Ponente: CUEVAS, J.

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CUEVAS, J.:

Petition for Certiorari, with prayer for the issuance of a writ of preliminary injunction, to annul and set aside the Order[1] dated July 28, 1980, issued by the Hon. respondent Judge in Civil Case No. 6728 entitled "Gorgonio Tejero versus Francisco Ares", for Cancellation of Contract with Damages; and the Order[2] dated August 8, 1980 denying petitioner's motion for reconsideration.

On September 4, 1979, herein petitioner Gorgonio Tejero filed with the then Court of First Instance of Misamis Oriental, a complaint[3] for cancellation of contract with damages, against herein private respondent Francisco Ares. The case was docketed in the said court as Civil Case No. 6728 and assigned to Branch IV thereof, presided by the Hon. respondent Judge.

The complaint, among others, alleged that —

"2. Plaintiff is the owner and pro-prietor of the Tejero Subdivision, a private residential subdivision located at Patag, Cagayan de Oro City;

3. On May 23, 1963, plaintiff and defendant entered into a Land Purchase Agreement whereby plaintiff agreed to sell and defendant agreed to buy for the sum of Four Thousand Three Hundred Sixty-Eight Pesos (P4,368.00) two (2) parcels of residential land situated at the plaintiff's aforementioned subdivision;

4. Under the terms of said agreement, defendant bound to pay the aforesaid consideration in thirty-nine (39) monthly installments x x x;

5. Defendant failed to pay and comply with his obligation under the aforesaid agreement x x x".

Plaintiff therefore prayed for judgment cancelling the Land Purchase Agreement and ordering defendant to vacate the premises and return possession thereof to the plaintiff; to pay attorney's fees, damages and costs.

Private respondent, then defendant, filed his Answer with Counterclaim[4] on November 3, 1979, alleging, as special defenses that the court has no jurisdiction over the action, the matter relating thereto being now governed by the National Housing Authority; that defendant has a justifiable reason to suspend the payment of his remaining obligation with the plaintiff; that defendant has fully paid his obligation with plaintiff thru valid tender of payment and consignment; and that consequently plaintiff has no cause of action against the defendant.

By way of counterclaim, private respondent prays for the recovery of moral damages in the sum of P10,000.00, P3,000.00 attorney's fees, exemplary damages as the Court may in its discretion award and costs of suit.

The issues having been joined, the case was set for pre-trial conference on July 28, 1980.

At this scheduled pre-trial conference, which is admittedly the first pre-trial schedule, petitioner (then plaintiff) failed to appear "due to sickness leading to his paralysis". Nevertheless, counsel for petitioner, Atty. Cecilio A. Pepito, Jr. appeared, with a notarized Special Power of Attorney[5] dated July 15, 1980 signed by petitioner Gorgonio Tejero, the pertinent portion of which reads —

"I, Gorgonio Tejero x x x do hereby name, constitute and appoint Atty. Cecilio A. Pepito, Jr. as my attorney-in-fact for the purpose of representing my interest in Civil Case No. 6728 before Branch IV, Court of First Instance of Misamis Oriental.

Further, I hereby grant authority unto my said attorney-in-fact to settle or compromise the above stated case for and in my behalf.

xxx xxx xxx".

On the same day, July 28, 1980, respondent Judge issued his now assailed Order,[6] reading as follows:

"For failure of plaintiff to appear in Court this morning for pre-trial, despite due notice, the complaint is hereby dismissed for non-suit. Counsel for plaintiff although equipped with a special power of attorney is not in a position to say whether the signatures appearing in the receipts of payments are those of the plaintiff or not and said counsel is not in a position to know whether the person who signed the receipts of payments were authorized by the plaintiff or not, the special power of attorney then of counsel is deficient and so plaintiff himself should have come to Court. The special power of attorney which is executed in favor of his counsel defeats the purpose of a pre-trial therefore.

The reception of the evidence for the counterclaim of defendant is hereby set for August 8, 1980 at 2:00 o'clock in the afternoon, subject, however, to the result of the motion for reconsideration that may be filed by plaintiff.

SO ORDERED."

Petitioner's Motion for Reconsideration[7] of the said order was denied by respondent Judge in the following Order,[8] to wit:

"The reason for declaring plaintiff non-suited and for dismissing the complaint was the insufficiency of the Special Power of Attorney because counsel as attorney-in-fact could not tell whether the signatures appearing in the receipts of payments presented by the defendant were signed by the plaintiff or whether the plaintiff authorized the persons who signed the receipts for the plaintiff. The only person who could identify the signatures and who could say whether the persons who signed the receipts of payments were authorized by the plaintiff is the plaintiff himself, as his presence was necessary but despite which he did not come to court. Besides, the motion for reconsideration did not furnish any copy to the adverse counsel. This is an incident which could not be considered ex-parte.

In view thereof, said motion for reconsideration is, therefore, denied. In the meantime, the reception of the evidence in support of the counterclaim is hereby reset to August 19, 1980 at 2:00 o'clock in the afternoon.

SO ORDERED."

Petitioner's second motion for reconsideration[9] having been denied,[10] he now comes before this Court, through the instant Petition,[11] claiming that respondent Judge committed grave abuse of discretion in dismissing his complaint as well as in denying his motion for reconsideration.

