

EUGENIO ESTAYO, PROTESTANT AND APPELLANT VS. JOSE L. DE GUZMAN, PROTESTEE AND APPELLEE.

G.R. No. 10920. December 29, 1958

Ponente: PADILLA, J.

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PADILLA, J.:

On 14 December 1938 the Court of First Instance of Pangasinan rendered judgment declaring that in the elections held in 1937 the protestant Eugenio Estayo had been duly elected member of the provincial board of Pangasinan as against the protestee Jose L. de Guzman and directed the latter to pay to the former the costs and incidental expenses of the election protest (civil No. 7654). The protestee appealed to the Court of Appeals (CA-GR No. 4754). On 18 January 1939, pursuant to section 482, Revised Administrative Code, Act No. 2711, the election law then in force, now section 180, Republic Act No. 180, the protestee, as principal, and the spouses Agustin Mejia and Candida Soriano, Simplicio Carifio Tibayan, Adriano Pasaoa and Mariano Biascan, as bondsmen, filed an appeal bond in the sum of P2,000, by mortgaging five (5) parcels of land to answer for the expenses and costs incident to the appeal. On 31 May 1940 the Court of Appeals affirmed the judgment with costs against the appellant protestee. On 19 July 1940 the Supreme Court denied the protestee's petition for review of the judgment rendered by the Court of Appeals. On 6 August 1940 entry of judgment was made by the Clerk of the Supreme Court in the book of entries of judgment. On 2 April 1946 the protestee filed a petition for cancellation of the appeal bond. On 1 November 1946 the protestant filed the bill of costs in the Court of First Instance and in the Court of Appeals. On 10 December 1946 the protestee objected to the protestant's bill of costs. For sometime neither party took any step to have their conflicting claims on costs adjudged. On 5 July 1949 counsel for the protestant filed in court a notice and served a copy thereof upon counsel for the protestee advising him that on 14 July 1949 they would ask the Court to assess the costs and incidental expenses and to approve the same. On 14 July 1949, by agreement of the parties, the Court entered an order deferring consideration and determination of the bill of costs until further move of the parties in the premises. On 20 August 1954 the protestee petitioned for the release of the appeal bond and for authority to the Registrar of Deeds in and for the province of Pangasinan to cancel the memorandum of encumbrance on the back of the certificate of title of the bondsmen covering the five (5) parcels of land put up by them as security or bond. On 24 August 1954 the protestant objected to the protestee's petition and prayed that the bill of costs he had submitted be approved. On 29 November 1954 the protestee filed a reply to the protestant's objection. On 7 December 1955, after hearing and after the parties had submitted their memoranda in support of their respective contentions, the Court entered an order releasing the appeal bond. On 13 January 1956 the Court denied the protestant's motion for reconsideration. The protestant has appealed. On 19 November 1956, upon motion of counsel for the protestant-appellee in the court below, now appellant, with the consent of the protestee-appellant in the court below, now appellee, Consolation Sta. Maria Vda. de Estayo, the widow, and Josefina Estayo de Pulido, the daughter of the late Eugenio Estayo, were substituted for the deceased.

Section 6, Rule 39, which is substantially the same as sections 443 and 447 of Act No. 190, provides:

A judgment may be executed on motion within five years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action.

Costs and incidental expenses of the suit are part of the judgment^[1] and it is incumbent upon the prevailing party in whose favor they are awarded to submit forthwith the itemized bill to the clerk of court so that he may make the corresponding taxation. In the case at bar, entry of judgment was made on 6 August 1940, and it was only on 1 November 1946 that the protestant filed the bill of costs and on 5 July 1949 that counsel for the protestant filed in court a notice and served a copy thereof upon counsel for the protestee advising him that on 14 July 1949 he would move the court to assess the costs and incidental expenses and to approve the bill of such costs and expenses. However, by agreement of the parties its consideration and determination were deferred until further move by them in the premises. It was only on 24 August 1954 that the protestant objected to the protestee's petition for the release of the appeal bond and pressed for taxation and approval of the bill of costs he had filed. The protestant slept on his right and neglected to execute the judgment rendered in his favor within five years from its entry. He cannot claim that as the case involved a protest against an official elected during the Commonwealth Government and for that reason it had a political complexion, he could not move for its execution during the Japanese occupation, because the motion would be just for a taxation of costs and other incidental expenses and not for execution of the judgment involving the right to hold office during the Commonwealth Government, and because the term of office of the protestant had already ended at the beginning of the Japanese occupation. Neither could the Moratorium Law improve the protestant's position, because even if it were applied, deducting the period from 10 March 1945, when Executive Order No. 32 amending Executive Order No. 25 was promulgated, which suspended the enforcement of payment of all debts and other monetary obligations payable within the Philippines, to 26 July 1948, when the said Executive Order was partly amended by Republic Act No. 342, or 3 years, 4 months and 16 days, still the protestant's notice to the adverse party that he would move for taxation of costs and incidental expenses filed on 5 July 1949 or his prayer filed on 24 August 1954 that the costs and incidental expenses be approved and taxed against the defeated party was beyond the five-year period after the entry of judgment.

As to the right of action by the mortgagee against the mortgagors—the bondsmen on the appeal bond—under article 1142 of the new Civil Code "A mortgage action prescribes after ten years," thereby reducing the prescriptive period of twenty years provided in article 1964 of the old Civil Code. Article 1116 of the new Civil Code provides that:

Prescription already running before the effectivity of this Code shall be governed by laws previously in force; but if since the time this Code took effect the entire period herein required for prescription should elapse, the present Code shall be applicable, even though by the former laws a longer period might be required.

The new Civil Code took effect on 30 August 1950.^[1] From 6 August 1940, when the action to enforce the mortgage became effective by the entry of judgment in the Supreme Court, to 30 August 1950, more than ten years had elapsed. Hence the provision of article 1142 of the new Civil Code would apply. Therefore, the encumbrance on the five (5) parcels of land mortgaged by the bondsmen for the appeal bond filed by the protestee may be cancelled by the Registrar of Deeds in and for the province of Pangasinan.

The order appealed from is affirmed as to the release of the appeal bond and modified so as to grant authority to the Registrar of Deeds in and for the province of Pangasinan to cancel the memorandum of encumbrance on the five (5) parcels of land put up by the bondsmen as security or bond for the appeal, without pronouncement as to costs.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

Order affirmed with modification.

[1] Section 8, Rule 131.

[1] Lara vs. Del Rosario, 50 Off. Gaz. 1975; Casabar vs. Cruz, G. R. No. L-6882, 29 December 1954; Velayo vs. Shell Co. of P.I. Ltd., 54 Off. Gaz. 63.

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