

GO BON CHIAT, IN HIS CAPACITY AS ADMINISTRATOR OF THE ESTATE OF THE DECEASED GO BUNGCO, PETITIONER, VS. PRIMITIVO L. GONZALES, JUDGE OF THE COURT OF FIRST INSTANCE OF MISAMIS OR...

G.R. No. L-4063. November 29, 1950

Ponente: REYES, J.

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REYES, J.:

This is a petition for a writ of mandamus to compel the trial judge to approve petitioner's record on appeal. The petition is not verified and is challenged on that ground by one of the respondents. But the respondent judge has raised no objection in that regard and the technical defect has become immaterial with the substantial admission of the ultimate facts necessary to the determination of petitioner's pretended right to the relief sought.

It appears that on January 19, 1950, the administrator of the estate of the deceased Go Bungco filed an action in the Court of First Instance of Misamis Oriental against one of the herein respondents Pedro Valmorida to have the latter ousted from a certain lot situate in the municipality of Balingasag of said province and the lot declared property of the deceased, it being alleged, among other things, that his ownership thereof had already been recognized by the same court in civil case No. 4438 instituted on behalf of his estate against one Go Bianchong. Answering the complaint, Valmorida claimed title to the lot by purchase from an heir of said Go Bianchong and alleged that the judgment in the civil case referred to, which was rendered in 1936, had lapsed without being executed.

At the trial plaintiff presented a copy (Exhibit B) of the decision rendered on October 26, 1936, in civil case No. 4438, holding plaintiff to be the owner of the land there in controversy and requiring Go Bianchong to pay rents until the land was vacated. But with the record of the case either destroyed or missing, plaintiff was not able to present any document showing further development of the case, except a copy of the bill of exceptions filed by Go Bianchong and some correspondence (Exhibits C and D) from the provincial sheriff to the attorney for plaintiff, referring to a remittance from the former to the latter of the sum of P250 by telegraphic transfer as "a part of the redemption money paid to this Office by defendant Go Bianchong" in civil case No. 4438. The correspondence was evidently meant to show that the judgment against Bianchong had already been executed.

After the presentation of plaintiff's proof, defendant waived his right to present evidence and moved for dismissal on the ground that plaintiff had failed to prove his case. The court granted the motion for the reasons stated in its order as follows:

"In this light of the evidence presented by the plaintiff, the Court is at a loss to conclude: (1) whether the plaintiff is the real owner of the land in question, (2) whether or not, the decision appearing in Exhibit B, refers to the land in question in the present case, (3) whether or not, said decision, Exhibit "B, was confirmed by the higher court, (4) in case it was confirmed, whether or not, said decision was ever executed, and (5) that Exhibits C and D, are not clear evidence of the fact that said decision in civil case No. 4438, if it became final,

was really executed."

"In view of the foregoing, this Court finds no reason why this case should be continued and, consequently, orders the dismissal of this case, with costs against the plaintiff."

Notified of the above order, plaintiff immediately filed his notice of appeal. But before perfecting his appeal, he first filed a motion for new trial with the idea obviously of putting in evidence which he had reserved for rebuttal but which he had been prevented from presenting by defendant's waiver of proof. Non-presentation of this rebuttal evidence is apparently attributed by plaintiff to "error o negligencia excusable que la prudencia ordinaria no pudo evitar." The intended evidence refers to the identification of the disputed lot and the proceeding already taken for the execution of the judgment in civil case No. 4438 and is set forth in the following annexes to his motion for new trial:

"ANEXO A

"AFFIDAVIT DE MERITO

"Yo, Petronilo Fernandez, Sheriff Provincial de esta Provincia de Misamis Oriental, Filipino, mayor de edad, daswes de prestar juramento en debida forma declaro:

"Que antes de la vista de esta causa, que se ha celebrado en 28 de Marzo, de 1950, el abogado Sr. Vicente Pelaez se apersono en mi oficina para averiguar si aun conservara, en nuestra oficina las copias del mandamiento de ejecucion expedida en el Causa Civil No. 4438, titulada, Santiago So Beng y otros documentos pertenecxentes y relativosa dicha ejecucion, a lo que le informe de que ya no existe por motivo de la guerra; que el Sr. Vicente Pelaez entonces me pregunto, si era yo u otro Sheriff quien efectuo las diligencias para el cumplimiento de la orden de ejecucion contra Go Bianchong a lo que tarabien le informe que era yo quien, personalmente, habia ejecutado y que por no haber pagado la cantidad que aparecia en la ejecucion entonces.procedi, al embargo de las propiedades inmuebles de Go Bianchong que se nan vendido en publica subasta, y que antes de expirar el plazo de retracto, el ejecutado Go Bianchong verifiko al retracto.

"Que el Sr. Vicente Pelaez me pregunto si yo podia-declarar en la vista como testigo, a lo que le informe que lo haria con gusto, y asi que el dia 28 de Marzo de 1950, cuando se celebre la vista de la causa arriba titulada yo esperaba a que me llamara para declarar pero yo no fui llamado, aunque despues de la vista el abogado Sr. Vicente Pelaez, y que mi testimonio era corroborativo y que me llamaria despues, como testigo de contraprueba, en el caso de que el demandado o sus testigos declararan que no hubo tal ejecucion.

