

ALFREDO B. ENOJAS, JR., PETITIONER, VS. THE HONORABLE COMMISSION ON ELECTIONS AND JOSE R. RODRIGUEZ, RESPONDENTS.

G.R. No. 129938. December 12, 1997

Ponente: REGALADO, J.

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REGALADO, J.:

The present petition for certiorari seeks the reversal of the resolution[1] issued by respondent Commission on Elections (COMELEC) in SPR Nos. 9-97 and 18-97 which set aside the decision of the Regional Trial Court of Palawan, Branch 50, in Special Election Case No. 891 by disposing as follows:

“WHEREFORE, the Commission resolves to GRANT, as it hereby GRANTS, the petitions. The respondent court’s order dated February 19, 1997, denying petitioner’s presentation of evidence, the order dated March 10, 1997, denying petitioner’s Motion for Reconsideration, the Decision dated April 21, 1997, the order dated June 17, 1997, directing the issuance of a writ of execution, and the writ of execution issued pursuant thereto are SET ASIDE.

We order the Regional Trial Court of Palawan and Puerto Princesa City, Branch 50, to proceed immediately with the trial of Election Case No. 891.

In the meantime, respondent Alfredo Enojas, Jr. shall vacate the position of mayor of Roxas, Palawan, and the petitioner shall assume said position to restore the parties to the status quo ante.

This resolution is immediately executory.

Let the records be remanded to the court a quo for further proceedings.”

The records show that these facts are not substantially disputed:

1. Petitioner Alfredo B. Enojas, Jr. and respondent Jose R. Rodriguez were the mayoralty candidates for the Municipality of Roxas, Palawan in the May, 1995 elections. Respondent Rodriguez reportedly won by forty-eight (48) votes over petitioner Enojas and was proclaimed by the Municipal Board of Canvassers for Roxas, Palawan as its duly elected mayor.
2. Petitioner Enojas, Jr. then filed an election protest before the Regional Trial Court of Palawan, docketed as Special Election Case No. 891, seeking the revision of ballots in one hundred two (102) precincts in the municipality. However, after the revision of the ballots in thirty-nine (39) precincts, petitioner Enojas, Jr., with prior approval of the trial court, withdrew the remaining unrevised precincts from the revision proceedings.
3. After petitioner Enojas, Jr. had filed his Formal Offer of Exhibits and rested his case, respondent Rodriguez filed, with leave of court, a Motion to Dismiss[2] alleging, inter alia, that the court had no jurisdiction on the ground that the protest had not passed through the Katarungang Pambarangay and the correct docket fees had not been paid; that based on the allegations in the protest and the exhibits formally offered, protestant had no cause of action against the protestee because the protest should have been filed against the person or persons

liable for the alleged errors in the counting of votes; that protestant should be deemed to have waived his right to file the present protest by reason of his failure to file a protest with the Board of Election Inspectors and/or Municipal Board of Canvassers; that the filing of the election protest was premature and should be dismissed for forum shopping since there was a pending pre-proclamation protest filed with the Municipal Board of Canvassers and the COMELEC; and that the allegations in the complaint are ambiguous for failure to make out clearly whether it is an election contest or a judicial recount.

4. On December 19, 1995, the trial court granted the motion of respondent Rodriguez on the ground of lack of jurisdiction for non-payment of the correct docket fees, and dismissed Special Election Case No. 891.

5. From said order of dismissal, petitioner Enojas, Jr. went to respondent COMELEC on a petition for certiorari, prohibition and disqualification which was docketed as SPR No. 1-96. On June 11, 1996, respondent COMELEC issued a resolution reversing the Order of December 19, 1995 and remanding the case to the trial court for further proceedings. The lower court thereafter set the case for reception of the evidence of respondent Rodriguez.

6. On October 11, 1996, however, petitioner Enojas, Jr. filed an Opposition to the presentation of evidence by respondent Rodriguez on the ground that the latter is deemed to have waived his right to present evidence by reason of the COMELEC's denial of his motion to dismiss which was previously granted by the court a quo.

7. On February 19, 1997, the trial court issued an Order declaring that respondent Rodriguez was deemed to have waived his right to present evidence, and accordingly considered the case submitted for decision.

