

**FILEMON VELUZ, PETITIONER, VS. THE JUSTICE OF THE PEACE OF SARIAYA, PROVINCE OF TAYABAS, SEGUNDA ABUEL AND HER HUSBAND BONIFACIO A. SANTOS, RESPONDENTS.**

*G. R. No. 16253. December 15, 1921*

Ponente: JOHNSON, J.

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**JOHNSON, J.:**

This is an original action, commenced in this court, for the writ of certiorari. The facts upon which the petition is based may be stated as follows:

- (1) That on the 23d day of October, 1919, the petitioner herein commenced an action of forcible entry and detainer in the court of the justice of the peace of the municipality of Sariaya, Province of Tayabas;
- (2) That on the 5th day of November, 1919, the defendants, Segunda Abuel and her husband Bonifacio A. Santos, presented their answer, in which they alleged (a) a general and specific denial of the facts contained in the complaint, and (6) six distinct and separate defenses;
- (3) That the cause was set down for trial on the 13th day of November, 1919, on which day the trial of the cause was transferred until the 20th day of November, 1919;
- (4) That on the 20th day of November, 1919, the trial of the cause was again transferred until the 22d day of November, 1919;
- (5) That on the 22d day of November, 1919, the trial of the cause was again transferred until the 29th day of November, 1919;
- (6) That on the 29th day of November, 1919, the trial of the cause was again transferred until the 4th day of December, 1919;
- (7) That on the 4th day of December, 1919, the plaintiff appeared with his witnesses. The justice of the peace called the case for trial, and, after hearing the proof adduced by the plaintiff, rendered a judgment against the defendants, ordering them to deliver to the plaintiff the land in question and to deliver or pay to the plaintiff eighty (80) piculs of copra, or its value, for every period of three months commencing with the month of February, 1919, until the delivery of the land, with costs against the defendants.
- (8) That after the trial and judgment, as indicated in the paragraph immediately preceding (No. 7), the plaintiff and his witnesses returned to his municipality (Lucena, Province of Tayabas) ; that two hours after his return to his municipality, he received word that the defendants had appeared in the justice of the peace court and had presented a motion asking the court to set aside its judgment, under section 55 of Act No. 190; that a copy of said motion was not served upon the plaintiff; that later, and on the same day (December 4, 1919) the plaintiff presented a written opposition to said motion, upon the ground that the justice of the peace was without authority under the law, in cases of forcible entry and detainer, to grant motions of the character of that presented by the

defendants; that the judgment rendered by the justice of the peace was not a judgment by default, as erroneously stated in his decision; that the only remedy of the defendants was by an appeal to the Court of First Instance.

(9) That notwithstanding the opposition of the plaintiff to the granting of such motion to set aside the judgment, the justice of the peace, on the 17th day of December, 1919, granted said motion and set aside his judgment of December 4, 1919, notice of which order was given to the plaintiff on the 10th day of January, 1920.

Upon the presentation of the petition in this court, the respondents (the defendants in the court below) were required to demur or answer. On the 8th day of March, 1920, the respondents presented an answer and interposed a general and special defense.

From a memorandum which appears attached to the record, signed by the justice of the peace, it appears that the various transfers of the trial, as above indicated, were made by an agreement and with the consent of the plaintiff.

The petitioner herein contends that the justice of the peace exceeded his jurisdiction in considering the motion of the defendants to set aside his judgment of December 4, 1919. He contends that the judgment rendered was neither a judgment of nonsuit nor judgment by default, and could not be set aside, therefore, under the provisions of section 55 of Act No. 190. He further contends that the justice of the peace, in actions of forcible entry and detainer, is without authority to hear and determine motions for a new trial or reconsideration.

The first contention of the petitioner is tenable, for the reason that the judgment of the justice of the peace, rendered on the 4th day of December, 1919, was neither a judgment of "nonsuit" nor a judgment "by default." A judgment of nonsuit is the name of a judgment given against the plaintiff (a) when he is unable to prove his case, or (b) when he refuses or neglects to proceed to the trial of the cause after it has been put at issue, without determining such issue. In other words, a judgment of nonsuit is a judgment by which the action of the plaintiff for some good reason or other is dismissed. (Sec. 53, Act No. 190.) A judgment by default is a judgment rendered against the defendant for his failure to appear, demur, or answer. (Sec. 54, Act No. 190.) When the plaintiff makes default, he may be nonsuited; and when the defendant makes default a judgment by default may be rendered against him.