"Cagayan, Misamis Oriental, hoy a 2 de Mayo, de 1950.

(Fdo.) "P. A. Fernandez

"Sheriff Provincial

"Suscrito y jurado ante mi hoy a 2 de Mayo, 1950, en Cagayan, Misamis Oriental.

(Fdo.) "Leoncio Edmilao

"Acting Clerk, of Court"

"ANEXO B

"AFFIDAVIT DE MERITO

"Yo, Jesus R. Bautista, Sheriff Delegado de esta Provincia, Filipino, mayor de edad, despues de prestar juramento en debida forma declaro: que durante la vista de la causa arriba titulada fui llamado por el Juzgado y

preguntado si conocia donde esta situada la propiedad de Go Bungco, que esta en litigio a lo que contesto afirmativamente, pero que no sabia los nombres de las calles que colindan con la finca aunque me consta que hay nombres de dichas calles solo que no hay titulos aue la designan.

"Que el Juzgado entonces me comisiono para que fuera a Balingasag con el fin de levantar un croquis en el que aparezca los nombres de dichas calles si las hay, los nombres de los otros propietarios que colindan con Bungco y la distancia o los linderos de dichas propiedades.

"Que cumpliendo con lo ordenado por el Juzgado, he presentado en 30 de Marzo de 1950 el croquis solicitados que hoy aparece unido al expediente arriba titulado.

"Esta declaracion la presto voluntaria y libremente sin promesa coaccion o violencia a peticion del abogado Sr. Vicente Pelaez.

"Talisayan, Misamis Oriental, hoy a 5 de Mayo de 1950.

(Fdo.) "Jesus R. Bautista

"Sheriff Delegado

"Suscrito y jurado ante mi hoy a 5 de Mayo, de 1950, en Talisayan, Misamis Oriental,

(Fdo.) "Santiago P. Mercado

"Juez de Paz de Talisayan, Mis Or."

"ANEXO D

"AFFIDAVIT DE MERITO

"Yo, Daniel Galarrita, filipino, mayor de edad, despues de prestar juramento en debida forma declaro:

"Que ha sido nombrado Sheriff Provincial de esta provincia de Misamis Oriental en o hacia el año 1935 cuyo cargo lo he desempeñado hasta el año 1946, sin interrupcion; que he visto y examinado los Exhibitos 'C' y 'D' que se han presentado como pruebas en el expediente arriba titulado; que las firmas que aparecen en dichos exhibitos son mis firmas genuinas y autenticas; que en el primer parrafo del Exhibit 'C' que se lee textualmente: In compliance with your request contained in your telegram dated yesterday, I sent you today P250 by telegraphic transfer. This is a part of the redemption money paid to this office by the defendant Go Bianchong in the above entitled case. The fee for wiring; this amount to you is P2.32, se refiere a la cantidad remitida al abogado Sr. Vicente Pelaez, por cuanto que el demandado y ejecutado Go Bianchong en la causa civil No. 4438, titulada: Santiago So Beng, versus, Go Bianchong, este efecto y verifiqué el retrato legal de las fincas embargadas y vendidas en publica subasta en virtud del mandamiento de ejecucion expedido.

"Que antes de ser llamada a vista esta causa el abogado Sr. Vicente Pelaez estuvo a verme en mi casa donde me demostro los exhibitos 'C' y 'D' y me informo que el me utilizara como testigo de contrapueba en el caso de que el demandado o los testigos de este negasen que no hubo ejecucion como aparece en la contestacion y defensas especiales del demandado en la causa arriba titulada; que yo le conteste que estaba dispuesto a declarar solamente toda la verdad y de conformidad con lo que esta escrito en mi carta exhibit C.

"Esta declaracion la presto voluntaria y libremente y. sin mediar promesa, dolo violencia o amenaza.

"Cagayan, Misamis Oriental, Mayo 3, 1950.

(Fdo.) "Dan Galarrita

"Suscrito y jurado ante mi hoy a 3 de Mayo de

(Fdo.) "Ignacio A. Calingin

"Clerk of Court."

The trial court denied the motion for new trial, and in doing so it also ordered the affidavits stricken from the record. Plaintiff then took steps to perfect his appeal by filing his record on appeal. But the lower court would not approve it unless the affidavits were omitted therefrom. Hence this petition for mandamus.

We find merit in the petition. Petitioner avers that one of the questions to be raised in the appeal is whether or not the denial of the motion for new trial was legally justified. Whether that motion is meritorious or not can only be determined by an examination of the evidence sought to be presented in the new trial and that evidence is described in the affidavits already mentioned. By ordering the deletion of the affidavits from the record on appeal the trial court would thus deprive the appellate court of the means of determining one of the questions involved in the appeal. This would be unfair to the appellant and should not be permitted.

The petition for mandamus is, therefore, granted and respondent Judge is ordered to approve petitioner's record on appeal without the exclusion of the affidavits already mentioned. With costs against the respondent Pedro Valmorida.

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

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