

THE ROMAN CATHOLIC BISHOP OF LIPA, PLAINTIFF AND APPELLANT, VS. THE MUNICIPALITY OF UNISAN, DEFENDANT AND APPELLEE.

G. R. No. 14562. September 14, 1920

Ponente: ARAULLO, J.

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ARAULLO, J.:

This is an action to recover title to real property. The plaintiff alleged in his complaint that he was the sole owner of three parcels of land situated in the municipality of Unisan, Province of Tayabas, and described in paragraph 3 of the complaint; that said parcels were taken by the defendant, pretending to be the owner thereof, and that by reason of such detainer he suffered losses and damages amounting to P1,500. Wherefore he prayed the Court of First Instance of said province to render judgment in his favor, declaring him to be the exclusive and absolute owner of said lands, and ordering the defendant to deliver them, to him and to pay him the sum of P1,500 with legal interest thereon from the date on which the defendant took possession of the lands until payment was made, and costs.

The defendant, in his answer to the complaint, denied the allegations thereof, and alleged as a defense that he was the owner of said lands since time immemorial and that he has been in possession thereof until the day of the filing of the answer said property by adverse possession, and prayed that he be absolved from the complaint. The trial having been held and the evidence for the plaintiff having been presented, the provincial fiscal of Tayabas, in representation of the defendant municipality, moved for the dismissal of the case on the ground that the plaintiff had failed to prove his alleged title to said lands and that from said evidence it appeared that the action had prescribed. On April 19, 1917, the court rendered judgment dismissing the plaintiff's action and denying the relief prayed for in the complaint, without any special pronouncement as to costs. On April 21, the plaintiff excepted to the judgment in writing, asking at the same time that the case be reopened and a new trial held on the ground that the judgment was manifestly contrary to the weight of the evidence adduced at the trial and against the law. The plaintiff sent a copy of this petition to the defendant on the same date, April 21, 1917, but without stating in said motion the place and the date designated for the hearing thereof.

On March 2, 1918, that is, ten months and eleven days afterwards, the attorneys for the plaintiff notified in writing the attorney for the defendant that on the 9th of said month or as soon thereafter as they could be heard they would ask the court to pass upon, and decide, the motion for a new trial dated April 21, 1917. The hearing upon said motion having been held on the date fixed for the purpose, the court by order dated March 14th declared that It could not consider or resolve in one way or another the motion for new trial presented by the plaintiff on April 21, 1917. It ordered, however, that the exception presented by the attorneys for the plaintiff to said decision of April 19, 1917, be noted. To this order the plaintiff excepted on March 18, and announced his intention to present the corresponding bill of exceptions in order that this court might review the judgment and the orders rendered in said case, and asked that said bill be approved and transmitted to this court together with all the evidence, documentary and oral, adduced at the trial, all of which was made an integral part of the bill. Said bill having been

approved and transmitted to this court, the appellant assigned in his brief as the first error committed by the trial court, the latter's failure to consider or decide the motion for new trial presented by him.

On the other hand, the defendant and appellee submitted in its brief in the first place the proposition that the evidence, that is, the transcript of the stenographic notes of the testimony of the witnesses taken in court during the trial, was improperly attached to the record and that it should be stricken out before this court should proceed to consider and decide the question raised in the appellant's brief; and the defendant also asked that judgment be rendered dismissing the appeal with the costs of both instances against the appellant. Therefore as a preliminary question, the point raised by the parties by virtue of the exception taken by the plaintiff to the order of the lower court dated March 14, 1918, must be solved. Article 11 of the Rules of the Courts of First Instance, promulgated before those now in force and in effect in the year 1917, when the said motion for new trial was presented by the plaintiff, as well as article 10 of the Rules for the same courts in force since January 1, 1919, provided that the notification of motions and incidental applications shall be in writing and shall state, besides the grounds upon which they are based, the place and date when they are to be heard. It is also provided in article 10 of the former rules and in article 9 of the latter that, except when the law provides otherwise, no action shall be taken upon any motion unless it appears that the adverse party has been notified three days in advance of the date of the hearing thereof. It is likewise provided in article 10 of the rules now in force that no motion shall be admitted for filing unless it is shown that notice has been served three days in advance, that the motion shall be heard on the next motion day or on a day specially fixed for the purpose. Section 145 of the Code of Civil Procedure, as amended by section 27 of Act No. 2347, provides that within thirty days after notification of a judgment rendered by a court of first instance, the judge thereof, upon the petition of the aggrieved party and previous notice to the other, may vacate the judgment and grant a new trial whenever the motion, as in the present case, is founded, among other grounds, upon the fact that the evidence does not sufficiently justify the judgment of the court, or that said judgment is against the law.

Inasmuch as, according to the articles cited of the Rules of the Courts of First Instance, in order that the court may act upon a motion or other incidental applications it is a necessary and indispensable requisite that the adverse party should be notified three days in advance of the date of the hearing thereof with which requirement the appellant had not complied when, on April 21, 1917, he filed his motion for new trial in this case, having failed to serve upon the defendant a copy of the motion, just as he did fail to state therein the time and place when the hearing should be held and, inasmuch as said plaintiff further failed to comply with said requirements until March 2, 1918, which was ten months and several days after the filing of said motion and long after the expiration of thirty days following the notification of the judgment to said party, within which the court could vacate the judgment and grant the new trial or deny it, it is evident that, as the trial court well says, the period within which to determine said motion had already expired and the court was not under obligation to decide it. With respect to the period of thirty days granted to the Court of First Instance within which it may, according to section 145 of the Code of Civil Procedure, vacate its judgment upon the petition of the party who believes himself to be aggrieved thereby, there exists the duty on the part of such party to present his petition or motion within exactly the same period; and it is beyond doubt that, as the appellant well says in his brief in attempting to show the first error assigned and already discussed, if the motion for new trial is presented within thirty days after the notification of judgment, it shall be considered as presented on time and the court is bound to decide it at any moment even after said thirty days have expired, for upon the presentation of the motion said period is suspended and the delay in the resolution thereof by the court should not prejudice the mover as it is not imputable to him.

