

VICENTE FLORDELIZA, PETITIONER, VS. BERNABELA FLORDELIZA ET AL., RESPONDENTS.*G.R. No. L-4987. June 30, 1952*

Ponente: PARAS, C.J.

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PARAS, C.J.:

On February 19, 1946, Civil Case No. 46, Bernabela Flordeliza and Iluminado Espinas, plaintiffs, vs. Vicente Flordeliza and Provincial Government of Camarines Sur, defendants, was tried by the Court of First Instance of Camarines Sur, with Judge Pedro Valdez Liongson presiding. The latter was transferred to the Court of First Instance of Albay without first having decided civil case No. 46. On August 7, 1946, the plaintiffs moved the Court of First Instance of Camarines Sur, then presided over by Judge Jose R. de Venecia, to have the records of the case taken from Judge Valdez Liongson and to decide it as tried and submitted on February 19, 1946. The records, as returned by Judge Valdez Liongson, contained his signed decision with the following:

"This decision has been signed and promulgated today, June 27, 1946—by virtue of an authorization granted by the Supreme Court through the Department of Justice."

On August 16, 1946, the plaintiffs moved the Court of First Instance of Camarines Sur for the immediate execution of the decision rendered by Judge Valdez Liongson, to which the defendants objected, on the ground that Judge Valdez Liongson had no jurisdiction to render said decision. The court issued an order of execution, but required the plaintiffs to file a bond for P10,000 in favor of the defendants. On September 12, 1946, the latter filed a motion to vacate the decision of Judge Valdez Liongson and the order of execution issued by Judge De Venecia, with prayer for a new trial. This motion was denied on November 7, 1946. No further step was taken by the defendants until August 14, 1951, when the defendant Vicente Flordeliza instituted in this Court the present petition for certiorari, praying that the decision rendered by Judge Valdez Liongson in civil case No. 46 and the subsequent order of execution issued by Judge De Venecia be set aside and a new trial granted.

The theory of the herein petitioner (defendant in civil case No. 46) is that Judge Valdez Liongson was not authorized to render the decision in question because he was no longer the Judge of the Court of First Instance of Camarines Sur and his appointment was rejected by the Commission on Appointments on July 9, 1946.

It appears that by virtue of Administrative Order No. 127 of the Department of Justice, dated June 6, 1946, Judge Valdez Liongson was authorized to hold court in the province of Camarines Sur from June 25 to June 30, 1946, for the purpose of rendering judgment in cases previously heard, before and submitted to him while presiding over the Court of First Instance of Camarines Sur. Apart from the legal presumption that official duty had been regularly performed, the decision in question carried, the certification of Judge Valdez Liongson that he signed and promulgated it on June 27, 1946. The accuracy of the certification was assailed by the petitioner in his motion of September 12, 1946, wherein the decision and the order of execution were sought to be annulled; but Judge De Venecia of the Court of First Instance of Camarines Sur denied petitioner's motion in the order dated November 7, 1946. The petitioner took no action whatsoever against the order of Judge De Venecia until the present petition

for certiorari was filed, in this Court on August 14, 1951, or nearly five years later. It is significant that the attorney who filed the motion of September 12, 1946, in the Court of First Instance of Camarines Sur is now representing the petitioner in the instant petition for certiorari. We are thus inclined to hold that there was rather too much negligence or indifference on the part of the petitioner and his counsel. (*Gil vs. Reyes*[*] 47 Off. Gaz., No. 5 p. 2354.) In this case cited, the petition for certiorari and prohibition was filed only about eight months after the rendition of the judgment and only about two months after the issuance of the order of execution; whereas in the case before us, the petition for certiorari was filed after a much longer period,—about five years.

At any rate, there is controversy not only on the point whether at the time the decision in question was promulgated, Judge Valdez Liongson had already been informed of the rejection of his appointment by the Commission on Appointments, but also on the exact date of the promulgation of said decision. These questions cannot be ventilated in the present petition for certiorari; and it would seem that an independent action to annul is the proper remedy.

Wherefore, the petition is dismissed with costs against the petitioner. So ordered.

Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor, Bautista Angelo, and Labrador, JJ., concur.

* 85 Phil. 97

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