34 Phil. 282

[G.R. No. 11464. March 17, 1916]

VICTOR BIUNAS, PETITIONER AND APPELLANT, VS. BENITO MORA, RESPONDENT AND APPELLEE.

RESOLUTION OF A MOTION

TORRES, J.:

This case, No. 11464, a probate proceeding, having been submitted and Victor Biunas having requested probate of the will executed by Romana Arevalo on March 3, 1915, the trial court, in view of the opposition thereto, entered by Benito Mora and others, and after considering the evidence adduced by both parties, denied the petition for said probate by an order of October 20, 1915. To this ruling counsel for petitioner excepted three days afterwards and by a written motion of November 1st moved for a reopening of the case and a new trial on the ground that the decision denying probate of said will was openly and manifestly contrary to the weight of the evidence and contrary to law.

The original proceedings having come before us on an the respondents presented a motion asking that said appeal be declared improperly admitted and that the judgment above-mentioned of October 20, 1915, be declared final, inasmuch as the appeal was not filed until November 17,1915, and the respondents had objected to its allowance and moved that it be dismissed, although their motion was disallowed. Counsel for appellee, therefore, relying upon the provisions of section 781 of the Code of Civil Procedure, alleged that the appeal taken by petitioner on November 17, 1915, from the order or judgment of the 20th of the preceding October, had been filed after the expiration of 28 days, counted from the 21st of October, while said section fixed the period within which the appeal should be filed at 20 days; that the exception taken by petitioner on the 22d of October to the judgment of the 20th of the same month could not be held to be an appeal, because it did not show petitioner’s intention to appeal in such wise that it would serve to bring the proceedings before this court on appeal; that such exception did not have the scope of an appeal, and that on this account, on November 17, petitioner concluded it was necessary to file his

notice of appeal. The appellant did not answer the motion aforementioned, nor was he present on the day of the hearing thereon.

Although the question was not raised nor frankly discussed as to whether, against the orders or final rulings dictated in special probate or proceedings for the settlement of intestate estates, a motion may be made to annul orders or judgments rendered therein and to grant a new trial, in conformity with the provisions of section 145 of the Code of Civil Procedure, yet, as the petitioner interested in the probate of said will has requested in the present special proceedings that the case be reopened and a new trial held, it devolves upon us to decide whether this motion is proper and whether, until such time as it is decided by the judge, it does or does not in fact interrupt the running of the period prescribed in said section 781 within which the appeal must be made.

There is no provision of law that prohibits said motion, nor does any section of the Code of Civil Procedure forbid its presentation by any of the interested parties. Section 145, in providing for such a remedy, does not stipulate that it shall be availed of in ordinary actions only and not in special proceedings. Consequently the judge, within the period fixed by law, may amend his rulings or decisions in the manner authorized by said section 145 in the same way as in ordinary actions, for the purpose of correcting any error or mistake affecting the interests and rights of the parties.

It only remains to determine whether the filing of a motion to quash a judgment or decision of the court and to grant a new trial does or does not in fact interrupt the running of the twenty days allowed by said section 781 of the Code of Civil Procedure for the filing of an appeal.

It has been uniformly held that in ordinary actions a petition to set aside a judgment or decision and to grant a new trial, interrupts the running of the period allowed for the appeal, and this same rule has been applied to proceedings for the registration of real properties in the property registry wherein Act No. 2347, amending Acts Nos. 496 and 1484, has fixed the period of thirty days for the filing of an appeal: the running of this period is in fact interrupted by a motion to set aside a judgment or decision rendered and to grant a new trial. Consequently, if in special proceedings such a motion may be made, it is only logical to hold that a petition to set aside a judgment and to grant a new trial interrupts in fact the running of the period fixed by law for an appeal in special proceedings.

This is perhaps the first time that this question has been raised, as there is no law

prohibiting an affirmative resolution of the two points therein comprised, nor any decisions of the United States courts that conflict with what we have hereinbefore stated, this court must expressly hold that in special proceedings a motion may be filed to set aside a judgment and grant a new trial, and that once such a motion has been filed the running of the period specified by law for the filing of an appeal is interrupted until the court passes on that motion.

From the record it appears that appellant took no exception to the order denying his motion for a new trial. This failure to except would, in ordinary actions, prevent the appellate court from reviewing the evidence, but it produces no such result in the special proceedings brought before this court on appeal, not by bill of exceptions, and it is well known that an appeal in special proceedings enables us to review the evidence. Although this point was not discussed by the parties herein, nevertheless the opinion of the court is incidentally set forth in this resolution as a complement of the decision of the issues raised by appellant's motion.

