

## FIRST DIVISION

[ CA-G.R. CV NO. 99691, March 11, 2015 ]

**ROMEO C. CAMPOS, AS JUDICIAL ADMINISTRATOR/ATTORNEY-IN-FACT OF THE ESTATE OF DON GREGORIO MADRIGAL ACOP OVER TCT NO. 408, PLAINTIFF-APPELLANT, VS. DR. RICO TORRES, LUCIO C. ALEJO, III, SHERIFF IV, THE REGISTER OF DEEDS FOR THE PROVINCE OF CAVITE, DEFENDANTS-APPELLEES.**

### DECISION

**SORONGON, E.D., J.**

Assailed via Rule 41 of the Rules of Court is the *Order*<sup>[1]</sup> dated April 18, 2011 of the Regional Trial Court of Trece Martires City, Branch 23 dismissing the case for failure of the plaintiff-appellant to present a witness despite reasonable opportunity to do so. Impugned likewise is the November 4, 2011 *Order*<sup>[2]</sup> of the same court which denied plaintiff-appellants' motion for reconsideration.

The present controversy arose from the following factual milieu:

Plaintiff-appellant Romeo C. Campos (Campos) filed a complaint for quieting of title with prayer for preliminary injunction against defendant-appellee Dr. Rico Torres (Dr. Torres) over a parcel of land located at General Trias, Cavite and covered by TCT No. 408 registered under the name of Don Gregorio Madrigal Acop. In his complaint, Campos alleged that he is the attorney-in-fact of Don Gregorio Acop as per annotation at the dorsal portion of the said title and that he was and is in actual, continuous, open and adverse possession of said property. Lately, he learned that Dr. Torres had a title over the said property and that he (Dr. Torres) filed an ejectment case against the occupants of the said property. When the writ of execution<sup>[3]</sup> was implemented he filed a motion to have the property resurveyed considering that there is already a title issued to Acop. But the trial court denied his motion. Thus, this case.

Dr. Torres insisted on the authenticity of his title over the disputed property claiming that he purchased it from one Vicente A. Peralta who presented to him a valid and legitimate title thereof under his name. As an offshoot of the ejectment suit he filed against the illegal occupants of the subject lot, a writ of execution was issued to enforce a judgment in his favor. He wondered why Campos never intervened in the ejectment case to question in the proceedings therein his title to the disputed property. But Campos opted to stay silent and only when a decision was already rendered in Dr. Torres' favor that the former chose to scrutinize his title.

During the initial hearing on the issuance of a TRO, Campos' counsel manifested to prepare an affidavit instead of having their witness testifying in open court. At the scheduled hearing, Campos failed to present his evidence to support his prayer for

TRO, thus, by Order<sup>[4]</sup> dated April 18, 2011, the trial court ordered the dismissal of the case ruling:

*"Considering the vehement objection of the party-defendant and considering further that this is the second time that the party-plaintiff could not present their witness despite the fact that they were given time by the court, this case is hereby ordered DISMISSED.*

*SO ORDERED."*

On motion for reconsideration, Campos urged for the liberal interpretation of the rules and further harped on the alleged violation of his right to due process.

By Order<sup>[5]</sup> dated November 4, 2011, the trial court sustained its stand to dismiss the case opining:

*"The Court after a consideration of all the allegations presented by both parties believed that the plaintiff should be vigilant over their case; that the hearing was for their prayer for the issuance of a temporary restraining order but for the second time after it was reset from the initial hearing on April 12, 2011, the plaintiff again failed to present their evidence on April 18, 2011, thus defendant objected to a resetting and instead prayed for the dismissal of the case. Such showing of laxity on their part is fatal on plaintiff's case.*

*WHEREFORE, the Order of dismissal dated April 18, 2011 stays and the Motion for Reconsideration is hereby denied as it is DENIED.*

*SO ORDERED."*

Hence, this appeal.

Campos makes the following assignment of errors:

**I. THE COURT A QUO SERIOUSLY ERRED IN DISMISSING PLAINTIFFS-APPELLANT'S [CAMPOS] PRAYER FOR THE ISSUANCE OF TEMPORARY RESTRAINING ORDER; and**

**II. WHETHER THE ISSUE OF OWNERSHIP IS SO INTERTWINED WITH THE ISSUE OF POSSESSION.**

In seeking a reversal, Campos invokes the liberal construction of the rules. He justifies his failure to present a witness during the scheduled hearings on the fact that Mr. Cris Pakingan, his supposed witness, opted to execute an affidavit instead of testifying in open court. Thus, the trial court's hasty dismissal of the case infringes his right to due process without considering the merits thereof. Campos thus prayed to us now that he be afforded ample opportunity to ventilate his case rather than injudiciously dispose the case on technicality.

On the one hand, Dr. Torres insists that no fault could be attributed to the trial court in ruling the way it did because Campos is not exactly without blame. It was him who was neglectful of his duty to pursue his case with utmost expediency given the allegations in the complaint that his peaceful possession and occupation of the