

PLACIDO NACUA, PETITIONER-CLAIMANT, VS. INTESTATE OF ZACARIAS ALO, DECEASED. AMPARO ALO DE BELTRAN, RESPONDENT-ADMINISTRATIX.*G.R. No. L-4933. August 06, 1953*

Ponente: MONTEMAYOR, J.

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Petitioner Placido Nacua is appealing from a decision of the Court of Appeals reversing an order of the Court of First Instance of Negros Oriental in Special Proceedings No. 533 of that Court for the settlement of the intestate estate of Zacarias Alo. The facts in this case are not disputed.

On July 30, 1941, a decision was rendered in civil Case No. 1503 of the Court of First Instance of Cebu, sentencing defendant Zacarias Alo to pay to plaintiff Placido Nacua the sum of P810 with legal interest from October 22, 1940 and costs. Alo perfected an appeal to the Court of Appeals, docketed as C.A.-G.R. No. 9542. The Pacific War came and during said war Alo died. After liberation, special proceedings No. 533 already mentioned were instituted in the Court of First Instance of Negros Oriental for the settlement of the estate of Alo, and his daughter Amparo Alo de Beltran was appointed special administratrix.

Upon inquiry by Nacua's counsel as regards the status of the appeal made by Alo, the Court of Appeals replied that the records of that Court had been burned or lost during the war. It is a fact that none of the parties asked for the reconstitution of said records. Consequently, said parties may be regarded as having waived their right to the reconstitution of the records destroyed.

On April 28, 1947, Nacua's counsel filed a claim in special proceedings No. 533 of the Court of First Instance of Negros Oriental, on the basis of the decision in Nacua's favor in Civil Case No. 1503, for P810. On December 16, 1948, said counsel sent to the probate court a certified copy of the decision in Civil Case No. 1953, and on December 18, 1948, the probate Court issued an order allowing the claimant "two weeks to ascertain whether the decision in said case is already final and executory."

On May 12, 1949, acting upon a motion filed by Nacua in Civil Case No. 1503, the Court of First Instance of Cebu issued an order stating that said court was of the opinion that the decision rendered in said case was already final and for that reason ordered its execution. In pursuance thereof, a writ of execution dated May 17, 1949, was issued by the clerk of court, and was transmitted to the provincial sheriff of Negros Oriental.

On July 13, 1949, the Court of First Instance of Cebu, acting upon a motion to vacate the writ of execution, set aside its previous order of May 12, 1949, on the ground that according to the Rules of Court, a judgment against a deceased person should be presented as a claim in the proceedings for the administration of his estate, and so gave Nacua permission to present a claim for the amount of said decision, in special proceedings No. 533 of Negros Oriental. In the same order the Cebu Court reiterated its belief and holding that said decision was final and executory.

On July 14, 1949, Nacua filed an amended application for the approval of his claim in special proceedings No. 533. It was opposed by special Administratrix Amparo Alo de Beltran. Ruling upon said amended application and the opposition thereto, the probate court approved the claim of Nacua and ordered the administratrix to pay him the sum of P810 with legal interest from October 22, 1940. Failing to secure a reconsideration of said order, the special administratrix appealed to the Court of Appeals which, as already stated, reversed the decision or order appealed from, on the ground that the decision of the Cebu Court in favor of Nacua for P810 was pending appeal and therefore could not be sufficient basis for the probate court to grant the claim. The appellate court said that the failure of the administratrix of the estate of Alo to ask for reconstitution constituted waiver, and so "the other party was free to take his action anew." The present appeal by certiorari is from that decision of the Court of Appeals.

There is no question that inasmuch as the decision in civil case No. 1503 of the Cebu Court was properly appealed to the Court of Appeals, said decision did not become final and executory. Now, what was the effect of the failure of both parties, appellant and appellee, to ask for the reconstitution of the records of the Court of Appeals destroyed during the war? One theory is that it was the duty and to the interest of the appellant to have the records reconstituted in order to keep the appeal alive and prevent the appealed decision from becoming final. Another theory is that it was to the interest of the appellee to have the records reconstituted because the judgment was in his favor. However, inasmuch as this Court has already ruled on this question in several cases,[1] to the effect that it is the duty of both parties to ask for the reconstitution, we deem it unnecessary to elaborate on this point.

But the most important question to be determined is the effect of failure to reconstitute the records on appeal in the Court of Appeals, on the status of the case in its entirety.

