

NINTH DIVISION

[CA-G.R. CV NO. 97069, November 24, 2014]

JOSE H. FERNANDEZ, PLAINTIFF-APPELLANT, VS. FELOMINO FERNANDEZ, DEFENDANT-APPELLEE.

DECISION

PERALTA, JR., E. B., J.:

It was the court *a quo*'s dismissal of the civil case^[1] due to the absence of plaintiff-appellant and his counsel during the scheduled May 12, 2010 pre-trial conference, and the failure to file the Pre-Trial Brief within the period prescribed by law,^[2] which spawned the appeal before Us.

The instant controversy came to fore when herein appellant Jose H. Fernandez brought an action for Partition with Accounting of Rents and Profits and Damages on June 18, 2009 against his father Felomino Fernandez.

Appellant's cause of action, eventually raffled to the Regional Trial Court, Branch 52, Sorsogon City, docketed as Civil Case No. 2009-8070, reads:

"1. That plaintiff is of legal age, Filipino, married, with capacity to sue and be sued, and a resident of Barangay Central, Casiguran, Sorsogon where he may be served with summons and other processes of this Honorable Court; whereas defendant, is likewise of age, Filipino, married and may be served with summons and processes of this Honorable Court at his residence in Barangay Central, Casiguran, Sorsogon;

2. That plaintiff and defendant are related by flesh and blood, plaintiff being the legitimate and only child of defendant and his deceased wife, Carmen Habitan-Fernandez;

3. That plaintiff and defendant are the intestate heirs of the estate of the late Carmen who passed away on February 25, 1967. The said estate is part of the conjugal property regime of defendant and his deceased wife, which said properties are located in the municipalities of Magallanes and Casiguran, Sorsogon, listed and more particularly described as follows:

xxx xxx xxx

4. That prior to the filing of the case at bar, plaintiff exerted all his earnest effort to settle the matter agreeably, by requesting defendant for several times that the above-described real properties, which comprise the estate of the late Carmen, be amicably partitioned between them by mutual agreement, but defendant refused and continuously refuses to do

so;

5. That following the termination of defendant's marriage with Carmen by reason of the latter's death, defendant did not liquidate the conjugal property in a proceeding for the settlement of the estate of deceased person nor defendant liquidated the conjugal property, either judicially or extra-judicially, within a year from the death of his deceased spouse and (Art. 130, Family Code);

6. That defendant contracted a subsequent marriage with one Maria Escalderon on May 8, 1986, without complying with the foregoing requirements of the law;

7. That defendant, without plaintiff's knowledge, may have disposed several real properties in favor of his second wife or any other person, albeit knowing that said properties were part of the conjugal property of gains with his deceased spouse;

8. That since 1967 after death of Carmen until to date, defendant administers the conjugal property, including plaintiff's inheritance from the estate of his late mother, and collects the income solely for himself from said properties. Plaintiff was allowed by defendant to administer only five (5) parcels of land in 1998, when plaintiff demanded from defendant that he given his just share from his mother's estate;

9. That plaintiff desires that the above-listed and described real estate be partitioned between him and defendant, for which plaintiff prays that his one-half (½) share from his mother's estate in the conjugal property with that of defendant, be given to him as provided for by law (Art. 966, New Civil Code);

10. That plaintiff demands that an accounting be rendered for the rents and profits realized from the properties subject of this partition and collected solely by defendant since 1967 until to date, and upon determination of the total income generated from said rents and profits, plaintiff's share be given to him.

x x x "

On September 30, 2009, defendant-appellee filed an Answer with Counterclaim.^[3]

Pre-trial conference was scheduled on May 12, 2010 with previous notice to all the parties.^[4] However, plaintiff-appellant and his counsel failed to attend. As a result, the trial court issued an Order^[5] which dismissed the Complaint, viz:

"Upon motion of Atty. Jacinto Tagum considering the absence of the plaintiff or his counsel who in fact filed a motion for postponement of today's pre-trial and considering further that the said plaintiff failed to file his pre-trial brief, upon motion of the said counsel for the defendant who

has filed his pre-trial brief and whose client defendant Felomino Fernandez, despite his advanced age and apparent infirmity is present in today's pre-trial, let this case be dismissed.

SO ORDERED."

On May 24, 2010, plaintiff-appellant moved to reconsider^[6] the preceding Order, but it was denied on January 11, 2011,^[7] the dispositive portion of which reads:

"All told, this Court, after a meticulous study of the arguments set forth in the Motion for Reconsideration filed by plaintiff through counsel, finds no cogent reason to revise, amend, much less reverse the Order of this Court dated May 12, 2010. The Motion for Reconsideration is thus DENIED.

SO ORDERED."

In his appeal^[8] elevated to this court, plaintiff-appellant harped on a singular ascription insofar as the lower court in this wise:

"THE HONORABLE COURT A QUO ERRED WHEN IT DISMISSED PLAINTIFF-APPELLANT'S COMPLAINT BY HIS FAILURE AND OF HIS COUNSEL TO APPEAR AT THE SCHEDULED PRE-TRIAL CONFERENCE ON MAY 12, 2010 AND PLAINTIFF-APPELLANT'S FAILURE TO FILE HIS PRE-TRIAL BRIEF WITHIN THE PRESCRIBED PERIOD, ALTHOUGH PLAINTIFF-APPELLANT'S COUNSEL FILED A MOTION FOR POSTPONEMENT OF THE SAID PRE-TRIAL CONFERENCE ON MAY 7, 2012 OR SIX (6) DAYS BEFORE THE SCHEDULED HEARING."^[9]

To the question of whether the trial court's demeanor during pre-trial conference warrants a different perspective, We find no fault on the part of the lower court.

In dismissing plaintiff-appellant's Complaint, the court *a quo* cited two grounds: a) non-appearance at the pre-trial conference and b) failure to file pre-trial brief.

Section 4, Rule 18 of the 1997 Rules of Civil Procedure mandates the appearance of the parties and counsel during the pre-trial conference:

"SEC. 4. Appearance of parties. – *It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of*