45 Phil. 504

[G.R. No. 21188. December 10, 1923]

CANDIDA GRANADOS AND MARIA GRANADOS, PLAINTIFFS AND APPELLEES, VS. LORENZO BANDELARIA ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

MALCOLM, J.:

Candida Granados and Maria Granados, the plaintiffs and appellees in this case, brought action in the Court of First Instance of Batangas to recover the possession of a tract of land, situated in the barrio of Sabang, municipality of Tuy, Province of Batangas. After Andres Granados, one of the defendants, had acknowledged that a portion of the land claimed by the plaintiffs belonged to them; after Icasiano Tolentino, another defendant, had indicated that the land occupied by him was with the consent of Geronimo Villanueva, and after the latter had been brought into the case, following trial, judgment was rendered in favor of the plaintiffs and against the defendants, Lorenzo Bandelaria and Ana Filler, Icasiano Tolentino, and Geronimo Villanueva. It is from this judgment that Lorenzo. Bandelaria and his wife Ana Filler have appealed.

Before proceeding to a consideration of the errors assigned by the appellants, a preliminary question raised by the appellees must be decided. This point, made not only in the instant case but in others which have come to our notice recently, is based on the proposition that the appellants not having assigned as error the order of the lower court, denying the motion for a new trial, this court has no right to review the facts.

The basis of the appellees' argument is the decision of this court in the case of Escudero and

Marasigan *vs.*
Director of Lands ([1922], 44 Phil., 83). This was an action to obtain the registration under the Torrens system of a certain parcel of land. On appeal, the court first examined the evidence adduced during the trial of the cause, as clearly appears from the decision, and came to the conclusion that the petitioners had established their title. Then, near the close of the decision is found the following: "Our attention is called to the fact that the appellant did not assign as error the order of the lower court denying the motion for a new trial presented by him. His failure to do so, of course deprived this court of the right to examine the evidence adduced during the trial of the cause. In such a case we are bound by the facts found by the lower court. (Subparagraph 2, section 497, Act No. 190; Benedicto *vs.* De la Rama [3 Phil., 34]; 201 U. S., 303; 11 Phil., 746.)"

With reference to the applicability of the above doctrine, it is self-evident that notwithstanding what was said in the decision, and notwithstanding the failure of the appellant to assign as error the order of the trial judge denying the motion for a new trial, this court did review the facts of record.

It is well to recall that in
a long line of decisions referring to civil procedure and appellate practice, there have been settled the following propositions;

(1) In order that the evidence adduced in the lower court may be reviewed by the Supreme Court, it is necessary (a) that the excepting party file a motion in the Court of First Instance for a new trial upon the ground that the evidence was insufficient to justify the decision; (b) that the said motion be overruled by the trial judge; and (c) that due exception be taken to the overruling of the motion (Code of Civil Procedure, sec. 497, as amended by Act No. 1596; De la Rama *vs.* De la Rama [1906], 201 U. S., 303; 11 Phil., 746; Recto, *Codigo de Procedimiento Civil, Anotado y Comentado, Tomo II*, pp. 155-165, where the Philippine cases are collated);

(2)
The duty is on the appellant to see that all the evidence is brought up

to this court on appeal, and unless this is done the Supreme Court must accept the facts as found by the court below and can deal only with the questions of law (Ferrer *vs.* Neri Abejuela [1907], 9 Phil., 324; Act No. 2383 as construed in De Guzman and Mercado *vs.* Fernandez [1920], 41 Phil., 7; Lazarte *vs.* Nolan [1921], 42 Phil., 563);

(3)
No error not affecting the jurisdiction over the subject-matter will be considered unless stated in the assignment of errors and relied upon in the brief. (Rules of the Supreme Court of the Philippine Islands, pars. 19, 20; Enriquez *vs.* Enriquez [1907], 8 Phil., 565; Capellania de Tambobong *vs.* Antonio [1907], 8 Phil., 683; Paterno *vs.* City of Manila [1910], 17 Phil., 26; Santiago *vs.* Felix [1913], 24 Phil., 378.)

But to these three propositions should not be added a fourth, stating in unequivocal terms that the failure of the appellant to assign as error the order of the lower court denying the motion for a new trial presented by him, deprives this court of the right to examine the evidence adduced during the trial of the cause. Indeed, an assignment of error that the court erred in refusing a motion for a new trial, might be held, as in other jurisdictions, too general to be available (Selover *vs.* Bryant, 21 L. R. A., 418). Rather is the fourth proposition to be understood as meaning that if the appellant makes an assignment of errors raising issues of fact, this is a sufficient compliance with the law and the rules, even though no specific assignment is made relative to the denial of the motion for a new trial in the lower court. The nearly uniform practice of the bar has been not to assign as error the denial of a new trial; and should we hold that without such assignment this court is without jurisdiction to review the facts, it would result in a miscarriage of justice in innumerable cases, to the prejudice of litigants.

An examination of the record before us discloses a motion for a new trial and due exception to the denial thereof, together with five assignments of errors made in this court, four of which raise questions of fact. We therefore proceed to decide the case on its merits.

Plaintiffs claim a parcel
of land of about eight cavanes (hectares) in extent. Their case goes back to the document, Exhibit B, of May 4, 1892, reinforced by possession of the land which they contend was usurped by the defendants in 1915. Plaintiffs state that Lorenzo Bandelaria and his wife are in the illegal possession of three hectares of land located in the southeastern portion of the tract, that Geronimo Villanueva illegally occupies two hectares to the west of Bandelaria, and that Andres Granados was in illegal possession of three hectares to the northeast. As the latter person confessed judgment in favor of the plaintiffs, the strip of land in controversy is about five hectares in extent. Also since judgment has been rendered against Villanueva and he has not appealed, the issue narrows down finally to the consideration of the three hectares claimed alike by the plaintiffs and by Mr. and Mrs. Bandelaria.

Above was indicated the contention of the
plaintiffs. Their possession was proved principally by the testimony of the witness, Pio Sanchez. On the other hand, the Bandelarias have documentary evidence to support their claim, have witnesses to establish their occupancy, and have paid the land taxes on the property.

The question of fact is not easy to resolve, but after a number of the members of the court have examined the record minutely, they have all come to the conclusion that the plaintiffs have not established by a preponderance of evidence dominion over the three hectares of land occupied by Mr. and Mrs. Bandelaria. Even if the plaintiffs may at sometime have had some shadowy right to the three hectares in question, they have lost it by failure to assert their rights in time in an affirmative manner.

Judgment is affirmed in so far as it
gives to the plaintiffs the land returned to them by Andres Granados and the land originally claimed in these proceedings by Geronimo Villanueva, and is reversed in so far as it gives to the plaintiffs the land claimed by the spouses Lorenzo Bandelaria and Ana Filler, who shall remain in undisturbed possession of the three hectares of land

situated in the southeast portion of the tract described in the complaint. Without special findings as to the costs in either instance, it is so ordered.

Johnson, Street, Avanceña, Villamor, Ostrand, Johns, and *Romualdez, JJ.*, concur.

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