44 Phil. 519

[G.R. No. 19539. February 20, 1923]

FRANCISCO SORIANO, PLAINTIFF AND APPELLANT, VS. JUAN RAMIREZ, DEFENDANT AND APPELLEE.

D E C I S I O N

VILLAMOR, J.:

For the proper understanding of this case, it should be borne in mind that the Court of First Instance of Surigao, on June 30, 1922, rendered a decision in an action for the recovery of a certain sum of money, absolving the defendant from the complaint. The appellant was duly notified of said judgment on July 12th, and thereupon filed a motion for new trial dated in Manila on the 12th, and received in Surigao on the 22d, of the said month of July. Said motion for new trial reads as follows:

> "The undersigned plaintiff being dissatisfied with the decision of the court rendered in this case, of which he was notified in Manila on June 12, 1922, hereby moves for a new trial on the following ground:
>
> "That the evidence does not justify the decision of the court, and the said decision is contrary to the facts and the law.
>
> "Manila, for Surigao, July 14, 1922.
>
> (Sgd.) "FRANCISCO SORIANO
> "*Plaintiff*
>
> "Copy of this motion was on the same day sent by me by mail to Mr. Montano Ortiz, attorney for defendant.
>
> (Sgd.) "FRANCISCO SORIANO

"*Plaintiff*."

This motion having been denied by the court on July 26th, the appellant took due and timely exception to such ruling, and announced his intention to perfect a bill of exceptions, which he did on July 31st, the bill of exceptions presented by him having been approved by the court on the 19th of following August.

On September 2, 1922, the docket fee was paid, and the necessary amount of money for the printing of the bill of exceptions deposited with the clerk's office. The bill of exceptions was printed on September 9th, and appellant and appellee received the required number of copies thereof on October 2d and 11th, respectively.

The defendant-appellee received the required number of copies of appellant's brief on October 25th, and, on November 14th, filed a motion for an extension of 15 days within which to file his brief. Said extension was to expire on December 9th of the same year. On December 11th a motion dated December 3d was filed in this court asking for the dismissal of the appeal. The court, by a resolution dated December 22, granted the motion *ex parte*, dismissing the appeal interposed by the plaintiff. On January 2, 1923, the plaintiff filed a motion for the reconsideration of the preceding resolution, and this is the motion now before us.

It should be noted that no question was raised by the appellee in the Court of First Instance as to the alleged irregularity in the filing of the motion for new trial; nor was any objection made by him to the approval of the bill of exceptions; nor was the motion for the dismissal of the appeal filed in this court until after he had received the copies of the bill of exceptions and of appellant's brief, and after the expiration of the extension applied for by him for the filing of his brief.

Under these circumstances, after hearing the arguments made by both parties, the doctrine laid down by this court, among other cases, in that of Vergara *vs*. Laciapag (28 Phil., 439, 442), may be applied, wherein, the court said:

> "We have frequently decided that no objection to the procedure in the lower court will be considered here unless an objection or exception was made or taken in the lower court. The only exception to this rule is one where the jurisdiction of the lower court is involved. The defendant-appellant not having laid a foundation for his first assignment of error it cannot be considered here. (Andrews *vs*. Morente, 9 Phil., 634; Guerrero *vs*. Singson, 19 Phil., 122.)"

It cannot be argued that as, in the motion for new trial now in question, the date and place of its hearing were not stated, the trial court had no jurisdiction to entertain said motion, for the case was under its control and it could pass upon it, as is expressly provided in section 146 of the Code of Civil Procedure.

Under article 9 of the Rules of the Courts of First Instance, when no other provision is made by law, no action shall be taken on any motions or applications unless it appears that the adverse party had notice thereof three days before the time set for the hearing thereof.

Article 10 provides the manner in which notices of motions should be given, and says:

> "All notices of motions shall be in writing, and shall state generally the nature and grounds of the motion and when and where it will be heard. They shall
> be accompanied with copies of the affidavits and other papers on which the motion is based. No demurrer or motion shall be accepted for filing without proof of notice thereof having been given the adverse party, at least three days in advance, that same will be submitted on the next motion day or on a date specifically designated by the court."

Could the lower court validly pass upon said motion, as it did, notwithstanding that the notice given the appellee by the appellant did not state the date and place of hearing? An answer in the negative would be inevitable if the general provisions alone of these two articles of the Rules

are considered, but article 9 contains an exception which is a recognition of the principle that the provisions of the statute must prevail over those of the Rules. Under said article 9, no action shall be taken upon any motion if the formalities required by the Rules have not been complied with, unless the law provides otherwise.

And section 146 of the Code of Civil Procedure expressly provides:

> "The application shall be made by motion in writing, stating the ground therefor, of which the adverse party shall have such reasonable notice as the judge may direct. When the application is made for a cause mentioned in the first or second subdivisions of the last section (referring to accident, surprise which could not have been guarded against, or newly discovered evidence) it must be made upon affidavits, and counter affidavits from the adverse party may likewise be received.
>
> "The overruling or granting of a motion for a new trial shall not be a ground of exception, but shall be deemed to have been an act of discretion on the part of the judge, within the meaning of the second sentence of section one hundred and forty-one. If, however, the motion for a new trial was made on the ground that the evidence was insufficient to justify the decision, an exception may be taken to the order overruling such motion, and such exception may be reviewed by
> the Supreme Court as in other cases."