For the foregoing reasons it is held that the appeal filed by Victor Biunas was not improperly allowed and the proceedings in this second instance will go forward to a decision of the pending appeal. So ordered.

Moreland, Trent, and *Araullo, JJ.,* concur.
Arellano, C. J., concurs with J. Johnson.
Johnson, J., see concurring opinion.

CONCURRING OPINION

JOHNSON, J.:

I concur with the dispositive part of the preceding decision holding that the appeal raised by Victor Biunas was not improperly allowed.

My reason is the decision of this court in the case of Moreno *vs.* Gruet (1 Phil. Rep., 217), which held that "appellant has given notice of appeal within the meaning of section 781 of

the Code of Civil Procedure." In my opinion, the fact that within the twenty days he filed a petition for a new trial, instead of a notice of appeal as prescribed by section 781, cannot prejudice him.

But I cannot agree to the establishment of the principle that, in special proceedings, petition may be made to avoid a judgment therein rendered and to grant a new trial.

Neither can I agree to the proposition that, after a motion for a new trial has been denied and no exception to the ruling has been filed, this court may, notwithstanding such defect, review the evidence.

Act No. 190 is divided into two parts, not for art's sake but in pursuance of a system, for specific purposes. The first part deals with civil actions and the second with special proceedings. The decision above-cited very correctly says:

> "The Code of Civil Procedure now in force points out two methods, *radically* different, for bringing cases to this court. One is by bill of exceptions and the other is by appeal. The first refers to ordinary actions, the second to special proceedings."

In special proceedings there is no other method of bringing a case before us but by way of appeal, excepting the case given in section 777 where bills of exceptions are expressly prescribed. With this exception, the appeal, as in the case at bar, is prosecuted by the filing of a petition and bond by the appellant and the clerk of the court below must forthwith transmit to the Supreme Court a certified copy of the will, and also, in case any question of the handwriting is involved in the controversy, the original will itself, and a certified copy of all the evidence and of the judgment of the court thereon.

But, is not section 145 applicable in special proceedings?

Section 145, which is included in the first part of Act No. 190, deals with new trials and prescribes as follows:

> "At any time during the term at which an *action* has been tried in a Court of First Instance, the judge thereof may set aside the judgment and grant a new trial, upon such terms as may be just, on the application of the party aggrieved, and

after due notice to the adverse party and hearing, for any of the following causes, materially affecting the substantial rights of such party:

> "1. Accident or surprise which ordinary prudence could not have guarded against, and by reason of which the party applying has probably been impaired in his rights;
>
> "2. Newly discovered evidence, material to the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial;
>
> "3. Because the judge has become satisfied that excessive damages have been awarded, or that the evidence was insufficient to justify the decision, or that it is against the law."

The question, therefore, hinges on the third cause of section 145: (1) May this third cause be invoked in special proceedings? May the party interested in the probate of a will ask for a new trial simply because he considers the evidence insufficient to justify the judgment, and the latter to be contrary to law?

(2) And when once denied, may he omit to file an exception? Beginning with this second point, it is a rule of the application of laws that they must be applied in their entirety; we may not take from them that which is favorable and leave what does not please us. If it is desired to apply section 145, and that section is applicable, we must observe all the provisions contained in section 146 for the application of section 145, to wit, that upon the allowance or denial of the motion for a new trial, when founded on the first or the second cause, the ruling cannot be the subject of exception; but when founded on the third cause, that is, on the insufficiency of the evidence to justify the decision, it can be, and this exception may be reviewed by the Supreme Court as in other cases. (Sec. 146, Code of Civ. Pro. and Act No. 1596.) If the interested party in the present case has not excepted to the ruling denying his motion for a new trial, the provisions of section 497 must be applied.

> "Following the rule laid down by this court in numerous decisions, when no exception is taken to the ruling of the court below denying a motion for a new trial upon the ground of the insufficiency of the evidence, the evidence cannot be

> reviewed upon appeal." (Sandeliz *vs.* Reyes, 12 Phil. Rep., 506.)
>
> "The appellant not having taken exception to the denial of his motion for a new trial, this court ought not to review the evidence adduced in first instance * * * and must accept the findings of fact established by the trial court and only examine the direct application of the findings of law, on which the judgment rests, to the facts that were proved." (Arroyo *vs.* Yulo and Locsin, 18 Phil. Rep., 236.)