8. His motion for reconsideration of the Order of February 19, 1997 having been denied for lack of merit, respondent Rodriguez filed a petition for certiorari and prohibition before the COMELEC in SPR No. 9-97 questioning the February 19, 1997 and March 10, 1997 orders of the trial court denying his right to present evidence.

9. In the meantime, the trial court rendered a decision dated April 28, 1997 declaring petitioner Enojas, Jr. as the winner in the 1995 elections for the position of mayor of Roxas, Palawan. On even date, petitioner Enojas, Jr. filed a motion for execution pending appeal.

10. As a consequence of the foregoing, the COMELEC issued on April 29, 1997 a temporary restraining order (TRO) in SPR No. 9-97 against Presiding Judge Nelia Yap-Fernandez of the Regional Trial Court of Palawan, Branch 50.

11. On June 17, 1997, a writ of execution pending appeal was issued by the trial court, upon motion of protestant and after the expiration of the 20-day TRO issued by the COMELEC. Accordingly, after posting a bond of P400,000.00, petitioner Enojas, Jr. assumed office as municipal mayor of Roxas, Palawan.

12. Respondent Rodriguez consequently filed another petition for certiorari, prohibition and mandamus with the COMELEC, docketed as SPR No. 18-97, questioning the propriety of the Order of June 17, 1997 which authorized the issuance of a writ of execution pending appeal.

In reversing the trial court and ordering the reception of evidence for respondent Rodriguez, respondent COMELEC held as follows:

“x x x [R]espondent Enojas objected to petitioner's presentation of evidence contending that by filing a motion to dismiss or demurrer to evidence, petitioner was deemed to have waived his right to present evidence. Respondent judge upheld such contention in the questioned orders dated February 19, 1996 and March 10, 1996.

Such ruling is not only erroneous but constitutes a grave abuse of discretion amounting to lack or excess of jurisdiction. What petitioner filed was not a demurrer to evidence but a motion to dismiss for lack of

jurisdiction. Demurrer to evidence questions the sufficiency of evidence. Thus, as enunciated by the Supreme Court in the case of *Siyngco vs. C(o)stibolo*, 27 SCRA 272:

‘This rule is now embodied in the Revised Rules of Court, section 1, Rule 35, captioned Judgment and Demurrer to Evidence, which will take effect on January 1, 1964. It is, therefore, evident that the respondent court, in the case at bar, after denying the motion to dismiss, for insufficiency of evidence, (demurrer to evidence), should have permitted the petitioner-defendant to present his own evidence x x x.’

The motion to dismiss on the ground of jurisdiction can be easily differentiated from a motion to dismiss on demurrer to evidence in that, in the latter case, the movant admits the truth or factual allegations in the complaint and moves for the dismissal of the case on the ground of insufficiency of evidence. The legal effect and consequence of a demurrer to evidence is that in the event that the motion to dismiss on demurrer to evidence is granted and the order of dismissal is reversed on appeal, the movant loses his right to present evidence in his behalf.

However, in a motion to dismiss on the ground of lack of jurisdiction, the movant does not lose his right to present evidence.

The case of *Calabig vs. Villanueva*, 135 SCRA 300, and *Demetrio vs. Lopez*, 50 Phil 45, cited by private respondent are inapplicable to the instant case as the motions filed therein were demurrers to evidence.”[3]

The main issue in this case, therefore, involves the determination of whether the motion to dismiss filed by respondent Rodriguez should be considered as a demurrer to evidence by reason of which he is deemed to have waived his right to present evidence.

We rule in the affirmative.

