2 Phil. 294

[G.R. No. 1111. May 16, 1903]

FELICIDAD GARCIA DE LARA, PLAINTIFF AND APPELLANT, VS. JOSE GONZALEZ DE LARA ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

COOPER, J.:

This is an appeal by the plaintiff from a judgment of the Court of First Instance, brought here by bill of exceptions which purports to have been prepared under section 143 of the Code of Civil Procedure of 1901, but which in reality bears a very small resemblance to a bill of exceptions properly prepared under the Code. It contains arguments of counsel, unintelligible statements, and sets forth much that is irrelevant, The real nature of the suit, the rulings of the court from which the appeal has been taken, and tire character of the judgment rendered, after a careful reading of the bill of exceptions, are left in doubt and largely to conjecture.

The Code of Civil Procedure is based upon American practice and has superseded the Spanish Code of Procedure, and since the practice now in force is in a large measure different from that under the Spanish practice, many difficulties present themselves to those not familiar with the American practice.

As a general rule, exceptions which are not presented in the course of the proceedings in the Court of First Instance can not be presented and urged on appeal to this court. The purpose of the rule is to require a party desiring to review in the appellate court the action of the trial court to call the attention of the trial court by timely objections to the proceedings complained of. This rule serves the interest of litigants and conduces to produce the orderly administration of justice in the courts.

An exception has been defined as an objection taken to the decision of the trial court upon a matter of law, and is a notice that the party taking it preserves for the consideration of the

appellate court a ruling deemed erroneous. (8 Am. Enc. P. and P., 157.)

An objection alone is not sufficient to preserve the question for review on appeal. To save the objection an exception is necessary.

We will indicate briefly when and how objections are made and exceptions taken. This will depend upon the character of the question.

They are taken sometimes by demurrer, sometimes by answer, or by some objection raised during the progress of the trial, or by objections to the judgment after its rendition. The defendant may demur to the complaint when it appears upon the face thereof, either—

1. That the court has no jurisdiction of the person of the defendant, or the subject of the action; or
2. That the plaintiff has no legal capacity to sue; or
3. That there is another action pending between the same parties for the same cause; or
4. That there is a defect or misjoinder of parties, plaintiff or defendant; or
5. That the complaint does not state facts sufficient to constitute a cause of action, or
6. That the complaint is ambiguous, unintelligible, or uncertain.

The demurrer must distinctly specify the grounds upon which any of the objections to the complaint are taken. (Sec. 91, Code of Civil Procedure.)

When any of the matters enumerated in this section do not appear upon the face of the complaint, the objection to the complaint can only be taken by answer. (Sec. 92.)

If no objection be taken to the complaint, either by demurrer or answer, the defendant shall be deemed to have waived all the above-named objections, excepting only the objection to the jurisdiction of the court over the subject-matter, and that the complaint does not state facts sufficient to constitute a cause of action. (Sec. 93, Code of Civil Procedure.)

If the ruling of the court upon a demurrer be adverse to the party making the same, he should except to the ruling of the court, and, in order that the court may determine the force of the objection, it will be necessary to incorporate in the bill of exceptions the complaint demurred to, the demurrer, and the judgment or ruling of the court upon the demurrer.

If the objection is raised by the answer, the exception must necessarily come after the proofs which are made in support of it. The sufficiency and the validity of the objection thus

raised must be determined by the sufficiency of the evidence which has been offered in support of the allegation contained in the answer. This requires a review or retrial of the questions of fact and can only be made in the cases which are provided for in section 497 of the Code of Civil Procedure.

The manner of making objections and taking exceptions to rulings, such as rulings upon admissibility or exclusion of evidence and other questions arising during the course of the trial, is provided for in section 142, which reads as follows:

> "The party excepting to the ruling, order, or judgment shall forthwith inform the court that he excepts to the ruling, order, or judgment, and the judge shall thereupon minute the fact that the party has so excepted; but the trial shall not be delayed thereby. The exception shall also be recorded by the stenographer, if one is officially connected with the court."

The Code has not made any specific provisions as to the manner and time of taking exceptions to the final judgment which has been rendered in a case. It would seem that the objection should be taken at the time of the rendition of the final judgment, or as soon thereafter as may be practicable, and before the ending of the term of court at which the final judgment is rendered.

With reference to the character of objections which may be taken to a judgment of the court, the American rule is stated as follows:

> "Errors in a judgment or decree will not be noticed on appeal in the absence of objections and exceptions taken below, and they should be sufficiently specific to direct the attention of the court to the alleged defects." (8 Enc. PI. and Pr., 289.)

If objection to the judgment arises upon the insufficiency of the proof to support the judgment or the findings of fact made by the judge, it will also be necessary to bring flu; ease within the first or third clause of section 497 of the Code of Civil Procedure, and if under the latter clause, the excepting party should file a motion in the Court of First Instance for a new trial based upon the ground that the findings of fact are plainly and manifestly against the weight of evidence.

