

VIRGILIO B. AGUILAR, PETITIONER, VS. COURT OF APPEALS AND SENEN B. AGUILAR, RESPONDENTS.

G.R. No. 76351. October 29, 1993

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This is a petition for review on certiorari seeking to reverse and set aside the Decision of the Court of Appeals in CA-GR CV No. 03933 declaring null and void the orders of 23 and 26 April 1979, the judgment by default of 26 July 1979, and the order of 22 October 1979 of the then Court of First Instance of Rizal, Pasay City, Branch 30, and directing the trial court to set the case for pre-trial conference.

Petitioner Virgilio and respondent Senen are brothers; Virgilio is the youngest of seven (7) children of the late Maximiano Aguilar, while Senen is the fifth. On 28 October 1969, the two brothers purchased a house and lot in Parañaque where their father could spend and enjoy his remaining years in a peaceful neighborhood. Initially, the brothers agreed that Virgilio's share in the co-ownership was two-thirds while that of Senen was one-third. By virtue of a written memorandum dated 23 February 1970, Virgilio and Senen agreed that henceforth their interests in the house and lot should be equal, with Senen assuming the remaining mortgage obligation of the original owners with the Social Security System (SSS) in exchange for his possession and enjoyment of the house together with their father.

Since Virgilio was then disqualified from obtaining a loan from SSS, the brothers agreed that the deed of sale would be executed and the title registered in the meantime in the name of Senen. It was further agreed that Senen would take care of their father and his needs since Virgilio and his family were staying in Cebu.

After Maximiano Aguilar died in 1974, petitioner demanded from private respondent that the latter vacate the house and that the property be sold and proceeds thereof divided among them.

Because of the refusal of respondent to give in to petitioner's demands, the latter filed on 12 January 1979 an action to compel the sale of the house and lot so that they could divide the proceeds between them.

In his complaint, petitioner prayed that the proceeds of the sale be divided on the basis of two-thirds (2/3) in his favor and one-third (1/3) to respondent. Petitioner also prayed for monthly rentals for the use of the house by respondent after their father died.

In his answer with counterclaim, respondent alleged that he had no objection to the sale as long as the best selling price could be obtained; that if the sale would be effected, the proceeds thereof should be divided equally; and, that being a co-owner, he was entitled to the use and enjoyment of the property.

Upon issues being joined, the case was set for pre-trial on 26 April 1979 with the lawyers of both parties notified of the pre-trial and served with the pre-trial order, with private respondent executing a special power of attorney to his lawyer to appear at the pre-trial and enter into any amicable settlement in his behalf.[1]

On 20 April 1979, Atty. Manuel S. Tonogbanua, counsel for respondent, filed a motion to cancel pre-trial on the ground that he would be accompanying his wife to Dumaguete City where she would be a principal sponsor in a wedding.

On 23 April 1979, finding the reasons of counsel to be without merit, the trial court denied the motion and directed that the pre-trial should continue as scheduled.

When the case was called for pre-trial as scheduled on 26 April 1979, plaintiff and his counsel appeared. Defendant did not appear; neither his counsel in whose favor he executed a special power of attorney to represent him at the pre-trial. Consequently, the trial court, on motion of plaintiff, declared defendant as in default and ordered reception of plaintiff's evidence ex parte.

On 7 May 1979, defendant through counsel filed an omnibus motion to reconsider the order of default and to defer reception of evidence. The trial court denied the motion and plaintiff presented his evidence.

On 26 July 1979, rendering judgment by default against defendant, the trial court found him and plaintiff to be co-owners of the house and lot in equal shares on the basis of their written agreement. However, it ruled that plaintiff has been deprived of his participation in the property by defendant's continued enjoyment of the house and lot, free of rent, despite demands for rentals and continued maneuvers of defendant to delay partition. The trial court also upheld the right of plaintiff as co-owner to demand partition. Since plaintiff could not agree to the amount offered by defendant for the former's share, the trial court held that the property should be sold to a third person and the proceeds divided equally between the parties.

The trial court likewise ordered defendant to vacate the property and pay plaintiff P1,200.00 as rentals[2] from January 1975 up to the date of decision plus interest from the time the action was filed.

