

**VALERIANO NICOLAS AND SOCORRO SAN JOSE, PETITIONERS, VS.
THE HON. MODESTO CASTILLO, JUDGE OF THE COURT OF
INDUSTRIAL RELATIONS AND REYNALDO NAEL, RESPONDENTS.**

G.R. No. L-8129. July 25, 1955

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This is a petition for certiorari to annul the decision of the respondent Court of Industrial Relations in Case No. 2339-R thereof, on the ground that said decision is based only on a portion and not on the entirety of the evidence on record, and to enjoin its execution.

It appears that petitioners Valeriano Nicolas and Socorro San Jose entered into a tenancy contract with respondent Reynaldo Nael (Exhs. 1 and 1-A) wherein it was agreed that the latter would cultivate a riceland of 8 hectares belonging to the former during the agricultural year 1950-51 at a sharing basis of 75 per cent for the tenant and 25 per cent for the landlords; that in March, 1951, respondent Nael filed in the Justice of the Peace Court of Sipocot, Camarines Sur, a complaint against petitioners for the recovery of his share of the 70 cavanos of palay harvested from the land in question in 1950; and that in answer, petitioners claimed that due to the negligence of Nael, the harvest was only 76 cans (19 cavanos), and counterclaimed for damages. The case being a tenancy case, the Justice of the Peace certified the same to the Court of Industrial Relations. Attorney Benedicto Bonifacio was commissioned by the latter Court to receive the evidence for the parties; but at the hearing set, respondent Nael did not appear and so petitioners were allowed to present their evidence on their counterclaim. To give Nael another chance to have his day in court, the Court below again set the case for hearing and designated the Justice of the Peace of Sipocot to receive the evidence, providing, however, that the evidence formerly adduced by petitioners before Commissioner Benedicto remain in the record (Annex B, B-1, Petition). The case was repeatedly postponed and was finally tried before Judge Vicente Tuason of Naga City.

On May 31, 1954, the Court of Industrial Relations rendered judgment in the case, finding that the harvest from the land in question was 76 cavanos, and ordering petitioners to deliver respondent Nael's share thereof. Not satisfied with this judgment, petitioners filed a petition for review in this Court (G.R. No. L-7939), which petition was dismissed for raising factual question. So, on August 30, 1954, this petition for certiorari under Rule 67 was filed by petitioners.

Petitioners charge that the respondent Court either was unaware of, or, with grave abuse of discretion, failed to consider the evidence presented by them before Commissioner Benedicto Bonifacio; that in rendering its decision of May 31, 1954, the Court below considered only the evidence adduced during the hearing before Judge Vicente Tuason; and that therefore, such decision, having based only on a portion of the evidence, is invalid and of no force and effect.

Three grounds are relied upon in support of the above claims: (1) That the decision in question, in reciting the history of the case, omits the fact of the hearing before Commissioner Bonifacio; (2) that the lower Court found

the evidence of respondent Nael to be "uncontroverted", when the evidence presented by petitioners during the hearing before Commissioner Bonifacio controverts Nael's evidence; and (3) that the physical condition of the records reveals that at the time the decision in question was rendered, the proceedings before Commissioner Bonifacio had not yet been transcribed.