In the present case the justice of the peace admitted that the plaintiff had adduced proof sufficient to justify his complaint, or otherwise he could not have rendered a judgment in his favor. The judgment could not be a judgment by default for the reason that the defendant had appeared and answered. Not only had the defendant appeared and answered but the cause had been set down for trial several times. Section 55 of Act No. 190, therefore, furnished no reason nor justification for the justice of the peace to set aside his judgment of December 4, 1919, even though the application therefor had been made within two hours after the same had been rendered. The authority of the justice of the peace under said section (55) to annul and set aside a judgment of nonsuit or default within two hours after the entry of the same, is not applicable in the present case and furnishes no authority for the order of the justice of the peace complained of.

The second contention of the petitioner, that the justice of the peace is not authorized to grant a motion for a new trial, presents a more difficult question. It is true that there is no statutory provision granting the justice of the peace authority to consider a motion for a new trial. Neither is there any statutory provision authorizing judges of the Courts of First Instance, in special proceedings, to consider or grant motions for new trial or reconsideration. Notwithstanding that fact, however, in the case of *Biunas vs. Mora* (34 Phil., 282), we held, by a divided court, that a motion for a new trial might be presented in special proceedings, provided that the motion was made before judgments in such cases became final. The doctrine announced in that case was followed in the cases of *Dy Cay vs. Crossfield & O'Brien* (38 Phil., 521); and *Tindoc vs. Donato* (40 Phil., 732). The doctrine permitting motions for a new trial in the absence of statutory authority was also recognized and applied in the case of *Palomata vs.*

Villareal (40 Phil., 641), an election protest.

The theory upon which the court allowed motions for a new trial, in the absence of statutory authority, is based upon the fact that, until the decision becomes final, it is under the control of the court. If the trial court should discover or be convinced that it had committed an error in its judgment, or had done an injustice, before the same has become final, it may, upon its own motion or upon a motion of the parties, correct such error in order to do justice between the parties. If the trial court should discover that it was necessary, in order to correct an error in its decision, to grant a new trial, it may do so either upon its own motion or upon a motion of the parties, provided that that is done before the decision becomes final. It does not require statutory authority for a court to correct its errors or mistakes during the time which it has control over its decisions. And, moreover, paragraph 7 of section 11 of Act No. 190 expressly provides, as one of the incidental powers of the court, "To amend and control its process and orders so as to make them conformable to law and justice."

In actions of forcible entry and detainer the judgments of the justice of the peace do not become final for a period of five days. (Sec. 88, Act No. 190.) During that period, he may correct it, modify it, or grant a new trial, if he discovers that an error or mistake has been committed. After the judgment becomes final, he is without authority to change or modify it except for the purpose of correcting clerical errors. (U. S. vs. Court of First Instance of Manila, 24 Phil., 321.)

At the time the motion for a new trial in the present case was made, the judgment of the justice of the peace had not yet become final. In a memorandum presented by the petitioner herein in the court of the justice of the peace on the 4th day of December, 1919, it appears that the defendants presented the motion upon which the justice of the peace set aside his judgment, within half an hour, or an hour, after the judgment had been rendered. (P. 17, expediente.) The judgment not having become final, neither section 148 nor section 149 of Act No. 190 could have been invoked by the respondents herein, for the reason that said sections are only applicable where a judgment has been rendered by fraud, accident, mistake, or excusable negligence, and has become final/ Certainly, there is no occasion for putting the defendants to the trouble of presenting the petition permitted by said sections (148 and 149) to the Court of First Instance during a time when the trial court may, upon its own authority, correct error, mistake, or injustice which it has committed. Said sections are only applicable after the judgment has become final and after the time has elapsed for perfecting an appeal. It would seem to be the very height of absurdity to prohibit a trial judge from correcting an error, mistake, or injustice which is called to his attention before he has lost control of his judgment. Under such circumstances, the losing party should not be required to incur the expense and the delay occasioned by an appeal or by the required petition for a review in cases of fraud, accident, or excusable negligence. A judge has an inherent right, while his judgment is still under his control, to correct errors, mistakes, or injustices. After the judgment becomes final, of course, he loses his right to change or modify it in the slightest degree, except for the purpose of correcting clerical errors.

In view of all of the foregoing, we are persuaded that the justice of the peace did not exceed his jurisdiction when he granted the motion for a new trial. The remedy prayed for is hereby denied, without any finding as to costs. So ordered.

Araullo, C. J., Street, Avancena, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

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