

5 Phil. 415

[ G.R. No. 2368. December 14, 1905 ]

**CIRILO ESTRELLA, PLAINTIFF AND APPELLANT, VS. BONIFACIO ZAMORA AND JOSE ZAMORA, DEFENDANTS AND APPELLEES.**

**D E C I S I O N**

**MAPA, J.:**

This is an action with respect to the title and possession of a building lot. The trial court found that the following facts had been established: (1) That the lot in question had at one time belonged to the plaintiff, who inherited it from his father; (2) that on May 14, 1884, the plaintiff sold the lot to Carlos Zamora for the sum of 660 pesos, of which 200 pesos were paid at the time of the sale, and the balance at a subsequent date; and (3) that the purchaser, Carlos Zamora, was in possession of the lot until the time of his death in 1889, when his children, defendants herein, succeeded him, they having since been in possession.

Upon these facts the court below found that the defendants were the lawful owners of the land, decided the case in their favor, with costs to the plaintiff.

The plaintiff contends in his brief that the findings of the court are not supported by the evidence introduced at the trial. He, however, admits that there was a contract for the sale of the land for the sum of 660 pesos, and that the purchaser, Carlos Zamora, paid him 200 pesos at the time of the sale on account of the purchase price, but he alleges that there is nothing to show that Zamora ever paid him the balance of 460 pesos. This is not true. The defendant Bonifacio Zamora testified in regard to two different payments of 100 pesos and 258

pesos, respectively, which according to the defendants, were made to the plaintiff by his father, Carlos Zamora, on account of the purchase price of the land. The first amount was delivered to one Anselmo Ventura by order of the plaintiff, and the second payment was made to the plaintiff himself in jewels. These jewels were delivered to the plaintiff for sale on commission, with the condition that he was to return those which he could not dispose of, and apply the proceeds of those he did sell to the payment of the purchase price of the land. Zamora's testimony in this respect was uncontradicted. He further stated that the plaintiff did not return any of the jewels delivered to him.

There were introduced in evidence to prove the delivery of the two sums mentioned, the receipt signed by Anselmo Ventura, and two telegrams from the plaintiff ordering that 100 pesos be delivered to Ventura, also a list signed by the plaintiff containing the pieces of jewelry received by him from Carlos Zamora, the purchaser of the land. These documents were admitted in evidence by the court below, but neither of them appears in the bill of exceptions. It was the duty of the plaintiff as appellant to bring to this court the documents mentioned for consideration in connection with the facts found in the decision of the trial court. Having failed to do so, he must suffer the consequences thereof. In the absence of these documents we must consider their contents to have been as stated by the defendant in his testimony, and sustain the conclusions drawn therefrom by the trial court.

Aside from the evidence referred to, we have the testimony of Bonifacio Zamora to the effect that his father paid to the plaintiff the entire 660 pesos within the time stipulated in the contract. His testimony, uncontradicted by the plaintiff, shows that in addition to the 200 pesos paid at the time of the sale, the 100 pesos paid to Anselmo Ventura, and the 258 pesos received by the plaintiff himself in jewels, the balance still due from the 660 pesos, the purchase price of the land, was also paid to him by the purchaser.

The appellant also assigns as error the admission in evidence by the

court below of the list of jewels referred to. He claims that the jewels were received from Tiburcia Reyes, and that it was not shown that any privity existed between her and the defendants in this case, and that the evidence was therefore immaterial, and improperly admitted by the court. As already indicated the list does not form a part of the bill of exceptions. We can not, therefore, make any finding as to its contents. It appears from the testimony of the defendant Bonifacio Zamora that the jewels belonged to his father, and that the latter agreed with the plaintiff that the proceeds of the sale of the jewels should be applied to the payment of the purchase price of the land. This sufficiently shows the pertinency of the evidence, even assuming that the list was made in favor of Tiburcia Reyes, who was, after all, the mother of the defendants, as stated by them in their brief. The court below therefore did not err in admitting the list in evidence.

The plaintiff moved for a new trial in the court below on the ground of material and newly discovered evidence. The court overruled his motion, and he now assigns this as error.

The plaintiff's petition for a new trial was accompanied by the affidavit of Prudencio de Jesus, wherein the latter states "*that while examining the trunk of Cirilo Estrella brought to me for cleaning, I found therein a paper signed by Carlos Zamora, which is an important document in the case now pending between them.*" The affidavit says nothing more. It will be noticed that this affidavit contains merely the opinion of the witness that the document found by him was an important one in the present case. It was not the witness, but the court, who was called upon to determine this question. Considering the form of the affidavit, it seems to us that it was impossible for the judge to know whether the document referred to had any importance in the case, there being nothing in the affidavit upon which he could have based his opinion. The judge therefore properly overruled the plaintiff's motion for a new trial.

The overruling or granting of a motion for a new trial on the ground of material and newly discovered evidence is an act of discretion on the part of the judge. As such it can not be a ground of exception

under section 146 of the Code of Civil Procedure, and the judge's action is not reviewable by this court.

The judgment of the court below is affirmed, with costs of this instance against the appellant. After the expiration of twenty days let judgment be entered in accordance herewith, and let the case be remanded to the Court of First Instance for proper action. So ordered.

*Arellano, C. J., Johnson, Carson, and Willard, JJ., concur.*

---

Date created: April 28, 2014