

FEDERICO LAZARTE, AS CURATOR AD LITEM, AND IN REPRESENTATION OF GUILLERMO LAZARTE, PLAINTIFF AND APPELLANT, VS. RICARIX) NOLAN ET AL., DEFENDANTS AND APPELLEES.

G. R. No. 16501. December 22, 1921

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

This is an action for the annulment of a contract of purchase and sale of certain real properties described in the amended complaint on the ground that the vendor Federico Lazarte was mentally unsound at the time of executing the document by which said Federico Lazarte on February 11, 1919, sold to Ricardo Nolan all of the properties described in the complaint.

The defendants Ricardo Nolan and "The Carmen Plantation Co., Inc." answered denying each and every allegation in the complaint, with the exception of those specifically or impliedly admitted in their special defenses.

The parties presented their respective evidence, and after a careful analysis of the testimony of the witnesses the learned judge a quo rendered judgment on February 28, 1920, in favor of the defendants, dismissing the complaint with the costs against the plaintiff. On March 13, 1920, the plaintiff excepted to this judgment, and filed a motion for a new trial. This motion was denied on March 27, of which denial the appellant was notified on the 29th of the same month by registered mail. On the 10th of April, next, the bill of exceptions was approved, and three days thereafter, that is, on April 13, 1920, the appellant filed a motion, excepting to the order denying the new trial.

The first question we have to decide is whether or not the exception to the order denying the new trial was filed on time, so as to give this court jurisdiction to review the evidence adduced at the trial.

In the case of *Singayan vs. Mabborang* (10 Phil., 601), this court said:

"When a motion for a new trial is denied by the court below and no exception is taken to such denial, the Supreme Court has no jurisdiction to review the evidence, but must accept the facts as found and deal only with the questions of law."

In *Sandeliz vs. Reyes* (12 Phil., 506), this court said:

"Following the rule laid down by this court in numerous decisions, when no exception is taken to the ruling of the court below denying a motion for a new trial upon the ground of the insufficiency of the evidence, the evidence can not be reviewed upon appeal."

This same doctrine was confirmed by this court in the case of *Buencamino vs. Soriano* (29 Phil., 230):

"An exception to the order overruling the motion for a new trial made on statutory ground is jurisdictional and the failure to except prevents this court from reviewing the facts."

"Section 497 of the Code of Civil Procedure places a limitation on the appellate power of the Supreme Court by providing that it shall not review the evidence except under certain conditions. One of the conditions precedent to the right of this court to review the evidence is that the appellant shall take an exception to the denial of the motion for a new trial."

And in *Layda vs. Legazpi* (39 Phil., 83), this court held:

"In an ordinary action the aggrieved party has (a) thirty days within which to present a motion for a new trial; (b) after notice of the ruling upon his motion, he has five days within which to present 'notice of his intention to present a bill of exceptions;' (c) after the presentation of 'notice of his intention to present a bill of exceptions' he has ten days within which to present his bill of exceptions; (d) failure to comply with any of the foregoing requirements, within the various periods mentioned, will cause the judgment to become final, upon which a writ of execution may issue, and the presentation of a bill of exceptions will not give the appellate court jurisdiction; (e) each and all of said periods may be extended by order of the court upon application made prior to the expiration of the original period."

It appears from the record that the attorney for the appellant was residing in the city of Iloilo on the 29th of March, 1920, when the notice of the order denying the new trial was sent to him by registered mail. On the other hand, the appellant alleges in his motion dated May 14, 1920, that the notice of said order was not received by him until the 6th of April, 1920. If so, if he desired to except to the order denying his motion, he should have filed his exception within five days from the day following the receipt of the notice, that is, on the 11th of the same month, in accordance with the decision of this court in the case of *Layda vs. Legazpi*, *supra*. But no exception to the order having been taken by him until April 13, it is evident that his exception was filed out of time, and it cannot be relied upon by this court for the purpose of reviewing the evidence adduced at the trial.