But it must be remembered that the petition or motion for new trial presented by the appellant should have been presented with the requisites mentioned in the article already cited of the rules; that is to say, notice must have been given to the adverse party three days in advance of the date of the hearing and said notice must have stated

the date and place of the hearing for, under the rules in force when the motion for new trial was presented, as well under those in force at present, and which have been in force since January 1, 1919, without said requisites the application or petition presented was not to be considered, and could not be considered or acted upon by the court, nor could it, according to article 10 of the rulea last mentioned, be filed, or what is the same thing, admitted, if the second of said requisites was not complied with. This point can very well be understood if it is taken into account that, as the object of a motion for new trial is to vacate the judgment and reopen the case, and that as the court can neither grant nor deny it without hearing the adverse party, then if a day is not fixed for the hearing and the adverse party is not notified thereof in advance, said petition or motion is a completely useless paper and should not even be united to the record nor filed, as correctly provided for in article 10 of the Rules of the Courts of First Instance which are now in force.

In the case at bar it is true that the written motion for new trial dated April 21, 1917, was filed by the appellant four days after the rendition of the judgment, to which said party excepted, and therefore within thirty days after the notification to him of said judgment; but said motion was not, and could not be considered as such, nor could it be acted upon by the court because the party presenting it had failed to comply with the requirements above set forth, and was, therefore, completely useless for the purposes for which it was filed; that is to say, for the purpose of vacating the judgment and securing a new trial, and it did not have the effect of suspending the period of thirty days fixed by section 14 of the Code of Civil Procedure within which the court could decide said motion, either granting or denying it. The appellant having notified the adverse party on March 2, 1918, that is, ten months and several days after he was notified of the judgment rendered in the case, that on the 9th of said month he would ask the court to hear and decide said motion for new trial dated April 21, 1917, he thereby admitted that when he presented his motion of the latter date he had not complied with the requirements prescribed by the rules in order that the court might act upon, and decide, his petition; and inasmuch as only from that time, to wit, from the day he sent to the adverse party such notice of the hearing did said incidental application acquire the legal consideration of a motion, for until that time it could not be acted upon and was merely a piece of paper united to the record without any other meaning or effect than an expression of the desire of the appellant to obtain a new trial; it is evident that said motion was presented out of the period of thirty days fixed by said section 145 of the Code of Civil Procedure, as amended by section 27 of Act No. 2347; and such being the case, the appellant himself rendered it impossible for the court to decide said motion, granting or denying it in accordance with the provision of said section.

The order of March 14, 1918, is, therefore, strictly in accordance with law, and said motion for new trial not having been overruled by the lower court, this court cannot review the evidence presented at the trial and transmitted together with the bill of exception; and we should decide only the questions of law raised by the bill of exceptions, inasmuch as the plaintiff excepted on time to the judgment rendered by the court, the court having noted said exception on March 14, 1918, and said bill of exceptions was presented by the appellant within ten days after said exception was noted.

Wherefore, we affirm the order appealed from, dated March 14, 1918, and it is ordered that the evidence adduced at the trial and transmitted tot this court be detached from the record. So ordered.

Mapa, C. J., Johnson, Malcolm, Avanceña and Villamor, JJ., concur.

DISSENTING

MOIR, J.,

I dissent. The facts are as follows: The case was originally decided by the court April 19, 1917, the 23d of the same month, exception was filed by plaintiff, and the usual motion for new trial was made and notice thereof sent to the opposite counsel. This motion did not carry with it the notice which the new rules of court require to be attached, notifying the opposite party that at a certain time and place the court would be asked to set its decision aside and grant a new hearing. Nothing else was lacking. The court should have called the case on the following Saturday, and denied the motion for a new trial, and should have notified the parties of its action. But the court did nothing, and the attorneys for plaintiff did nothing until March 2, 1918, when notice was given, and the court below refused to consider or decide the motion, because it was not presented for decision within the thirty days fixed by section 145, as amended, of the Code of Civil Procedure. It had been filed within thirty days and nothing more was required but for the court to rule on the motion.

Old Rules 10 and 11 of the Courts of First Instance in effect in 1917 and 1918 read:

"Rule 10. When no other provision is made by law no action shall be taken on any motions or applications unless it appears that the adverse party had notice thereof three days before the time set for the hearing thereof.

"Rule 11. All notices of motions shall be in writing, and shall state generally the nature and grounds of the motion and when and where it will be heard. They shall be accompanied with copies of the affidavits and other papers on which the motion is based."

Under these rules, I think it was only necessary to file the motion within the time fixed by law, and at any time thereafter three days notice of the time and place of calling up the motion could be given, and it would be the duty of the court to pass upon it no matter how much time had elapsed. I consider it is the duty of the court to pass on all formal motions of this kind in the record even in the absence of parties. I think the order, refusing to rule on the motion for a new trial, should be reversed.

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