

ESTATE OF THE DECEASED ABAUL HASSAN. EMILIO OQUINENA, PETITIONER, VS. PRIMITIVO CANIA, RESPONDENTS.

G.R. No. L-2478. July 27, 1950

Ponente: OZAETA, J.

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OZAETA, J.:

The appellee presented a claim for P2,667 against the estate of the deceased Abaul Hassan, based on the documents Exhibits A and B, which were attached to and made a part of his claim and which read, respectively, as follows:

"(To Whom It May Concern)

"This is to certify that Mr. Primitive Cania of Cebu City is employed by me as Coal Prospector with a remuneration of FIFTY CENTAVOS (P0.50) per ton of coal extracted. In this connection I would recommend that he be allowed to carry firearm.

"Cebu City, July 31, 1939.

(s) Boul Hasan

(Exhibit A.) (t) Aboul Hassan"

"Claim

Date

Tons of Coal

Extracted

Share and

Participation

at P0.50

a ton

Amount

Paid for

Deceased

Balance

Payable

1941

Jan.

P700

P350

P200

P150

Feb.

744

372

200

172

March

620

310

200

110

Apr.

740

370

200

170

May

840

420

200

220

June

960

480

200

280

July

900

450

200

250

August

920

460

200

260

Sept.

800

400

200

200

October

760

380

150

230

November

720

360

150

210

Dec.

600

300

200

100

1942

Jan.

680

340

200

140

Feb.

600

300

125

125

March

400

200

150

50

Totals

10,984

P5,492

P2,825

P2,667

(Exhibit B.)

(Sgd.) Primitivo Cania"

After hearing, the claim the trial court approved it to the extent of P994.01, and ordered the administrator to pay said amount to the claimant. From that order the administrator appealed to the Court of Appeals, which modified the order of the trial court by increasing the amount allowed to the claimant from P994.01 to P3,819.01,

From that judgment of the Court of Appeals the administrator has appealed to this court by certiorari.

Under his first assignment of error the appellant contends that the deceased Hassan was not the proprietor of the coal mine, but a mere operator and that he could not be held liable to the claimant. This assignment of error is untenable because the finding of the Court of Appeals from the oral and documentary evidence adduced in the trial court that Hassan employed the claimant as prospector and obligated himself to pay to the latter 50 centavos per ton of coal extracted, is conclusive upon this court.

Under his second assignment of error petitioner-appellant contends that the Court of Appeals erred in sustaining an assignment of error made by the appellee, who had not. appealed from the judgment of the trial court, by increasing the judgment from P994.01 to P3,818.01. We find this assignment of error to be meritorious. The claim presented by the plaintiff in the probate court was for P2,667 only. The trial court could have allowed less but not more than that amount. It allowed less, to wit: P994.01. The claimant did not question the correctness of that amount by filing a motion for reconsideration in the court below or by appealing from the judgment of the trial

court. His role as appellee is limited to refuting the appellant's assignment of error and to sustaining the judgment of the trial court. He is precluded from making any assignment of error impugning the correctness of the amount of the judgment of the trial court. To do that he should have appealed from the judgment. Both parties are allowed to appeal from the same judgment. (See sec. 8, Rule 41; see also sees. 17 and 18, Rule 48.)

Respondent-appellee attempts to justify the act of the Court of Appeals in increasing the amount of the judgment of the trial court by invoking sections 3 and 5 of Rule 53, which, respectively, read as follows:

"Sec. 3. Harmless error.—No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties."

"Sec. 5. Questions that may be decided.—No error which does not affect the jurisdiction over the subject matter will be considered unless stated in the assignment of errors and properly argued in the brief, save as the court, at its option, may notice plain errors not specified, and also clerical errors."

Neither of the above-quoted sections of the Rule authorizes the Court of Appeals to modify a judgment in favor of a party who has not appealed therefrom.

It appears that during the trial the claimant introduced in evidence a statement of account (Exhibit D) which was entirely different from Exhibit B, on which his claim was based. In said Exhibit D it is made to appear that the amount due was P3,819.01 and not P2,667 as alleged in the claim. Appellee contended that the trial court erroneously deducted the amount already paid—P2,825—from the said sum of P3,319.01.

The theory of the Court of Appeals that the trial court committed a clerical error in awarding to the claimant P994.01 instead of P3,819.01, is untenable, taking into consideration that the claim presented by the claimant to the probate court was for P2,667 only. The error, if any, was substantial and judicial—not clerical—and could have been corrected by an appellate court only thru appeal by the party adversely affected by such alleged error.

The judgment of the Court of Appeals is modified by making it conform to that of the Court of First Instance, without any finding as to costs.

Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

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