

SALVADOR E. BIMEDA, PETITIONER, VS. ARCADIO PEREZ AND HON. JOSE T. SURTIDA, JUDGE OF THE COURT OF FIRST INSTANCE OF CAMARINES SUR, RESPONDENTS.*G.R. No. L-5588. August 26, 1953*

Ponente: BAUTISTA ANGELO, J.

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This is a petition for certiorari and mandamus with preliminary injunction seeking to compel respondent Judge to allow petitioner to adduce evidence relative to an alleged irregularity committed by the board of inspectors of precinct No. 6 of Pamplona, Camarines Sur during the election for municipal mayor held on November 13, 1951. The purpose of the injunction is to restrain respondent Judge from proceeding with the trial of the protest pending determination of the issue raised in this proceeding. This injunction was issued as prayed for.

Petitioner was declared elected municipal mayor of Pamplona, Camarines Sur, with the plurality of one vote, in the elections held on November 13, 1951. Respondent Arcadio Perez contested the election in due time.

In his answer, respondent set up a counter-protest averring, among other things: "That he impugns the electoral returns in Precinct No. 6 of Pamplona as well as the votes therein on the ground of wholesale irregularity, gross violation of the election law by the Board of Inspectors, and wanton disregard by said board of the right of some 20 or more voters in said precinct to vote for protestee; it follows that were it not for such irregularity and violation of law, protestee would have obtained 20 or more votes in his favor."

When trial came, and after protestant had concluded presenting his evidence, protestee proceeded to present his evidence to establish not only his special defenses but also his counter-protest relative to the irregularity which he claims to have been allegedly committed in precinct No. 6 of Pamplona as stated in the preceding paragraph, but respondent Judge, sustaining the opposition of protestant, ruled out such evidence upon the theory that to permit proof of said irregularity would in effect disfranchise two hundred or more voters if the purpose is to annul the election in the aforesaid present petition for certiorari.

It should be noted that the main ground of the opposition of protestant to the presentation of the evidence which protestee desires to adduce is the fact that the irregularity which is desired to be established has not been clearly and specifically set out in the answer, which vagueness or generalization makes the averment utterly inadequate or insufficient to serve as basis for the presentation of evidence, even if at the trial counsel made a verbal manifestation as to the particular acts constitutive of the violation of law on which he bases his plea for the nullification of the election in precinct No. 6 of Pamplona. But it appears that such is not the ground entertained by the respondent Judge in ruling out the evidence, it being a matter which may be subserved with the mere amendment of the pleading, but rather his view, right or wrong, to the effect that such evidence could not serve any useful purpose for, even if it be allowed, it may not have the effect of nullifying the election as such would have the effect of disfranchising two hundred or more legitimate voters whose right has never been assailed. Such being the question before us for determination, we are of the opinion that the action taken by petitioner to correct

the ruling of the court is not the proper one, it being a mere error of judgment which should be corrected by appeal, and not an act of lack of jurisdiction or grave abuse of discretion which is the proper subject of a petition for certiorari.

As a rule, the errors which the court may commit in the exercise of its jurisdiction are merely errors of judgment. In the trial of a case, it becomes necessary to distinguish errors of jurisdiction from errors of judgment. The first may be reviewed in a certiorari proceeding; the second, by appeal. Errors of jurisdiction render an order or judgment void or voidable, but errors of judgment or of procedure are not necessarily a ground for reversal (Moran, Comments on the Rules of Court, Vol. 2, 1952 ed., p. 158). Again, a writ of certiorari will be denied where the appeal is an adequate remedy though less speedy than certiorari. "Mere possible delay in the perfection of an appeal and in securing a decision from the appellate court is not justification for departing from the prescribed procedure . . ." unless "there was lack or excess of jurisdiction or abuse of discretion and the delay would work injustice to the complaining party . . ." (Idem, pp. 166, 167.)

The order complained of by petitioner is merely interlocutory or peremptory in character which is addressed to the sound discretion of the court. That order may be erroneous, but it is a mere error of judgment which may be corrected by appeal. This remedy is adequate enough, for whatever delay may be suffered in the proceeding would not work injustice to petitioner who sure enough is presently holding the office contested by respondent.

Wherefore, the petitioner is hereby denied with costs against petitioner.

The writ of injunction issued by this Court is hereby dissolved.

Paras, C.J., Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo and Labrador, JJ., concur.

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