

LEON VELEZ, PETITIONER, VS. VICENTE VARELA, ETC. AND VICENTE M. FLORIDO, RESPONDENTS.

G. R. No, L-5601. May 29, 1953

Ponente: REYES, J.

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REYES, J.:

This is a petition for certiorari to annul an order of Honorable Vicente Varela as Judge of the Court of First Instance of Cebu allowing an amendment to a motion of protest in an election contest.

The record shows that on November 28, 1951, Vicente M. Florido, one of the respondents in this case, filed a motion of protest in said court contesting the election of the herein petitioner Leon Velez as vice-mayor of Carcar, Cebu, and alleging as his first cause of action that in 13 specified precincts of said municipality irregularities were committed in that legal votes cast in favor of protestant were rejected whereas illegal votes (marked ballots) cast in the name of the protestee were counted in favor of the latter. In due time the protestee filed his answer, denying the alleged irregularities whereupon a committee on the revision of ballots was appointed by the court and directed to begin revision on February 11, 1952. With the work of the revisors nearing completion and the trial of the case already set, the protestant, on February 26, 1952, filed a motion for leave to drop two specified precincts from his protest and include a new one in their stead. Though the motion stated no reason, the court granted it over protestee's objection in its order of March 4, 1952, and reconsideration of this order having been denied, the protestee now seeks to annul it thru this petition for certiorari.

The respondent protestant sets up the defense that the petition states no cause of action since it does not allege that the respondent judge has acted without or in excess of his jurisdiction or with grave abuse of discretion and that there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law.

Though generally found in petitions of this kind, the missing allegations are in reality mere conclusions of law which may be deduced from the averred facts even when not specifically pleaded. The petition is, therefore, sufficient if it gives enough facts from which those conclusions can be drawn. And such, we think, is the case here.

It is the policy of the law to have an election contest speedily determined for the obvious reason that the term of the contested office grows shorter with the passing of each day. To insure this objective the law has limited the period for the filing of the motion of protest and has also limited the time for deciding it. It is easy to see that the purpose of the law would be defeated if the protestant could at any time be allowed to amend his motion of protest with the introduction of new matter or new precincts. Such amendment, if not made within the time allowed for the filing of the protest, would naturally prolong the proceeding since it would call for a new answer from the protestee. As was said in the case of *Fernando vs. Endencia et al.* (66 Phil., 148), where a similar question was decided, "the prompt determination of election contests is a matter of public interest, and the purpose of the election law is to insure such a result. To allow a motion of protest to be amended so as to introduce new matter after the time prescribed for the filing of the original pleading, would prolong the litigation and thus defeat the

very purpose of the law."

It being against the policy of the law to allow the amendment here in question beyond the period fixed for filing an electoral protest, the lower court exceeded its jurisdiction in permitting said amendment in its order of March 4, 1952 and as the order is not appealable, the petition for certiorari is granted and the order annulled, with costs against the respondent Vicente M. Florido.

Paras, C. J., Feria, Pablo, Bengzon, Tuason, Montemayor, Jugo, Bautista Angelo and Labrador, JJ., concur.

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