On 17 September 1979, defendant filed an omnibus motion for new trial but on 22 October 1979 the trial court denied the motion.

Defendant sought relief from the Court of Appeals praying that the following orders and decision of the trial court be set aside: (a) the order of 23 April 1970 denying defendant's motion for postponement of the pre-trial set on 26 April 1979; (b) the order of 26 April 1979 declaring him in default and authorizing plaintiff to present his evidence ex-parte; (c) the default judgment of 26 July 1979; and, (d) the order dated 22 October 1979 denying his omnibus motion for new trial.

On 16 October 1986, the Court of Appeals set aside the order of the trial court of 26 April 1979 as well as the assailed judgment rendered by default. The appellate court found the explanation of counsel for defendant in his motion to cancel pre-trial as satisfactory and devoid of a manifest intention to delay the disposition of the case. It also ruled that the trial court should have granted the motion for postponement filed by counsel for defendant who should not have been declared as in default for the absence of his counsel.

Petitioner now comes to us alleging that the Court of Appeals erred (1) in not holding that the motion of defendant through counsel to cancel the pre-trial was dilatory in character and (2) in remanding the case to the trial court for pre-trial and trial.

The issues to be resolved are: whether the trial court correctly declared respondent as in default for his failure to appear at the pre-trial and in allowing petitioner to present his evidence ex-parte, and whether the trial court correctly rendered the default judgment against respondent.

We find merit in the petition.

As regards the first issue, the law is clear that the appearance of parties at the pre-trial is mandatory.[3] A party

who fails to appear at a pre-trial conference may be non-suited or considered as in default.[4] In the case at bar, where private respondent and counsel failed to appear at the scheduled pre-trial, the trial court has authority to declare respondent in default.[5]

Although respondent's counsel filed a motion to postpone pre-trial hearing, the grant or denial thereof is within the sound discretion of the trial court, which should take into account two factors in the grant or denial of motions for postponement, namely: (a) the reason for the postponement and (b) the merits of the case of movant.[6]

In the instant case, the trial court found the reason stated in the motion of counsel for respondent to cancel the pre-trial to be without merit. Counsel's explanation that he had to go to Iloilo by boat as early as 25 March 1979 to fetch his wife and accompany her to a wedding in Dumaguete City on 27 April 1979 where she was one of the principal sponsors, cannot be accepted. We find it insufficient to justify postponement of the pre-trial, and the Court of Appeals did not act wisely in overruling the denial. We sustain the trial court and rule that it did not abuse its discretion in denying the postponement for lack of merit. Certainly, to warrant a postponement of a mandatory process as pre-trial would require much more than mere attendance in a social function. It is time indeed we emphasize that there should be much more than mere perfunctory treatment of the pre-trial procedure. Its observance must be taken seriously if it is to attain its objective, i.e., the speedy and inexpensive disposition of cases.

Moreover, the trial court denied the motion for postponement three (3) days before the scheduled pre-trial. If, indeed, counsel for respondent could not attend the pre-trial on the scheduled date, respondent at least should have personally appeared in order not to be declared as in default. But, since nobody appeared for him, the order of the trial court declaring him as in default and directing the presentation of petitioner's evidence ex parte was proper.[7]

With regard to the merits of the judgment of the trial court by default, which respondent appellate court did not touch upon in resolving the appeal, the Court holds that on the basis of the pleadings of the parties and the evidence presented ex parte, petitioner and respondents are co-owners of subject house and lot in equal shares; either one of them may demand the sale of the house and lot at any time and the other cannot object to such demand; thereafter the proceeds of the sale shall be divided equally according to their respective interests.

Private respondent and his family refuse to pay monthly rentals to petitioner from the time their father died in 1975 and to vacate the house so that it can be sold to third persons. Petitioner alleges that respondent's continued stay in the property hinders its disposal to the prejudice of petitioner. On the part of petitioner, he claims that he should be paid two-thirds (2/3) of a monthly rental of P2,400.00 or the sum of P1,600.00.

In resolving the dispute, the trial court ordered respondent to vacate the property so that it could be sold to third persons and the proceeds divided between them equally, and for respondent to pay petitioner one-half (1/2) of P2,400.00 or the sum of P1,200.00 as monthly rental, conformably with their stipulated sharing reflected in their written agreement.