None of the grounds given appears to us sufficient to overcome the presumption that official duty had been performed, and that the Court below considered the entirety of the evidence in deciding the case at bar. The mere failure to mention in the decision's narration of facts the proceedings taken before Commissioner Bonifacio is no proof that the respondent Court was unaware of such proceedings, since the Presiding Judge who penned the decision was the very judge who commissioned Atty. Bonifacio to hear the evidence for the parties (Annex A, Petition), and the transcript of the hearing before Judge Tuason abounds with reference to the proceedings before Commissioner Bonifacio, so that the same could not have been ignored, unless maliciously or recklessly, but no evidence exists of such abnormal attitude. With respect to the word "uncontroverted", used by the lower Court in describing respondent Nael's evidence, the same must have been used, not in the sense of "uncontradicted", but in the sense of "not sufficiently overcome", for the reason that even at the hearing before Judge Tuason alone (which is claimed to be the sole basis of the decision), evidence exists to counter Nael's evidence, namely, the testimony of witness Socorro San Jose and the document Exh. 2, which, obviously, did not convince the Court below, for it refused to give said exhibit any credit. Finally, the color or physical condition of the paper used in typing the transcript of the first hearing, and the change in the numbering of the first few pages of the transcript of the second hearing, do not of themselves show that when the Court below made its decision, the evidence presented at the first hearing had not yet been transcribed. It is quite possible that more yellowish or older paper was used in transcribing the notes of the hearing before Judge Tuason, while newer or whiter paper was used when the notes of the first hearing were typed. And even assuming that the transcript of the first hearing did not really exist at the time the case was decided, the presiding judge could have very easily learned of the evidence presented thereat by simply asking the stenographer to read his stenographic notes of such proceedings to him. Lastly, the change in the numbers of the first few pages of the transcript of the evidence presented before Judge Tuason does not prove that the records have been tampered with, since if there was indeed an effort (as petitioners suggest) to insert the transcript of the first hearing into the records of the case, after it has been decided, then all the pages of the second transcript, as well as that of the decision, would bear erasures or corrections, which is not the case.

At any rate, even granting that the lower Court based its decision only on the evidence presented before Judge Tuason, no prejudice or damage appears to have been caused to petitioners thereby. The only issue litigated by the parties in the Court below is the quantity of the harvest from the land in question during the agricultural year 1950-51, petitioners claiming that it was only 76 cans (19 cavanos) while respondent claimed (and the Court below so found) that it was 76 cavanos. Petitioners presented before Commissioner Bonifacio three witnesses, namely, Socorro San Jose, Eustaquio Yanto, and Lazaro Penaredondo. The first witness, petitioner San Jose herself, testified again before Judge Tuason in more or less the same manner that she declared before Commissioner Bonifacio (Orig. Rec, pp. 82-88; 135-143). Witness Penaredondo was not presented before Judge Tuason, but his testimony was merely corroborative of that of San Jose, and referred mainly to the area planted by respondent Nael, without saying that he personally saw the harvest (Orig. Rec. pp. 89-91). As for witness Eustaquio Yanto, the gist of his testimony before Commissioner Bonifacio is that as barrio lieutenant, it was he who supervised the harvest from petitioner's land; that such harvest was only 76 petroleum cans; and that he signed the document Exh. 2 certifying to said harvest at the request of petitioner San Jose (Orig. Rec. pp. 89-91). Although Yanto was not presented again before Judge Tuason, the substance of his testimony is contained in the document Exh. 2 (Orig. Rec. p. 13), which was introduced as exhibit before said Judge. The evidence presented by petitioners before Judge Tuason was, therefore, substantially the same as that adduced before Commissioner

Bonifacio. Consequently, even were it true that the Court below, in rendering the decision complained of, considered and took into account only the evidence presented by the parties before Judge Tuason, we can not see how petitioners could have been damaged or prejudiced thereby.

But there is still another reason why the writ applied for should be denied. It is settled doctrine that where the relief sought obtainable only by application in the court of the original proceedings and it has not there been applied for, the writ shall be denied. This means that the attention of the lower Court should first be called to its supposed error, and its correction asked for on a motion for reconsideration (*Herrera vs. Barretto*, 25 Phil., 245; *Uy Chu vs. Imperial*, 44 Phil., 27; *Manila Post Publishing Co. vs. Sanchez*, 46 Off. Gaz. Supp. (1) 412; : *Alvarez vs. Ibanez*, 46 Off. Gaz. 4233). No motion for reconsideration was ever filed by petitioners in the Court below, calling its attention to the alleged errors and irregularities now raised in this petition, to give it an opportunity to correct such errors and irregularities, if indeed any were committed. For this reason alone if not for any other, the writ applied for should be denied.

Wherefore, the petition for certiorari is dismissed. Costs against petitioners.

Bengzon, Acting C. J., Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador and Concepcion, JJ., concur.

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