Where the records in the appellate court as well as in the Court of First Instance are destroyed and are not reconstituted, it is clear that there is no recourse left to the parties but to litigate anew, and a new action may be filed. But what about a case where the records in the appellate court were lost or destroyed and were not reconstituted, but the records in the court of first instance are intact and complete? In this connection, we should state that from the records now before us, we understand that the records in the Court of First Instance are intact, and to confirm our understanding we had our Clerk of Court write the Cebu Clerk of Court on this point. Clerk of Court Vicente E. Jota of the Court of First Instance of Cebu, in his answer dated July 4, 1953, informs us that the records of Civil Case No. 1503, "Placido Nacua vs. Zacarias Alo" are still intact.

In the case of *Ambat vs. Director of Lands*, supra, a land registration case where the Director of Lands appealed to the Court of Appeals a decision of the Court of First Instance of Davao ordering the registration of a parcel of land in favor of the applicant, and where the records in the appellate court were destroyed and not reconstituted by the parties, this tribunal citing the case of *Claridad vs. Novella*, supra, held that pursuant to the provisions of section 29 of Act No. 3110, the parties due to their failure to have the appeal records reconstituted were understood to have waived their right to the reconstitution and they should file their respective actions anew. Section 29 of Act No. 3110 reads thus:

"SEC. 29. In case the parties interested in a destroyed record fail to petition for the reconstitution thereof within the six months next following the date on which they were given notice in accordance with section two hereof, they shall be understood to have waived the reconstitution and may file their respective actions anew without being entitled to claim the benefits of section thirty-one hereof."

After further study of the question involved in the cases above mentioned, we are inclined to modify the ruling therein made in the sense that section 29 of Act No. 3110 should be applied only where the records in the Court of First Instance as well as in the appellate court were destroyed or lost and were not reconstituted, but not where the records of the Court of First Instance are intact and complete, and only the records in the appellate court were lost

or destroyed, and were not reconstituted. One reason for this view is that section 29 of Act 3110 is found among the sections and provisions dealing with the reconstitution of records in the Court of First Instance in pending civil cases, special proceedings, cadastral cases and criminal cases. A study of Act 3110 and the marginal notes as published in Public Laws will show that there are separate procedures for the reconstitution of records in the Justice of the Peace Courts, from Sec. 48 to Sec. 53; for the reconstitution of records in the Supreme Court, now including the Court of Appeals, from Sec. 54 to Sec. 74; for the reconstitution of records in the Office of the Register of Deeds, from Sec. 75 to Sec. 90 and for the reconstitution of destroyed records in the Courts of First Instance, from Sec. 1 to Sec. 47, under which sections, Sec. 29 is obviously comprehended.

The whole theory of reconstitution is to reproduce or replace records lost or destroyed so that said records may be complete land court proceedings may continue from the point or stage where said proceedings stopped due to the loss of the records. The law contemplates different stages for purposes of reconstitution. In the case of *Obien de Almario vs. Fidel Ibañez, et al.*, 81 Phil. 592, 46 Off. Gaz., Supp. No. 1, p. 396, we said:

"It will be noted that Act No. 3110 provides separate procedures for the reconstitution of civil cases pending in the Courts of First Instance and for the reconstitution of those pending in the Supreme Court on appeal. (Cf. sections 6 and 7 and 64.) Different sections of the Act cover different stages in which the cases were found at the time the records were destroyed. Thus, section 4 covers the stage where a civil case was pending trial in the Court of First Instance at the time the record was destroyed or lost; section 6 evidently refers to the stage where the trial had been concluded but the case had not been decided at the time the stenographic notes were destroyed or lost; section 7 covers the stage where the case had been tried and decided but was still pending in the Court of First Instance at the time the record was destroyed or lost; and section 64 covers the stage where the case was pending in the Supreme Court (or Court of Appeals) at the time the record was destroyed or lost."

If the records up to a certain point or stage are lost and they are not reconstituted, the parties and the court should go back to the next preceding stage where records are available, but not beyond that; otherwise to ignore and go beyond the stage next preceding would be voiding and unnecessarily ignoring proceedings which are duly recorded and documented, to the great prejudice not only of the parties and their witnesses, but also of the court which must again perforce admit pleadings, rule upon them and then try the case and decide it anew,—all of these, when the records up to said point or stage are intact and complete, and uncontroverted.

