

PETRA GATMAITAN, PLAINTIFF AND APPELLEE, VS. MODESTO J. PASCUAL, DEFENDANT AND APPELLANT.

CA-G.R. No. L-601. March 20, 1946

Ponente: PARAS, J.

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PARAS, J.:

On October 27, 1942, the Court of First Instance of Bulacan rendered a decision the dispositive part of which reads as follows:

"Por todo lo expuesto, el juzgado falla el asunto condenando al demandado a restituir inmediatamente a la demandante la porcion de terreno descrita en el segundo parrafo de la demanda y delimitada con lapiz rojo en el croquis, Exhibit A, a pagar a la demandante la suma de P300 como gastos calculados para el terraplen del terreno en cuestion y mas la suma de P10 anuales desde el 1". de enero de 1937 hasta la restitution de la posesion de la propiedad, y mas las costas del juicio."

The Court of Appeals affirmed said decision in toto. Leave was granted to the appellant to file a motion for reconsideration; but it is now contended that this cannot be done without a new trial because, in addition to the question of law, some facts are disputed and this court, taking the place of the Court of Appeals, will not be able to pass upon said motion without the oral evidence which had been lost or destroyed.

Upon a re-examination of the entire record, including that just received from the Court of First Instance of Bulacan, we find, however, that the brief for the appellant admits that the portion of land in litigation is really part and parcel of that belonging to the appellee. His statement is as follows:

"El 18 de septiembre de 1936 Petra Gatmaitan vendio Una parcela de terreno de 59,015 m. c. por la suraa de P3,300 a favor de Modesto Pascual. Este tomo inmediatamente posesion de dicha parcela, pero, al hacerlo, llego a incluir una porcion de otro terreno de Petra Gatmaitan. Esta porcion de terreno en cuestion constituye un saliente irregular incrustada en el extremo sureste de la parcela vendida a Modesto Pascual entre las lineas 36, 37, 38, 39 y 40 de dicha parcela."

There is consequently no controversy between the parties as to the fundamental issue in this case. Moreover, the appellant's brief already quotes the pertinent testimony in his favor which, in our opinion, does not, and cannot, alter the decision of the trial court.

The only remaining question raised on appeal is the admissibility of the supplemental answer filed by the appellant after the case was decided by the court of first instance, in conjunction with his motion for a new trial, wherein it is alleged that an easement has been established in favor of the appellant on that portion of land admittedly pertaining to the appellee. This is purely a question of law which we can, and hereby, decide now against the appellant, because the new allegation was not supported by affidavits of merit as required by section 2 of Rule of Court No. 37, and, not being in fact new matter, should have been set up in the answer and proved at the trial.

Setting aside our resolution of November 21, 1945, ordering the "holding of a new trial by the court of origin in the event that the evidence cannot be reconstituted," we hereby declare this case duly reconstituted for all legal purposes and subject to the conclusions hereinabove set forth. So ordered.

Moran, C. J., Ozaeta, Jaranilla, De Joya, Pablo, Perfecto, Hilado, and Briones, JJ., concur.

FERIA, J., concurring:

This is a motion for reconsideration filed by appellant of the decision of the Court of Appeals.

At first, in view of the destruction of all the records of cases pending in the Court of Appeals, we ordered the reconstitution of the record of this case upon the request of the appellant. But the original record having subsequently been forwarded to this court from the court of first instance, we can, and do hereby, dispose of said motion for reconsideration in view of that record, without necessity of ordering a new trial.

The motion for reconsideration reiterates the questions raised in appellant's brief, to wit: The question of fact whether or not the evidence supports the decision of the Court of Appeals which affirms the conclusion of the court of first instance to the effect that, according to the evidence, appellees are the owners of the lot in question; and the question of law assigned in appellant's brief that the court of first instance erred in not allowing appellant's supplemental answer and motion for new trial filed in said court.

As to the question of fact, it is evident that the conclusion of the lower court or court of first instance is supported by the evidence, for the appellant, in his statement of facts (first paragraph) and part of his testimony quoted in appellant's brief, admits that the lot in question belongs to appellee and was not included in the deed of sale of the lands sold by appellee to appellant. And in the same supplemental answer and motion for new trial filed in that court, appellant impliedly makes the same admission in contending that he has acquired an easement of aqueduct over said lot in favor of the lands he acquired from appellee, since a person can not claim such an easement over his own property.

The questions of law raised in the motion for reconsideration do not merit a serious consideration.

The lower court did not err in not admitting the supplemental answer, not because it is not supported by affidavits of merit or is not a new matter, but because it was filed after the rendition of the decision of the lower court; and, besides, it alleges facts which had occurred prior to the filing of the original pleading and not material to the facts therein alleged. The law does not require the filing of affidavits of merit in support of a supplemental answer, or that it should allege a new matter.

The Court of Appeals was right in not holding as erroneous the order of the lower court which denied the appellant's motion for new trial filed in said court and based on the three grounds provided in section 1, Rule 37, Rules of Court, not precisely because it is not supported by affidavits of merit (the first and second grounds only, for the third ground does not require such affidavit), which the lower court had presumably taken into consideration in denying the motion, but because the granting or denying of said motion was a matter of discretion of the court below, and as such can not be assigned as erroneous in the assignment of errors or be subject to review by the appellate court. While it is true that the provisions of the second paragraph of section 146 of Act No. 190 have not been incorporated in the new Rules of Court, the latter has not introduced any substantial change in this respect, for section 3 of Rule 37 provides that the court may set aside the judgment and grant a new trial, upon such terms as may be just, or deny the motion.

A resolution or decision of the court is said to be discretionary or a matter of discretion when there is no law or

rule which serves as a guide for the court in deciding a question, and it is left to its discretion to decide it in one way or another. For that reason a court of first instance, in the exercise of its discretion, can not violate any rule or provision of law or commit any error, and consequently its resolution can not be assigned as erroneous and is not subject to revision or modification by the appellate or superior court. Only in case of abuse of discretion on the part of the lower court can the appellate court correct such abuse of discretion if raised on appeal.

If there is no abuse of discretion, instead of raising on appeal the denial of appellant's motion for new trial on the ground of newly discovered material evidence, appellant may reiterate or file it again with the appellate court under the provision of section 1 of Rule 55, if appellant is not satisfied with the lower court's resolution. And in case of fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against, and by reason of which such aggrieved party has probably been impaired in his rights, if appellant's motion for new trial on that ground is denied by the court of first instance, and he can not assign on appeal abuse of discretion on the part of said court in denying his motion, he may resort to the relief provided in section 2 of Rule 38.

It would be superfluous for appellant to assign in his brief as erroneous the order of the court denying his motion for a new trial on the ground that the judgment is contrary to law or the evidence. Because these questions are or may now be raised on appeal irrespective of whether or not a motion for new trial on that ground has been filed and denied by the lower court. This formal motion for new trial is no longer necessary as a prerequisite in order that, on appeal, appellant may raise questions of fact (section 19, Rule 48).

Appellant's motion for reconsideration is therefore denied.

Resolution of November 21, 194-5, set aside; case remanded for new trial.

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