A comparison of the language of section 146 of the Code of Civil Procedure with the phraseology of articles 9 and 10 of the Rules in regard to serving notice of motion on the adverse party, will show that while the Rules make it the duty of the party filing the motion to give the adverse party a three days' previous notice, stating the date and place of the hearing of the motion, the Code of Civil Procedure leaves it to the discretion of the judge to order the notification to the adverse party of a motion like that under discussion.

What the Code requires of the movant is that the motion for new trial be made in writing, stating the grounds therefor. And if the motion is on the ground of accident, or surprise which could not have been guarded against, or newly

discovered evidence, it must be proved by affidavits.

The appellant made his motion in writing and on the ground that the evidence did not justify the judgment, and gave notice thereof to the adverse party, although without stating the date and place of hearing. The appellant has complied with the requirement of the law. It became a matter of discretion on the part of the judge to order the giving of notice of the hearing of the motion to the adverse party, if he deemed it fit. But the judge denied the motion, and considered it unnecessary to give any notice. Such an action of the trial court is, in our opinion, in accordance with the provision of article 146 above quoted. Indeed, if the motion was to be denied, we do not see the necessity of giving any notice of the hearing of the same, there being no right of the appellee to be prejudiced by the denial of said motion. If the trial court were disposed to grant the motion for new trial, then it would have been necessary to notify the adverse party and to hear whatever objection he might have to the granting of new trial.

In reaching this conclusion, we are not unmindful of the decision rendered by this court in the case of Manakil and Tison *vs*. Revilla and Tuaño (42 Phil., 81), dismissing the complaint in an application for *mandamus* to compel the Court of First Instance of Pampanga to pass upon a motion for new trial similar to the one now in question.

In that case a motion for new trial was filed five days after the notice of the judgment; that is, on the 12th of April, 1921. The movants gave notice to the adverse party, but without designating the date and place of the hearing of said motion, which was submitted to the trial court without argument. No action was taken by the trial court on this motion, nor did the movants urge that court to act within the legal period. Forty days after the notice of the judgment, that is, on the 23d of May, 1921, the movants asked that that motion be taken up for decision, and that to that end a date and place of hearing be designated; whereupon the court below denied the motion on the ground that it had been filed outside of the legal period of thirty days and after the judgment had become final.

This is what gave rise to the petition for *mandamus*, in which the respondent demurred to the complaint on the ground that the application was

improper and that the facts therein alleged did not constitute a cause of action. The question at issue in that case was whether or not *mandamus* lay to compel the judge to admit a motion for new trial based on the insufficiency of evidence, filed thirty days after notice of judgment; and this was the question decided by this court in the negative when it sustained the demurrer to the complaint.

The fact of the motion lacking the formalities required by the Rules, as it was filed on the 12th of April, 1921, was not necessarily involved in the case of *mandamus*, since the petitioners had consented to the court passing upon the motion as of the 23d of May, whereby his contention was reduced to the proposition that *mandamus* should issue to compel the lower court to admit the motion for new trial on the ground of insufficiency of evidence even though it was filed after the lapse of the legal period.

In the case of the Roman Catholic Bishop of Lipa *vs*. Municipality of Unisan, p. 866, *post*, the appellant assigned as one of the errors committed by the trial court, its failure to consider and pass upon the motion, for new trial filed by the said appellant. In that case the trial court rendered judgment on April 19, 1917, dismissing the plaintiff's complaint. On the 21st of the same month the plaintiff filed a motion in writing, taking exception to the judgment and asking, at the same time, for the reopening of the case and the holding of a new trial on the ground that the evidence did not justify the decision and that the judgment was contrary to law. On the same day, April 21, 1917, he sent a copy of his motion to the defendant, but without having seated therein the date and place of its hearing. The trial court took no action on said motion. And on March 2, 1918, that is, more than ten months thereafter, the attorneys for the plaintiff notified the defendant in writing that on the 9th instant they would move the court to hear and determine the motion for new trial of April 21, 1917. Hearing having been held on the date fixed for the purpose, the trial court, by an order dated the 14th day of the said month of March, denied the petition to consider and decide the motion for new trial filed April 21, 1917.

Under these circumstances it is evident that the plaintiff having failed to urge the hearing of his motion within the legal period, he could not lawfully ask that same be taken up for decision ten months after the notice of judgment.

And this is the reason why the assignment of error made by the appellant was held by this court not to be well founded.

We believe that the doctrines laid down in the aforesaid two cases on the specific questions submitted to the court for decision do not apply to the instant case, in which a motion for new trial was filed within the legal period, notice of the same having been given to the adverse party, though without designating the date and place of hearing, the court having passed upon the motion by denying it.

In view of the foregoing, we find that in the instant case the trial court had jurisdiction to pass upon the motion of the appellant under section 146 of the Code of Civil Procedure; wherefore the resolution of December 29, 1922, should be set aside, the cause reinstated and the appellee granted the first extension of fifteen days applied for within which to file his brief, the said period to be computed from the date of notice of this decision. So ordered.

Araullo, C.J., Street, Malcolm, Ostrand, Johns, and *Romualdez, JJ.,* concur.
Avanceña, J., concurs in the result.

Date created: September 27, 2018