But during our deliberations on this case, it was suggested that all the prejudice and trouble incident to the filing of a new action as ordered in the case of *Ambat vs. Director of Lands* and as desired to be done here by the minority are all due to the fault and the failure of the parties to ask for reconstitution as what happened in the present case. The idea conveyed seems to be that it is the penalty for said failure to reconstitute or to ask for reconstitution. This idea or theory is not without flaw. The law on reconstitution, Act No. 3110, was not promulgated to penalize people for failure to observe or invoke its provisions. It contains no penal sanction. It was enacted rather to aid and benefit litigants, so that when court records are destroyed at any stage of judicial proceedings, instead of instituting a new case and starting all over again, they may reconstitute the records lost and continue the case. If they fail to ask for reconstitution, the worst that can happen to them is that they lose the advantages provided by the reconstitution law. In this case, they lose the benefit of having the case at the stage of appeal. So they have to go back to the next stage where they started from in making the appeal, namely, the decision of the Court of First Instance and the complete records of said court.

These records being intact, there is no occasion or necessity for reconstitution, so that even following the theory of penalizing parties, there being no need for reconstitution, there was no failure to penalize. And all the records in the Court of First Instance being complete, there is no reason why the parties may not start from there, and renew the appeal. On the other hand, to require the parties to file their action anew and incur the expenses and suffer the annoyance and vexation incident to the filing of pleadings and the conduct of hearings, aside from the

possibility that some of the witnesses may have died or left the jurisdiction, and also to require the court to again rule on the pleadings and hear the witnesses and then decide the case when all along and all the time the record of the former pleadings of the trial and evidence and decision are there and are not disputed, all this would appear to be not exactly logical or reasonable, or fair and just to the parties, including the trial court which has not committed any negligence or fault at all.

We believe that the rule laid down in the case of *Lichauco et al. vs. Judge Lucero et al.*, 85 Phil., 466, 47 Off. Gaz., No. 7, p. 3544, is more applicable and is more just to the parties, besides being more in keeping with the spirit and intention of the law on reconstitution. In that case, where the records in the Court of Appeals were destroyed and were not reconstituted, but the records in the Court of First Instance were intact, we held that "rather than put the parties to the necessity of filing a new action and conducting a new trial, we would be serving the interests of justice if we let them continue the old case by allowing them to prosecute the appeal anew, giving them reasonable time for that purpose.

In the course of our discussion of this case, the minority contended that to allow the estate of Alo to prosecute his former appeal anew would be authorizing reconstitution, after the period therefor has long expired. The contention is premised on a misunderstanding of the implication or consequence of a renewal of the appeal. It will by no means require or mean reconstitution of records, because the records in the Court of First Instance are complete and intact, and it is in that court where the appeal may be renewed. Reconstitution implies reproduction or replacement of records of the Cebu Court were not lost or destroyed; so there is nothing to reconstitute, and there is no occasion for reconstitution.

It is also argued that to allow renewal of the appeal would be granting a remedy which the parties have not solicited and which was never in issue. We are not exactly granting a remedy. We are only stating and defining the rights of the parties, and the remedy to them available under the circumstances; and this we do, to correct the error committed by the Court of Appeals when it said that the remedy available was to bring a new actions an error which we believe, is based on an erroneous interpretation of the law on reconstitution and the spirit motivating it.

In view of the foregoing, the decision of the Court of Appeals in so far as it reverses the decision appealed from, on the ground that the decision of the Cebu Court in favor of Nacua for P810 was pending appeal and so could not be sufficient basis for granting the claim filed before the Probate Court, is affirmed. It is reversed where it holds that Nacua has to file a new action. He does not have to. He already has a decision in his favor, though not yet final. The administratrix in Special Proceedings No. 533 of the Court of First Instance of Negros Oriental is given thirty days within which to file and perfect a new appeal from the decision of the Court of First Instance of Cebu in Civil Case No. 503, dated July 30, 1941. Upon failure to do so, the said decision will become final and executory and will be sufficient basis for the approval of Nacua's claim against the estate of the deceased Zacarias Alo.

No pronouncement as to costs.

Bengzon, Padilla, Tuason, Reyes and Jugo, JJ., concur.

CONCURRING AND DISSENTING

LABRADOR, J.,

I agree to the dismissal of the appeal and the denial of the claim of petitioner Placido Nacua against the estate of the deceased Zacarias Alo, but beg to to that ruling laid down in the opinion of the majority that grants an option to the administratrix of said estate to reinstate or revive the appeal that the deceased had in his life time prosecuted against the judgment rendered against him in Civil Case No. 1503, entitled Placido Nacua vs. Zacarias Alo, et al.

