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employer under the Civil Code and other laws because of said injury x x x."

Article 173 of the Labor Code also provides:

"ART. 173. Exclusiveness of liability.— Unless otherwise provided, the liability of the State Insurance Fund under this Title shall be exclusive and in place of all other liabilities of the employer to the employee, his dependents or anyone otherwise entitled to receive damages on behalf of the employee or his dependents."

I am against the Court assuming the role of legislator in a matter calling for actuarial studies and public hearings. If employers already required to contribute to the State Insurance Fund will still have to bear the cost of damage suits or get insurance for that purpose, a major study will be necessary. The issue before us is more far reaching than the interests of the poor victims and their families. All workers covered by workmen's compensation and all employers who employ covered employees are affected. Even as I have deepest sympathies for the victims, I regret that I am constrained to dissent from the majority opinion.

SECOND DIVISION

[G.R. No. L-34124. April 30, 1985]

MR. & MRS. TADEO P. DAEL, *petitioners,* vs. THE HON. BERNARDO TEVES, as Presiding Judge, Court of First Instance of Misamis Oriental, Branch VIII and DIONISIO EDOROT, VIDAL EDOROT, PONCIANO EDOROT, PETRA EDOROT, DIOSDADA EDOROT, JUANA EDOROT, and the late HERMINIGILDO EDOROT, represented by his heirs, VICTOR EDOROT, PEDRITO and JACOBO EDOROT, *respondents.*

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SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; ACTION; FAILURE TO COMPLY WITH ORDER TO AMEND, GROUND FOR DISMISSAL OF COMPLAINT.**— The heirs of deceased defendants in the case at bar being clearly indispensable parties, respondent Judge acted properly in ordering the amendment of the complaint so as to include the said heirs as defendants. Since the petitioners failed to comply with this Order, respondent Judge acted within his prerogative in dismissing the complaint pursuant to Section 3, Rule 17 of the Rules of Court thus, it has been held that — "Where the Court orders the plaintiff to amend its complaint within a certain period of time to implead as party defendants one who is not a party to the case but who is an indispensable party, *plaintiff's refusal to comply with such order is a ground for the dismissal of the complaint.*"

2. **ID.; ID.; ID.; RELIANCE ON RULE 3, SEC. 16, RULES OF COURT, MISPLACED; CASE AT BAR.**— Petitioners now claim that their failure to amend the complaint was due to the fact that the private respondents' counsel failed to inform the Court of the names of the heirs and/or representatives of the deceased defendants (Herminigildo and Petra Edorot) pursuant to Section 16, Rule 3, New Rules of Court. We find petitioners' reliance on the aforecited provision as misplaced. Rule 3, Section 16 of the Rules applies to a situation where a party (whether plaintiff or defendant) dies after the filing of the complaint and during the pendency of the case. This is not the situation in the case at bar since the two defendants, whose heirs are to be impleaded died even before the filing of the complaint.

3. **ID.; ID.; ID.; AMENDMENT OF COMPLAINT; STILL REQUIRED DESPITE WAIVER OF ONE OF THE HEIRS.**— The other contention of petitioners that there is not more necessity of amending the complaint because allegedly an affidavit of waiver of rights have been executed by one Victor Edorot is also not meritorious. It is not disputed that said Victor Edorot is only one of the heirs of deceased defendant Herminigildo Edorot. He is not the sole owner of the entire interest of Herminigildo. Neither is his waiver binding upon the other heirs of said deceased.

4. **ID.; ID.; NON-CONTENTIOUS MOTION; MAY BE ACTED UPON WITHOUT PROOF OF SERVICE TO ADVERSE PARTY.**— Finally, anent the contention of petitioners that private

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respondents "ex-parte manifestation" did not comply with the required notice of motions pursuant to Sections 4, 5 and 6 of Rule 15 of the "manifestation" informing the Court that petitioners have not complied with the order to amend the complaint, is not a litigated or contentious motion and may be acted upon even without proof of service on the adverse party.

DECISION

CUEVAS, *J.*:

Petition for Review on Certiorari of the Order of the Hon. respondent Presiding Judge of the Court of First Instance of Misamis Oriental - Branch VIII, issued on July 27, 1971 in Civil Case No. 3531 entitled "Mr. & Mrs. Tadeo P. Dael *versus* Dionisio Edorot, et al," dismissing petitioners' complaint; and his Honor's order of August 12, 1971 denying petitioners' motion for reconsideration of the said order of dismissal.

On October 19, 1970, petitioners filed with the then Court of First Instance of Misamis Oriental, a complaint for: "Ownership, Recovery of Possession & Damages" against the private respondents. The case was docketed in the said court as Civil Case No. 3531.

