

GREGORIO SAN JOSE, PETITIONER, VS. JOSE R. DE VENECIA, JUDGE OF FIRST INSTANCE OF CAMARINES SUR, AND FRANCISCO ROMERO, RESPONDENTS.

G.R. No. L-1154. November 28, 1947

Ponente: MORAN, C.J.

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MORAN, C.J.:

This is a petition for certiorari to annul an order, dated September 26, 1946, of the Court of First Instance of Naga, Camarines Sur, which declared as duly reconstituted its decision rendered on December 6, 1944, in civil case No. 317 of its docket.

It appears that in a suit for ejectment brought to it on appeal from the justice of the peace court of Naga in which respondent Francisco Romero, was plaintiff and petitioner Gregorio San Jose, the defendant, the Court of First Instance of Camarines Sur, after trial, rendered its decision on December 6, 1944, finding for the plaintiff. Further proceedings were interrupted and the record of the case was destroyed in the war of liberation of the Philippines by the American forces.

On October 31, 1945, respondent Romero filed with the same Court of First Instance a petition for reconstitution of said record. At the hearing, respondent Romero submitted the same copy of the decision that had been served upon him by the court in December of 1944. Petitioner San Jose objected on the ground that no copy of such decision had ever been served upon him, but the objection was overruled. And no other papers have been submitted by the parties to reconstitute other proceedings in the case. Hence, the decision was declared duly reconstituted with the copy submitted. Motion for reconsideration was filed upon the ground, among others, that petitioner had never been served with notice of the decision and that the decision alone was not sufficient to reconstitute the record for it could not be reviewed by the appellate court without the transcript of the evidence. The motion was denied; hence this petition for certiorari.

Section 7, of Act No. 3110, reads as follows:

"SEC. 7. If a civil case has already been decided, the decision shall be reconstituted by means of an authentic copy. In case an authentic copy cannot be found, the Court shall make a new decision, as if the case had never been decided."

The authenticity of the copy submitted by respondent Romero is not disputed. The alleged lack of notice upon petitioner is an argument not against the reconstitution but against the effectiveness of the decision. The reconstitution cannot operate to divest the parties of their remedies against lack of process. Upon the other hand, it is not essential for the reconstitution of a case, that the reconstituted record be so complete as to restore all the proceedings had. The record should be reconstituted to such extent as is possible under the circumstances, and where the proceedings thus reconstituted are sufficient to furnish a fair information as to what the issues are in the case, they may be accepted as a basis for further proceedings, the starting point being the last proceeding, in chronological order, that has been duly reconstituted. However, if it appears in the further proceedings that the

case cannot be prosecuted further due to the impossibility of reconstituting a part of the record which requires a repetition of all the proceedings, then a new action may be brought or, at least a new trial may be ordered if the pleadings are available.

Here, the last and only proceeding reconstituted is the rendition of the judgment. The next step would have been notice thereof upon the parties, but notice upon petitioner has not been reconstituted. Such notice therefore, should be served anew, and, from the date of the new service the period of appeal should be computed. If no appeal is taken within such period, the judgment shall become final and executory. But if appeal is taken, appellant would have to signify either in his notice of appeal or in his record on appeal whether he is appealing only upon questions of law or also upon questions of fact. (Rule 41, section 6, and Rule 42, section 3.) In the first instance, no transcript of the evidence need be elevated (Rule 42, section 3), and if pleadings become necessary and they may not be reconstituted, new action must be filed. In the second instance, inquiry should be made as to whether the transcript of the evidence is available or may be reconstituted, and only in a negative case may a new trial be ordered, or a new action filed if even the pleadings cannot be reconstituted.

It thus appears that in the instant case the reconstituted decision has not yet become final for new notice thereof should be served upon petitioner, who may still appeal. If appeal is taken and the transcript of the evidence becomes necessary and cannot be reconstituted, then plaintiff shall be advised to file a new action since the pleadings in this case have not been reconstituted.

Petition is denied, without costs.

Feria, Pablo, Perfecto, Hilado, Bengzon, and Tuason, JJ., concur.

PARAS, J.:

I concur. I am of the opinion, however, that the petition has been granted in part, in that the decision of the lower court on the merits is not as yet final.

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