

DAIPAN (NON-CHRISTIAN), PLAINTIFF AND APPELLEE, VS. SIGABU (NON-CHRISTIAN), DEFENDANT AND APPELLANT.*G.R. No. 7942. September 06, 1913*

Ponente: JOHNSON, J.

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On the 27th day of October, 1907, the plaintiff commenced an action against the defendant in the Court of First Instance of the Province of Ilocos Sur to recover the possession of a parcel of land located in the settlement of Daligan (Danguisen), within the municipality of Cabugao, Province of Ilocos Sur, which parcel of land is particularly described in paragraph 2 of the complaint.

To the complaint the defendant presented a demurrer which was overruled by the lower court. Upon the overruling of the demurrer, the defendant filed an answer, admitting a part of the facts set out in the complaint and denying a part. To the answer, the plaintiff presented a demurrer, which was overruled by the lower court, on the 11th day of January, 1908. The cause seems to have been set down for trial on the 14th of January, 1908, at 8 o'clock a.m. On the 14th of January the cause was duly brought to trial. The defendant did not appear. By reason of the nonappearance of the defendant, the lower court rendered a judgment by default against him.

On the 15th of January, 1908, the Honorable Dionisio Chanco, judge, after having heard the evidence of the plaintiff, rendered a decision and judgment, in which he granted the prayer of the plaintiff, giving the lands in question to the plaintiff in accordance with said prayer.

On the 15th of January, 1908, and before said decision had been rendered, the defendant presented a motion asking that the judgment by default rendered against him be set aside and that he be granted a new trial, in accordance with the provisions of section 113 of the Code of Procedure in Civil Actions. The defendant, in his said motion, tries to make it appear that he had not had proper notice of the time fixed for the trial of said cause. In his said motion, however, he admits that he had an agreement with the attorney for the plaintiff to have the trial transferred from 8 o'clock a. m. of the 14th of January to 3 o'clock p.m. of the same day. This allegation is supported by an affidavit. At the same time the attorney for the plaintiff, by affidavit, denies that any such agreement had been entered into. The defendant admits that he appeared in court at 3 o'clock p. m. on the 14th of January, and found that the case had already been tried on the morning of that day. The appellant presents an affidavit from the clerk of the court, which shows that the defendant had been duly notified on the 11th of January, 1908, that said cause had been set down for trial at 8 o'clock a. m. on the 14th of January, 1908. The lower court denied the motion of the defendant and rendered a judgment as above indicated. To the ruling of the court denying the motion to set aside the judgment by default and to grant a new trial, as well as a final judgment, the defendant duly excepted and appealed to this court.

In this court the appellant prays that the judgment by default rendered against him be set aside, and that he be granted a new trial and that the judgment of the lower court be reversed. In support of his contention he presents no additional reason to that presented in the court below. The proof shows that he had been duly notified of the

time and place of the trial. His only excuse for not appearing at that time is the fact that he claims that he had an agreement with the attorney for the plaintiff to have the trial transferred from 8 o'clock a.m. to 3 o'clock p.m. of the 14th of January, 1908. He undertakes to prove said agreement by an affidavit. The attorney for the plaintiff admits that the defendant requested his consent to have the trial transferred from 8 o'clock a.m. to 3 o'clock p.m., but that he refused to consent to the request. The lower court evidently believed the facts stated in the affidavit of the plaintiff that no agreement was entered into by him with the defendant to have the case transferred as is claimed by the defendant. Upon the question as to whether an agreement was made we have an affidavit presented by the defendant, alleging that it was, and an affidavit presented by the attorney for the plaintiff, in which he contends that no such agreement was made. The defendant and appellant does not attempt to show that even though a new trial should be granted him, he has proof sufficient to overcome the proof adduced by the plaintiff during the trial of the cause. The proof adduced during the trial of the cause, standing alone, seems to show, beyond question, that the plaintiff is entitled to the possession of the land, in accordance with and under the provisions of the prayer of his petition. Inasmuch as the lower court evidently believed that no such agreement, as the defendant contends was made, was entered into, and inasmuch as the defendant and appellant makes no effort to show that even though a new trial be granted, he has proof sufficient to overcome the proof adduced by the appellant, we are of the opinion that the judgment by default rendered by the lower court should not be revoked. Upon the question of fact the evidence adduced during the trial of the cause clearly shows that the plaintiff was entitled to the remedy prayed for. The judgment of the lower court is therefore hereby affirmed, and, without any finding as to costs, it is so ordered.

Arellano, C. J., Carson, Moreland, and Trent, JJ., concur.

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