The complaint, among others, alleged that petitioners, then plaintiffs, are the true and absolute owners in fee simple of a parcel of land with an area of 18,000 square meters, more or less, situated at Aplaya, Jasaan, Misamis Oriental, having purchased the same from the late Esteban Edorot on May 17, 1962; and that sometime in the month of February 1964, after the death of Esteban Edorot, the defendants (herein private respondents) by means of force, threats and intimidation surreptitiously occupied the said property.

Private respondents, through counsel, filed their Answer with Counterclaim on January 18, 1971, claiming that the property in question is owned by them *pro-indiviso* by inheritance from their deceased parents.

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The issue having been joined, the case was set for the pre-trial on various occasions in Branch VIII of the Court of First Instance of Misamis Oriental then still presided by the Hon. Severo Malvar "to give the parties more chance to arrive at an amicable settlement."[1] In all these pre-trial conferences, counsel for private respondents and respondent Vidal Edorot appeared. The latter had a special power of attorney to appear for defendants Dionisio, Diosdada, Ponciano and Juana. The two other defendants, Petra and Herminigildo, died long before the filing of the complaint.

After June 2, 1971, Judge Severo Malvar was transferred to another judicial district and respondent Judge Bernardo Teves was appointed to take his place.

On June 29, 1971, when the case was set for pre-trial for the first time before respondent Judge Bernardo Teves, an Order reading as follows -

"Considering that, as manifested before the Court, two of the defendants died before the filing of this case; the plaintiffs are hereby given until July 15, 1971 within which to file an amended complaint to include the heirs or representatives of said deceased defendants, furnishing copy thereof to Atty. Dumlao."

was issued by the respondent Judge.

On July 27, 1971, counsel for private respondents filed an Ex-Parte Manifestation, praying that the case be dismissed pursuant to Section 3, Rule 17 of the Rules of Court for failure of petitioners to comply with the aforequoted order of the Court to file an amended complaint. Acting thereon, the trial court on July 27, 1971 issued the order now assailed dismissing the complaint, which reads -

"As prayed for by the defendants, through counsel, Atty. Florentino Dumlao, Jr. in his ex-parte manifestation of July 27, 1971, which the Court finds well-founded, this case is hereby dismissed for failure of the

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[1] Annexes "D", "D-1" to "D-4", Petition.

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plaintiffs to comply with the Order of this Court dated June 29, 1971. No pronouncement as to costs.

SO ORDERED."

Petitioners' motion to reconsider the foregoing Order having been denied, they now come before Us through the instant petition, contending that respondent Judge -

1. - acted without jurisdiction or with grave abuse of discretion in ordering petitioners to file an amended complaint, to include the alleged heirs and/or representatives of respondents Petra Edorot and Herminigildo Edorot, deceased;

2. - committed a legal error in admitting respondents' ex-parte motion to dismiss Civil Case No. 3531 and in issuing the order dismissing Civil Case No. 3531; and

3. - acted without or in excess of its jurisdiction in denying petitioners' motion for reconsideration.

In their complaint, petitioners (then plaintiffs) claim that they are the owners of the parcel of land in question.[2] Private respondents, on the other hand, in their Answer controvert such assertion.[3] They also claim to be the owners and possessors, pro-indiviso by inheritance from their deceased parents, of the subject litigated parcel. Necessarily then, deceased defendants Herminigildo Edorot and Petra Edorot have an undivided interest, right and participation adverse to that of the petitioners' in the property in litigation. Since both of them are already dead (Herminigildo died on September 29, 1969 and Petra died on April 5, 1970) even prior to the filing of the complaint against them in the court below and their interest in the property in question having inured by intestacy to their heirs, the latter thereby became the real parties in interest who should be impleaded as defendants without whom no final determination of Civil Case No. 3531 can be had. Decidedly then they are indispensable parties who should be compulsory joined as defendants in the instant case. Sections 2 and 7, Rule 3 of the Rules of Court provides —

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[2] Par. 2, Complaint, Annex "A", "A-1" & "A-2", Petition.

[3] Annex "B", "B-1" & "B-2", Petition.

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"Section 2. Parties in interest. - Every action must be prosecuted and defended in the name of the real property in interest. All persons having an interest in the subject of the action and in obtaining the relief demanded shall be joined as plaintiffs. All persons who claim an interest in the controversy or the subject thereof adverse to the plaintiff, or who are necessary to complete determination or settlement of the question involved therein shall be joined as defendants."

"Section 7. Compulsory joinder of indispensable parties. - Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants."