The present controversy does not involve a novel issue. As early as the case of *Demetrio vs. Lopez*, [4] wherein after the protestant had introduced his evidence, the protestee, before presenting his, own, filed a motion to dismiss the protest upon the ground that the evidence presented by the protestant did not show that he had obtained a greater number of votes than the protestee, and reserving the right to present his evidence if his motion was decided adversely, this Court held that:

“In regard to the first assignment of error, the practice followed in the courts of these Islands is to permit the defendant to present a motion for dismissal in ordinary cases after the plaintiff has rested, reserving the right to present his evidence if the ruling on his motion is adverse to him either in the first instance or on appeal. In an election protest proceeding, however, which is a summary one, and in which the periods are short and fatal, and trials rapid and preferential as the peremptory nature of the litigation so requires, the motion for dismissal at that stage of the proceeding must be considered as a demurrer to the evidence presented by the protestant, with implied waiver by the protestee to present his evidence, whatever may be the ruling, whether adverse or favorable, either in the first instance or on appeal, the court of origin or appellate court having the power to definitely decide the protest. If, in the prosecution of election protests the ordinary practice were to be followed in regard to the presentation of motions for dismissal or of demurrers to the evidence, in the majority of cases, if not always, the law would be frustrated and the will of the electorate defeated, to the great detriment of the underlying principles of representative government, because, in case of revocation of a ruling sustaining the motion of dismissal or the demurrer on appeal, the case would have to be remanded to the court below for the continuation of the trial and the introduction of evidence by the protestee, thus causing the proceeding to continue during the term of the office in question, with the possible result that the defeated, and not the elected, candidate would be discharging the office.

In election protests, therefore, the protestee should not be permitted to present a motion for dismissal or a demurrer to the evidence of the protestant, unless he waives the introduction of his own evidence in case the

ruling on his motion or demurrer is adverse to him, in which case the court that tries the case must definitely decide it.

In the present case, the motion for dismissal filed by the protestee has the effect of a demurrer to the evidence presented by the protestant, he having thereby impliedly waived the introduction of his evidence, for which reason the trial court did not commit an error in sustaining said motion and definitely deciding the case without requiring the protestee to present his evidence.” (Italics supplied)

The aforequoted ruling was reiterated in the later case of *Jardiel vs. Commission on Elections, et al.*[5] wherein the motion to dismiss filed by the protestee, after the protestant had submitted a written offer of evidence, was considered as a demurrer to the evidence presented. In the succeeding case of *Calabig vs. Villanueva, etc., et al.*,[6] the foregoing pronouncement was quoted with approval and applied as a doctrinal rule.

The instant petition is substantially on all fours with the three cited cases, and no compelling reason exists to warrant an exception thereto. The fact that the motion to dismiss filed by respondent Rodriguez was initially granted by the trial court, but subsequently reversed on appeal by the COMELEC on the basis of the jurisdictional grounds raised therein, does not warrant a ruling to the contrary. The reason is that the motion to dismiss filed in this case did not only raise a couple of defective jurisdictional issues but likewise challenged and demurred to the sufficiency of the evidence adduced therein by petitioner Enojas, through these allegations:

“2. This protest is without any cause of action. It appears from the face of the protest and even in the exhibits formally offered, admitting in arguendo that the same is admitted by the Court, that the herein protest has no cause of action. The allegation in the protest clearly shows that protestant has no cause of action against the protestee. Again, granting in arguendo, that the herein protestant actually garnered more votes than herein protestee, the protest should be filed against the person or persons liable against such error or errors.”[7] (Emphasis ours).

and thereafter prayed that “the herein protest be dismissed for lack of jurisdiction, lack of cause of action,[8] nonpayment of correct filing fee, for being premature as the pre-proclamation protest is not yet terminated, and the protest is ambig(u)ous whether it is for election contest or judicial recount.”[9] Hence, we agree that respondent Rodriguez had waived his right to present evidence.

It was respondent COMELEC which erred in applying the ruling in *Sia yngco, et al. vs. Costibolo, et al.*[10] because that case involved an action for annulment of judgment. Moreover, we reject the view of respondent COMELEC that the doctrine in *Demetrio vs. Lopez, ante*, is inapplicable to the case at bar. The fact is that while what was filed in that case was a motion to dismiss, it was correctly treated therein by the Court as a demurrer to evidence, hence it is precisely in point under the position we have taken in this case.

It likewise bears stressing that a demurrer to evidence under Rule 33 is in the nature of a motion to dismiss on the ground of insufficiency of evidence and is presented after the plaintiff rests its case. It thus differs from a motion to dismiss under Rule 16 which is grounded on preliminary objections and is presented at the outset of the case, that is, before a responsive pleading is filed by the movant and within the period for the filing thereof.