The manner of perfecting a bill of exceptions is governed by section 143 of the Code and need not be here repeated.

In preparing and presenting a bill of exceptions under this section it is necessary that counsel should carefully read and follow the plain directions of the statute. These directions are sufficiently explicit to enable those who will carefully consider the section to comply with them.

In preparing a case for this court, counsel should also carefully consider the rules of the Supreme Court for sending up the bill of exceptions and for the making of briefs and assignments of errors.

By reason of the failure of the appellants in this case to comply with the plain statutory provisions with reference to bills of exceptions, it is largely a matter of conjecture to determine the nature of the suit, the rulings of the court complained of, or the character of the judgment which has been rendered. For this failure we might well refuse to consider the case.

It seems probable that the suit was an action for the partition of a tract of land, being the undivided half of the hacienda de Angono, situated in the Province of Rizal, and which the plaintiff and defendants in the suit had inherited from their deceased father, Don Eugenio Gonzales de Lara; that Eugenio Gonzales de Lara had acquired this undivided half interest by purchase from Dona Dominga Santa Ana; that the court refused to partition the land because the tract sought to be partitioned was itself an undivided interest, the other half being owned l>y parties the names of whom are not disclosed in the record; that the court declined to make the partition on the ground that the demarcation and boundaries of the land sought to be partitioned had not been set forth in the partition, and by reason of the interest which is sought to be partitioned being an undivided interest.

If this was the character of the suit, the Court of First Instance did not err in so holding.

Partition proceedings are now governed, and were at the time of the institution of this suit, by the Code of Civil Procedure, 1901, and must be determined by the provisions of this Code. Section 183 requires that the complaint in an action for partition shall set forth the nature and extent of the plaintiff’s title, and shall contain an adequate description of the real estate of which partition is demanded, *and name each tenant in common, coparcener, or other person interested therein as defendants.*

This provision requires that all persons interested in the land sought to be partitioned must be made a party to the suit. If the land sought to be partitioned was an undivided interest held by the father of the plaintiffs and defendants, in order to comply with the requirements of the statute those who were interested in the other half interest should have been made parties to the suit.

This is not only according to the requirements of the Code, but the very nature of a partition suit renders it necessary; otherwise the proceedings in the suit may become wholly ineffectual.

This proceeds from the general principle of law that a litigation can never result in an adjudication which will be binding upon others than the parties to the suit and their privies in blood or in estate. The other owners were persons who not only had an interest in the controversy but an interest of such a nature that a final decree could not be made without affecting that interest. The decree, therefore, would not bind such parties, and upon another suit for partition brought by them the very half that had been partitioned in this case might be assigned as the portion belonging to such other joint owners.

The Code provides that if, upon trial in a partition suit, the court finds that the plaintiff has a legal right to any part of such estate, it shall order partition thereof in favor of the plaintiff, among all parties in interest, and if the parties to tin1 unit are not able to agree amongst themselves to the making of partition, the court shall appoint three commissioners to make the partition and set off to the plaintiff and each party in interest such part and proportion of the estate as the court shall order.

When it is made to appear to the commissioners that the estate, or a portion thereof, can not be divided without great inconvenience to the parties interested, the court may order it assigned to one of the parties, provided he pays to the other party such sum of money as the commissioners judge equitable. But if no one of the parties interested will take such assignment and pay such sum, the court shall order the commissioners to sell such estate at public or private sale. Where the estate can not be divided, the court may direct the sale of the property at public or private sale. At this public or private sale third parties may become the purchasers.

A suit brought by the persons interested who were not made parties to the suit, and who are not bound bv the partition proceedings, would deprive such purchaser of the title to the land acquired at public sale under the judgment of a court. Roth the purchaser at such sale and

the heirs who had received their specific portion by metes and bounds, or the heirs who had compensated the other heirs by the payment of the value of the land, by reason of land not being divisible, would be deprived of the rights which they had acquired under the proceedings. This would not only create confusion and inconvenience but the time of the court would have been uselessly consumed in the proceedings thus rendered ineffectual, at the suit of the persons who were not made parties to the action. Such result is avoided by the provision of the statute which requires each tenant in common, coparcener, or other person interested in the land to be made a party to the suit.

The judgment will be affirmed with costs of both instances against appellants. This affirmance, however, will be without prejudice to the rights of the plaintiff should he desire to institute a partition proceeding against all parties at interest and effect a partition of the lands. By the provisions of section 181 of the Code of Civil Procedure, a person having or holding real estate with others, in any form of joint tenancy or tenancy in common, may compel partition thereof.

The judgment is affirmed.

Torres, J., concurs.

Willard, J., concurring, with whom concur *Arellano, C. J., Mapa* and *Ladd, JJ.*:

I agree with the result in this case, but I dissent from all that is said about exceptions to judgments. We have repeatedly passed upon cases in which the exception simply states that the party excepted to the judgment without pointing out any specific defects therein, and have impliedly held that such an exception is sufficient to remove the case to this court.

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