But even supposing that the said exception was filed on time, this court cannot review the evidence either because the oral evidence is not before us, since the documentary evidence only has been forwarded to this court. According to the doctrine laid down in *Ferrer vs. Neri Abejuela* (9 Phil., 324) the appellant desiring that the evidence adduced at the trial may be reviewed must see that all the evidence is brought up to this court on appeal. He cannot bring a part of the evidence only, and then ask for a reversal on the ground that the evidence before this court does not support the judgment.

The want of jurisdiction of this court to review the evidence introduced at the trial having thus been determined, the only question that remains for us to decide is whether or not the findings of fact made by the trial judge fully support the judgment appealed from.

The judge *a quo*, summing up the evidence introduced during the trial in order to make his findings of fact, says in his decision the following:

"The only question of fact to be decided is whether or not at the time of executing the deed of option and the deed of sale Exhibit D, about the middle of December, 1919, and on February 11, 1919, respectively, Federico Lazarte was mentally unsound.

"Aside from the testimony of Federico Lazarte's mistress, that of his servant and of Valeriano Medel, Custodio Tiberio and Bernardino Avellana, and of the vague testimony of Doctor Henares, there is not in the record any direct evidence tending to show that Federico Lazarte was about that time mentally insane. The expert opinions of Doctor A. C. Thomas and Doctor Cullen, both witnesses for the plaintiff, are contradictory on many important points.

"On the other hand, there is the testimony of various witnesses who, by reason of their education and their profession, are better qualified to judge the mental condition of Federico Lazarte before, during, and after, the execution of the deeds of option and sale. All of these witnesses testified that on those occasions they did "not

notice, from the acts and words of Federico Lazarte, anything indicating any mental derangement in him.

"The testimony on this point of Doctors Montinola and Yulo, especially that of the latter, who for several years was the physician of the supposed insane, is entitled to special credit. The social standing, education and learning of these witnesses and their lack of interest as to the outcome of this case, render their testimony more credible than those of the mistress and of the servant of Federico Lazarte and the other three witnesses for the plaintiff, including Doctor Henares, who would not give his opinion as to the mental condition of his patient, under the pretext of not having had time to examine him

"The very acts executed by Federico Lazarte for the purpose of realizing a more advantageous sale of his lands, the measures taken by him to have his rights secured, and his statements as to having made a satisfactory sale, show in spite of all the expert opinion to the contrary, that when he executed the deeds of conveyance of the lands in question, he was in the absolute enjoyment of his mental faculties.

"Even without the opinion of the experts, it can be concluded that the preponderance of evidence shows that Federico Lazarte was in a perfectly sound mental condition, not only at the time of executing both the document containing the promise to sell and the deed itself of sale of the lands in question, but also for some time before and after such acts were performed."

Such being the findings of fact made by the judge a quo we are of the opinion, and so hold, that if Federico Lazarte was in a perfectly sound mental condition when he executed the contract of sale in question, the court a quo acted in accordance with the law in dismissing the complaint.

It is a well-settled doctrine by the courts that contracts are binding, whatever be the form in which they may have been entered into, provided that the essential conditions required by the law for their validity exist, namely; consent of the contracting parties, a definite object which is the subject-matter of the contract, and a consideration for the obligation established. (Arts. 1278 and 1261, Civil Code.) The action for nullity instituted in this case is based on the alleged insanity of Federico Lazarte, a defect which vitiates the consent required by law. (Art. 1263, case No. 2, Civil Code.) The court below having found that Federico Lazarte was perfectly sane at the time of executing the contract under discussion, it is evident that the plaintiff's action is untenable, and the defendants must be absolved from the complaint.

The appellant alleges that he was deprived of his right to file an amended complaint. We believe that this assignment of error is of no importance, since there appears in the record the amended complaint filed by the appellant's counsel on February 3, 1920.

As the other assignments of error made by the appellant are based on the mental incapacity of Federico Lazarte, they need not be discussed separately, the principal question having been already decided in the sense that said Federico Lazarte was in a perfectly sound mental condition at the time of executing the contract of purchase and sale in question.

In view of the foregoing, the judgment appealed from should be, and is hereby, affirmed with the costs of both instances against the appellant. So ordered.

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

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