It is thus obvious that the motion to dismiss filed by respondent Rodriguez before the trial court in Special Election Case No. 891 was, in point of time, actually a demurrer to evidence. It was filed after petitioner Enojas, Jr. had offered his evidence and rested his case, and before respondent Rodriguez was supposed to present his own.[11] Although the motion contained other grounds, specifically alleged therein was the contention that petitioner Enojas had no cause of action. That ground necessarily connotes that despite the evidence offered by petitioner, it was respondent’s submission that such evidence was insufficient to establish his cause of action. Ineluctably, therefore, such a motion presented at that stage of the action and on that ground cannot be anything

else other than a demurrer to evidence.

It is pointless for respondent Rodriguez to insist that the mere fact that the issue of jurisdiction was also raised as another ground would detract from the nature of the pleading filed by him as being in truth a demurrer. Otherwise, it would be very easy for a defendant or respondent to avoid the restrictions and consequences of Rule 33 by merely filing an omnibus motion, or a motion containing several grounds, although his main thrust was to challenge the sufficiency of the evidence. That would open the door to further proceedings in either the trial or appellate court, if not in both, for piecemeal resolution of the different grounds and thereby delay the final decision in the election protest to the benefit of the dubious occupant, as pointed out in *Demetrio* and reiterated in succeeding cases *aforecited*.

In the present case, for reasons of its own, the trial court erroneously pounced upon the supposed lack of jurisdiction only, probably since this presented a more simple and convenient ground for dismissal. That is why the COMELEC rebuffed it likewise and necessarily on the same ground, but that did not convert the demurrer into an ordinary motion to dismiss which under Rule 16, should be filed before the movant presents his answer to the initiatory pleading. Note should further be taken of the fact that neither the trial court nor the COMELEC ruled out the propriety of private respondent's invocation of the ground of lack of cause of action in the same pleading, hence he actually demurred to the sufficiency of the evidence theretofore offered by petitioner.

What conjointly determine the nature of a pleading are the allegations therein made in good faith, the stage of the proceeding at which it is filed, and the primary objective of the party filing the same. The ground chosen or the rationale adopted by the court in resolving the motion does not determine or change the real nature thereof. It is also significant that respondent Rodriguez did obviously rely primarily on what he believed was the lack of the requisite quantum of evidence to prove the election protest, so much so that he did not even bother to file a counter-protest. All the foregoing considerations convince us that the supposed motion to dismiss is actually a demurrer, hence the trial court correctly held that respondent Rodriguez had waived his right to present evidence.

WHEREFORE, the questioned resolution of the Commission on Elections is hereby REVERSED and SET ASIDE. The decision of Branch 50 of the Regional Trial Court of Palawan in Special Election Case No. 891, declaring petitioner Alfredo B. Enojas, Jr. as the duly elected mayor of the Municipality of Roxas, Palawan, is hereby REINSTATED and the Presiding Judge thereof is hereby ordered to CEASE and DESIST from further proceeding with the hearing of the case. This decision shall be immediately executory.
SO ORDERED.

Narvasa, C.J., Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco, Panganiban, and Martinez, JJ., concur.

[1] Annex A, Petition; Rollo, 21.

[2] Annex E-1; Rollo, 52.

[3] Rollo, 25-26.

[4] 50 Phil. 45 (1927).

[5] G.R. No. 58575, September 21, 1983, 124 SCRA 650.

[6] G.R. No. 56598, March 15, 1985, 135 SCRA 300.

[7] Annex E-1, Petition; Rollo, 52.

[8] The ground for dismissal based on the fact that the pleading asserting the claims states no cause of action is different from the ground that the case of the claimant should be dismissed for lack of cause of action. The first is raised in a motion to dismiss under Rule 16 before a responsive pleading is filed and can be determined only from the allegations in the initiatory pleading and not from evidentiary or other matters aliunde. The second is raised in a demurrer to evidence under Rule 33 after the plaintiff has rested his case and can be resolved only on the basis of the evidence he has presented in support of his claim.

[9] Id., *ibid.*; Rollo, 54.

[10] G.R. No. L-22506, February 28, 1969, 27 SCRA 272.

[11] Rollo, 13, 44.

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