This case originated in the Court of First Instance of Negros Oriental as a claim presented by Placido Nacua against the estate of the deceased Zacarias Alo. The basis of the claim is the judgment of the Court of First Instance rendered in Civil Case No. 1503, where Nacua was plaintiff and Zacarias Alo and others, defendants. Nacua claims that the judgment rendered in the case has become final and executory. Said judgment had been rendered by the Court of First Instance in Nacua's favor, but an appeal had been prosecuted therefrom by Alo to the Court of Appeals, and the appeal was pending in that court during the last war. In that court the records of the case were destroyed, and none of the parties had seen fit to have them reconstituted. In the case now at bar, the trial court held that as none of the parties had sought the reconstitution of the records of the previous case in the Court of Appeals, the judgment of the Court of First Instance in said unreconstituted case was ipso facto revived for the reason that the jurisdiction of the lower court was restored by abandonment of the case, and that it may proceed as if no appeal had been taken. The Court of First Instance cited in support of its ruling 4 C.J.S. 2010. The decision of the Court of Appeals reverses the ruling laid down by the court a quo to the effect that the judgment may serve as a basis of the claim. The Court of Appeals held that the judgment could not be a basis because it had not become final by reason of the appeal.

In my humble opinion, the decision of the Court of Appeals is correct. I can not understand by what principle of law the majority of the Court, without any petition being presented for the purpose, now authorize the old case, Civil Case No. 1503 of the Court of First Instance of Cebu, to be revived and allowed to continue at the option of the respondent.

The present action is not one for reconstitution. It is a claim against a decedent based on a supposed final judgment. The issue before the Court of First Instance, as well as before the Court of Appeals, is, was the judgment of the Court of First Instance in Civil Case No. 1503, which had been appealed to the Court of Appeals, considered revived upon failure of the parties to reconstitute the records of the case in the Court of Appeals? By what principle of law or procedure are we authorized to go beyond the above issue and hold that the defendant in said case may still revive the old case, starting from where it ended in the Court of First Instance, when none of the parties had asked for this remedy, and this issue was never before the two courts below?

The case of Lichauco, et al vs. Lucero, et al., 85 Phil., 466; 47 Off. Gaz. (7) 3544, has been cited to support the majority opinion. We beg to state that case was begun as a case for the execution of a judgment, not a claim based on a judgment.

But our objection to granting option to respondent, to revive the old case and have it continue, is that it is not sanctioned by the spirit of the law on reconstitution nor by the principles which this Court itself had laid down in the cases of Claridad vs. Novella, G. R. No. L-4207, promulgated October 24, 1952, and Ambat vs. Director of Lands, G. R. No. L-5042, promulgated January 30, 1953. This latter case is on all fours with the case at bar. In that case the facts were as follows:

This is a case for the registration of a parcel of land situated in Davao filed in the Court of First Instance thereof on August 6, 1935. The Director of Lands presented an amended opposition to the application on August 4, 1939, and after proper proceedings and trial, the court rendered judgment ordering the registration of the land described in the application. The decision is dated December 12, 1939. The Director of Lands

appealed from the decision, and on April 3, 1940, the bill of exceptions and the evidence submitted in the case were forwarded to the Court of Appeals. The records of the case in the Court of Appeals were destroyed during the battle for the liberation of Manila, but none of the parties asked for their reconstitution in said court. The records of the case in the Court of First Instance of Davao, however, are intact, and on April 10, 1948, the applicant moved for the issuance of the decree of registration, alleging that as the Director of Lands, who had appealed from the judgment ordering the registration of the land, did not take any steps towards the reconstitution of the records in the Court of Appeals, the judgment had become final. She, therefore, prayed that a final decree issue in her favor in accordance with the decision rendered on December 12, 1939. The Director of Lands objected to the petition, but the Court of First Instance overruled the opposition, and on July 6, 1946, it ordered the issuance of the decree in favor of the applicant in accordance with the judgment rendered in the case. The Director of Lands appealed against this order to the Court of Appeals, but as the questions raised in the appeal are purely questions of law, the case has been certified to this Court for decision.

And we held:

The question squarely presented is: May the judgment rendered before the war, in a case pending appeal before the Court of Appeals, be considered final for failure of the losing party to ask for the reconstitution of the records in the appellate court within the time prescribed by the law for reconstitution of judicial records? The Court of First Instance of Davao held that such failure renders the judgment entered in the court of origin final, while the Solicitor General contends that as the duty to reconstitute does not rest on the appellant alone but on the appellee as well (citing the case of *Drillon, Gunabe and Gunche vs. Director of Prisons*, G. R. No. L-1231, January 30, 1947, 44 Off. Gaz. (4) 1244), the judgment never became final. In the case cited this Court held that the duty to reconstitute lies upon both parties to the action. In the recent case of *Claridad vs. Novella*, G. R. No. L-4207, promulgated October 24, 1952, we held further and declared that if a defendant in whose favor a judgment is rendered fails to ask for the reconstitution of the records of the case wherein the judgment is rendered, he impliedly waives, by his voluntary omission to ask for reconstitution, his right to the favorable judgment; and that if the period for reconstitution has already expired, Section 29 of Act 3110 is applicable, the parties being understood as having waived the right to reconstitution and having the right to file their respective actions anew.