We find the petition to be meritorious.

While it is true that under Section 1, Rule 20 of the Rules of Court, it is mandatory for the parties and their

counsel to appear at the pre-trial to consider inter alia "the possibility of an amicable settlement, the simplification of the issues, the possibility of obtaining stipulations or admissions of facts, totally or partially, and such other matters as may aid in the prompt disposition of the action"; and that a party who fails to appear at the pre-trial may be non-suited or considered as in default,[12] this rule was by no means intended as an implacable bludgeon but as a tool to assist the trial courts in the orderly and expeditious conduct of trials.[13] Time and again We have emphasized that the rules should be liberally construed in order to promote their object and assist the parties in obtaining not only speedy, but more importantly, just and inexpensive determination of every action and proceeding.[14]

"It cannot be overstressed that the application of the procedural rules on dismissal of actions (as well as on defaults) rests upon the sound judicial discretion of the trial courts and such discretion must be exercised wisely and prudently, never capriciously, with a view to substantial justice in the light of the Rules' express mandate that they be liberally construed in order to promote their object and to assist the parties in obtaining just, speedy and inexpensive determination of every action or proceeding."[15]

It will be noted that in the cases[16] where this Court sustained the trial court's non-suit orders for non-appearances, the pattern and scheme to delay disposition of the case or a wanton failure to observe the mandatory requirement of the rules appeared evident.

In the case at bar, however, no such pattern to delay or wanton attitude on the part of the petitioner appeared disclosed by the records.

The complaint was filed on September 4, 1979; the answer of private respondent, on November 3, 1979; and the case was set for the pretrial for the first time on July 28, 1980. It is not seriously disputed that the failure of petitioner to appear at the first scheduled pre-trial was due to illness which later led to his paralysis. It is not disputed that counsel for petitioner appeared properly clothed with a special power of attorney executed by the petitioner. The lower court's order of dismissal solely because of the inability of counsel for petitioner "to state whether the signatures appearing in the alleged receipts of payments are those of the plaintiff or not" is hasty and drastic, considering that it is the first time the case was scheduled for pretrial conference. While the intention of respondent Judge to terminate the subject case promptly is laudable, the better procedure should have been and the ends of justice would have been better served had his HONOR reset the case for another pre-trial to enable counsel for petitioner to verify from his client the authenticity of the signatures appearing on the questioned receipts; or it could have declared the pre-trial terminated and set the case for trial on the merits so that the parties, particularly the private respondent, could present their evidence. At any rate, no substantial right of the private respondent has been affected when counsel for petitioner failed or refused to admit the genuineness of the signatures appearing on the disputed receipts, since private respondent has all the right to present evidence thereon at the trial on the merits.

"Inconsiderate dismissals, even if without prejudice, do not constitute a panacea nor a solution to the congestion of court dockets; while they lend a deceptive cure of efficiency to records of individual judges, they merely postpone the ultimate reckoning between the parties. In the absence of clear lack of merit or intention to delay, justice is better served by a brief continuance, trial on the merits, and final disposition of the cases before the court."[17]

WHEREFORE, the Orders complained of, the first dated July 28, 1980 dismissing petitioner's complaint and that dated August 8, 1980 denying petitioner's motion for reconsideration are hereby ANNULLED and SET ASIDE. Civil Case No. 6728 is hereby REMANDED to the proper Regional Trial Court of Misamis Oriental for further proceedings.

No costs.

SO ORDERED.

Makasiar, (Chairman), Aquino, Concepcion, Jr., Abad Santos, and Escolin, JJ., concur.

- [1] Annex "D", Petition, page 16, Rollo.
- [2] Annex "F", Petition, page 20, Rollo.
- [3] Annex "A", Petition, pages 10-12, Rollo.
- [4] Annex "B", Petition, pages 13-14, Rollo.
- [5] Annex "C", Petition, page 13, Rollo.
- [6] Annex "D", Petition, page 16, Rollo.
- [7] Annex "E", Petition, pages 17-18, Rollo.
- [8] Annex "F", Petition, page 20, Rollo.
- [9] Annex "G", Petition, pages 21-23, Rollo.
- [10] Order dated August 25, 1980, Annex "H", Petition, page 24, Rollo.
- [11] Given due course in the Resolution dated March 4, 1981, page 54, Rollo.
- [12] Section 2, Rule 20, Rules of Court; Tropical Homes, Inc. vs. Flores, 101 SCRA 641;
- [13] Rice & Corn Administration vs. Ong Ante, 41 SCRA 636.
- [14] Heirs of Jose Fuentes vs. Macandog, 83 SCRA 648.
- [15] Tandoc vs. Tensuan, 93 SCRA 881.
- [16] Home Ins. Co. vs. U.S. Lines Co., 21 SCRA 863; Saulog vs. Custombuilt Mfg., Corp., 26 SCRA 1; Ventura, et al vs. Baysa, 4 SCRA 167.
- [17] Macasa vs. Herrera, 101 Phil. 44; Perez, et al vs. Perez, et al, 73 SCRA 517.

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