The heirs of deceased defendants in the case at bar being clearly indispensable parties, respondent Judge acted properly in ordering the amendment of the complaint so as to include the said heirs as defendants. Since the petitioners failed to comply with this Order, respondent Judge acted within his prerogative in dismissing the complaint[4] pursuant to Section 3, Rule 17 of the Rules of Court which provides that -

"If the plaintiff fails to appear at the time of the trial, or to prosecute his action for unreasonable length of time, or *to comply* with these rules or *any order of the court,* the action maybe dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless provided by the court. (Italics supplied)

Thus, it has been held that -

"Where the Court orders the plaintiff to amend its complaint within a certain period of time in order to implead as party defendants one who is not a party to the case but who is an indispensable party, *plaintiff's refusal to comply with such order is a ground for the dismissal of the complaint."* (Garchitorena, et al *vs.* de los Santos, et al., No. L-17045, June 30, 1962, 115 Phil. 490, citing Bautista *vs.* Teodoro, 54 O.G. 619; Dizon *vs.* Garcia, et al., G.R. No. L-14690, November 29, 1960)

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[4] Santos *vs.* Gen. Woodcraft & Design Corp., 117 SCRA 67; Santos *vs.* Liwag, 101 SCRA 327; Piramide *vs.* Go Guioc Sia, 74 SCRA 9; Palma *vs.* Q & S., Inc., 17 SCRA 97; Custodio *vs.* Cristobal, 4 SCRA 66.

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Petitioners now claim that their failure to amend the complaint was due to the fact that private respondents' counsel failed to inform the Court of the names of the heirs and/or representatives of the deceased defendants (Herminigildo and Petra Edorot) pursuant to Section 16, Rule 3, New Rules of Court which provides -

"Section 16. - Duty of attorney upon death, incapacity or incompetency of party. - Whenever a *party to a pending case dies,* becomes incapacitated, or incompetent, it shall be the duty of his attorney to inform the court promptly of such death, incapacity or incompetency and to give the name and residence of his executor, administrator, guardian or other legal representative." (Italics supplied)

We find petitioners' reliance on the aforequoted provision as misplaced. Rule 3, Section 16 of the Rules applies to a situation where a party (whether plaintiff or defendant) dies after the filing of the complaint and during the pendency of the case. This is not the situation in the case at bar since the two defendants, whose heirs are to be impleaded died even before the filing of the complaint.

The other contention of petitioners that there is no more necessity of amending the complaint because allegedly an affidavit of waiver of rights have been executed by one Victor Edorot is also not meritorious. It is not disputed that said Victor Edorot is only one of the heirs of deceased defendant Herminigildo Edorot. He is not the sole owner of the entire interest of Herminigildo. Neither is his waiver binding upon the other heirs of said deceased.

Finally, anent the contention of petitioners that private respondents "ex-parte manifestation" did not comply with the required notice of motions pursuant to Sections 4, 5 and 6 of Rule 15 of the Rules of Court, suffice it to state that the said "manifestation" informing the Court that petitioners have not complied with the order to amend the complaint, is not a litigated or contentious motion and may be acted upon even without proof of service on the adverse party.[5] In fact, under Section 3 of Rule 17, quoted earlier, the Court can *motu proprio* or on its own motion, dismiss the case for failure to comply with its order.

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[5] Yap *vs.* Court of Appeals, 115 SCRA 104.

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Upon the foregoing facts, We find that respondent Judge committed no error in dismissing the complaint. However, to avoid injustice, such dismissal should not operate as an adjudication on the merits.

WHEREFORE, the lower court's Order of dismissal which should be understood to be without prejudice, is AFFIRMED. Cost against petitioners.

SO ORDERED.

Makasiar, Abad Santos, and *Escolin, JJ.,* concur.

Aquino, J., I concur. The dismissal should be without prejudice. Petitioners counsel should have stated the name of T. Dael's wife. "Mr. and Mrs." is not proper.

Concepcion Jr., J., is on leave.

SECOND DIVISION

[G.R. No. L-35563. April 30, 1985]

BETHEL TEMPLE, INC., *petitioner, vs.* GENERAL COUNCIL OF THE ASSEMBLES OF GOD, INC., *respondent.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENT; ERRONEOUS JUDGMENT BY A COURT OF COMPETENT JURISDICTION; FINAL AND NO LONGER SUBJECT TO REVIEW; CASE AT BAR.— Whether or not the court committed an error in relying on the Parity Amendment to the 1935 Constitution is another matter but such reliance did not affect its jurisdiction. And since the judgment had become final it resolved the litigation definitely

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[6] Santos *vs.* General Woodcrafts & Design Corp., *Ibid.;* Piramide *vs.* Go Guioc Sia, et al., *ibid.*