The period for reconstitution has long ago expired, yet the majority authorizes the reconstitution at the option of the respondent. We fixed the periods for reconstitution, yet we allow it to be availed of by a party who never asked for it and has waived the privilege by his inaction. In so doing the majority transcends judicial authority, and in its officiousness actually acts as a solicitous guardian of one party, instead of impartially administering justice and deciding only questions presented to it.

We must make it clear that the subject matter involved in this case is of no consequence. But the process by which the decision of the majority is arrived at is of grave import, because it becomes a precedent which we are bound to follow and enforce. Granting that reasons of expediency and convenience argue in favor of allowing parties to continue a case on appeal, the records of which were destroyed in the appellate court, by starting from where it ended in the court of origin, I humbly believe that it is beyond the power of this court, under the guise and excuse of judicial interpretation, to insert by judicial fiat an additional provision or principle in the law of reconstitution (Act 3110), i.e., that of optional revival or restoration, which is contrary to its express provision and the evident spirit and intent thereof.

The principle of renewal of a case is applicable when a party abandons an appeal, in which case the jurisdiction of the lower court is restored and its judgment revived, the case proceeding as if no appeal had been taken. (See 4 C. J. S. 2010.) What the majority proposes, however, is a modified revival, so to say, a restoration of the case in the Court of First Instance, by allowing the case to continue in that court where the case had stopped. But this is contrary to the principle that as the appeal had been perfected, the Court of First Instance had lost jurisdiction of

the case, the Court of Appeals having, in turn, acquired jurisdiction. The principle of the law on reconstitution is to allow this to be done in the court where the case is pending at the time the records are lost. So the law authorizes reconstitution of the case in the Court of Appeals, because it is that court that had cognizance of the case when the records were destroyed. The effect of the disputed order, therefore, is the restoration of the case to the jurisdiction of the Court of First Instance, which had lost jurisdiction of the case and where it shall again continue from where it stopped. In effect, the action of the majority is a restoration of a case pending in the Court of Appeals to the jurisdiction of the Court of First Instance, despite the fact that the parties have not chosen to ask for its reconstitution. This, I believe, is beyond our power, beyond the scope of judicial authority. Jurisdiction, in the sense of authority to take cognizance of cases, is fixed by law, not by the judicial power.

Section 29 of the law on reconstitution also expressly provides:

SEC. 29. In case the parties interested in a destroyed record fail to petition for the reconstitution thereof within the six months next following the date on which they were given notice in accordance with section two hereof, they shall be understood to have waived the reconstitution and may file their respective actions anew without being entitled to claim the benefits of section thirty-one hereof.

It is said that this provision is applicable to Courts of First Instance alone. But we find it under the title "Common Provisions," and the principle that it enunciates may properly be applied to appellate courts. What reason or ground can there be for applying it to Courts of First Instance and denying its application to appellate courts, in the absence of a provision that it is not applicable to the latter? Are we not justified in carrying out this evident legislative intent and purpose, clearly expressed in a provision of the law, by adopting it for appellate courts, instead of adopting the novel principle of case revival, which is contrary to the spirit of the law? The majority is clearly inconsistent in its judgment. On the one hand, it denies the application of section 29 of Act 3110 to appellate courts, because the law does not say it is applicable thereto. In the words of Justice Frankfurter, the majority "disregards the implications of a statute and imprisons the reading of it in the shell of the mere words, committing the cardinal sin in statutory construction, blind literalness." But in the same breath, in an act of unsolicited officiousness, it grants a novel remedy, that of modified revival of a case, which neither the parties have asked nor the statute authorizes.

I must confess I can not follow the ramblings of the majority. If we must interpret the law, we must interpret it in the spirit in which it is enacted; if we must enlarge its scope by construction, we must enlarge it by carrying out the legislative intent and purpose, and not circumscribe its application within the narrow confines of its letter and then adopt and insert therein novel theories of our own making which are contrary to the philosophy of the law evident from its express provisions.

Paras, C.J., and Bautista Angelo, J., concur.

[1] Macario Gunabe, et al., vs. The Director of Prisons, 44 Off. Gaz., (4) 1244; 77 Phil., 993; Juan Claridad vs. Isabel Novella, G. R. No. L-4207 from Oct. 24, 1952 and Felicidad Ambat vs. Director of Lands, 49 Off. Gaz., (1) 129.

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