The matter of the possibility of the new trial, in ordinary *actions*, is condensed in the following terms: (1) The application for a new trial may be made, and the Court of First Instance may set aside his judgment, in case of accident or surprise; (2) it may also be made, with the same effect, in case of the discovery of new evidence, under the conditions required by law; (3) in either case, the ruling of the court cannot be excepted to, be it whatever it may; (4) a motion for a new trial is allowable in case of (*a*) excessive damages; (*b*) insufficiency of proof; and, (*c*) of the judgment being contrary to law; but an exception is not permissible in the cases of (*a*) and (*c*), and, according to Act No. 1596, it is only allowed in case (*b*), where the exception would result in the evidence being reviewed by this Supreme Court, as in other cases, according to section 497, case 2.

> "An order of court granting a new trial on the ground of newly discovered evidence is not subject to exception." (Garcia *vs.* Balanao, 8 Phil. Rep., 465.)
>
> "A motion for a new trial on the ground of newly discovered evidence gives no authority to this court to review the evidence upon which the judgment was based." (Magallanes *vs.* Caneta, 7 Phil. Rep., 161.)
>
> "An order of court denying a motion for a new trial on the ground of accident or surprise is not subject to exception." (Artadi & Co. *vs.* Chu Baco, 8 Phil. Rep., 677.)

If recourse to this court had been made in the form of an appeal, the proper bond having been furnished, notwithstanding the fact that a new trial was improperly applied for within twenty days, but that such motion was not decided until after twenty-eight days, I would agree that the proceedings should go forward and that the appeal should be heard and the evidence reviewed in conformity with the provisions of section 498. As already stated, I

consider the application for a new trial on the grounds above expressed, that is, insufficiency of the evidence, as if the appellant had said "I appeal," which is the only remedy that was available to him and the trial court should have denied such application for a new trial as not being permissible by law, but, in equity, should have admitted it as an appeal filed within the period specified by law. This was exactly what this court did in the case of De la Cruz *vs.* Garcia (4 Phil. Rep., 680):

> "A motion for a new trial on the ground of the insufficiency of the evidence presented within a reasonable time after notice of the judgment, amounts to an *exception* thereto and suspends until it is decided the time to give notice of the intention to present a bill of exceptions."

This court, by section 497, subsection 1, has the power to allow or to refuse to allow the presentation of newly discovered evidence and to grant or to refuse to allow a new trial, just as the Court of First Instance may do by virtue of section 145, case 2; but in the case of Chung Kiat *vs.* Lim Kio (8 Phil. Rep., 297) we decided that "the right to present a motion in this court for a new trial on the ground of newly discovered evidence is limited to cases pending herein on bills of exceptions, and does not apply to appeals in special proceedings," and that "section 143 of the Code of Civil Procedure providing that, after final judgment, either party shall have the right to perfect a bill of exceptions for a review by the Supreme Court (not otherwise than by first moving for a new trial and by excepting to the order denying the motion) of all rulings, orders and judgments made in the *action* to which the party has duly excepted, has no application to appeals in special proceedings."

So radical is the difference between a bill of exceptions in *actions* and an appeal in special *proceedings* that it has been especially provided for in sections 497 and 498. In actions, as a general rule, the appellate court with the exception of two cases decides only the questions of law raised by the bill of exceptions. In special proceedings the general rule, without exception, is that the appellate court determines the questions of fact arising out of the evidence certified by the trial court and decides those of law that arise on the appeal. The respective headings of these sections, in the original English text, are: *"Hearings confined to matters of law, with certain exceptions"* (sec. 497), and *"Procedure on appeal from special proceedings"* (sec. 498). It is true that section 497 speaks vaguely of hearing upon bills of exceptions in civil actions and special proceedings, but there is one kind (sec. 777) of special proceeding which is heard on bill of exceptions, as above stated. The provisions of

the two sections aforecited (Nos. 497 and 498) were the subject of a brief decision in which the difference between appeals in criminal cases, appeals in special proceedings, and appeals in civil actions is set out with great accuracy and in accordance with law. Thunga Chui *vs.* Que Bentec, 1 Phil. Rep., 356.)

In view of these three decisions, which constitute settled jurisprudence, I cannot bring myself to agree with the new decision that the procedure prescribed in section 145 for actions is applicable to special proceedings.

If a mistake was made by appellant's attorney in first instance, by moving for a new trial on the ground of the insufficiency of the evidence, instead of appealing from the judgment, and he presented his mistaken petition within the twenty days fixed by law for the appeal, I am of the opinion that in equity such petition is equivalent to an appeal and should be understood as such, and that the motion should be denied.

Date created: May 29, 2014