We uphold the trial court in ruling in favor of petitioner, except as to the effectivity of the payment of monthly rentals by respondent as co-owner which we here declare to commence only after the trial court ordered respondent to vacate in accordance with its order of 26 July 1979.

Article 494 of the Civil Code provides that no co-owner shall be obliged to remain in the co-ownership, and that each co-owner may demand at any time partition of the thing owned in common insofar as his share is concerned. Corollary to this rule, Art. 498 of the Code states that whenever the thing is essentially indivisible and the co-owners cannot agree that it be allotted to one of them who shall indemnify the others, it shall be sold and its

proceeds accordingly distributed. This is resorted to (1) when the right to partition the property is invoked by any of the co-owners but because of the nature of the property it cannot be subdivided or its subdivision would prejudice the interests of the co-owners, and (b) the co-owners are not in agreement as to who among them shall be allotted or assigned the entire property upon proper reimbursement of the co-owners. In one case,[8] this Court upheld the order of the trial court directing the holding of a public sale of the properties owned in common pursuant to Art. 498 of the Civil Code.

However, being a co-owner respondent has the right to use the house and lot without paying any compensation to petitioner, as he may use the property owned in common so long as it is in accordance with the purpose for which it is intended and in a manner not injurious to the interest of the other co-owners.[9] Each co-owner of property held pro indiviso exercises his rights over the whole property and may use and enjoy the same with no other limitation than that he shall not injure the interests of his co-owners, the reason being that until a division is made, the respective share of each cannot be determined and every co-owner exercises, together with his co-participants joint ownership over the pro indiviso property, in addition to his use and enjoyment of the same.[10]

Since petitioner has decided to enforce his right in court to end the co-ownership of the house and lot and respondent has not refuted the allegation that he has been preventing the sale of the property by his continued occupancy of the premises, justice and equity demand that respondent and his family vacate the property so that the sale can be effected immediately. In fairness to petitioner, respondent should pay a rental of P1,200.00 per month, with legal interest from the time the trial court ordered him to vacate, for the use and enjoyment of the other half of the property appertaining to petitioner.

When petitioner filed an action to compel the sale of the property and the trial court granted the petition and ordered the ejectment of respondent, the co-ownership was deemed terminated and the right to enjoy the possession jointly also ceased. Thereafter, the continued stay of respondent and his family in the house prejudiced the interest of petitioner as the property should have been sold and the proceeds divided equally between them. To this extent and from then on, respondent should be held liable for monthly rentals until he and his family vacate.

WHEREFORE, the petition is GRANTED. The assailed Decision of the Court of Appeals dated 16 October 1986 is REVERSED and SET ASIDE. The decision of the trial court in Civil Case No. 6912-P dated 26 July 1979 is REINSTATED, with the modification that respondent Senen B. Aguilar is ordered to vacate the premises in question within ninety (90) days from receipt of this decision, and to pay petitioner Virgilio B. Aguilar a monthly rental of P1,200.00 with interest at the legal rate from the time he received the decision of the trial court directing him to vacate until he effectively leaves the premises.

The trial court is further directed to take immediate steps to implement this decision conformably with Art. 498 of the Civil Code and the Rules of Court. This decision is final and executory.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., and Quason, JJ., concur.

[1] Page 97, Rollo.

[2] Presumably per month although the decision does not so specify.

[3] *Jungco v. Court of Appeals*, G.R. 78051, 8 November 1989, 179 SCRA 213.

[4] Sec. 2, Rule 20, Rules of Court; *Insular Veneer v. Plan*, G.R. L-40155, 10 September 1976 73 SCRA 1.

[5] Pacweld Steel Corp. v. Asia Steel Corp. No. L-26325, 15 November 1982, 118 SCRA 229.

[6] Guzman v. Elbinias; G.R. No. 57395, 17 April 1989 172 SCRA 240.

[7] Ravelo v. Court of Appeals, No. L-40111, 27 October 1983, 125 SCRA 366.

[8] Reyes v. Concepcion, G.R. No. 56550, 1 October 1990, 190 SCRA 171.

[9] Article 486, Civil Code.

[10] Pardell v. Bartolome 23 Phil 450 (1912).

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