

PEDRO MANAKIL AND ISIDRA TISON, PETITIONERS, VS. HONORABLE BARTOLOME REVILLA, JUDGE OF FIRST INSTANCE OF PAMPANGA, AND VICTORIANO TUANO, RESPONDENTS.

G. R. No. 17852. August 29, 1921

Ponente: JOHNSON, J.

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JOHNSON, J.:

This is an action for the writ of mandamus to compel the respondent judge to allow petitioners' motion for a new trial in cause No. 2083 pending in the Court of First Instance of the Province of Pampanga. To the petition the respondents demurred upon the ground that the facts staled were not sufficient to justify the remedy prayed for. The facts upon which the petition is based may be stated as follows:

- (1) That an action was commenced in the Court of First Instance of the Province of Pampanga, known as case No. 2083;
- (2) That in that cause the respondent judge entered a judgment in favor of the respondent, Victoriano Tuano, on the 7th day of April, 1921;
- (3) That the plaintiffs in that action (the petitioners herein) received notice of said decision on the 12th day of April, 1921;
- (4) That on the 15th day of April, 1921, the plaintiffs in that action (the petitioners herein) filed a motion for a new trial, a copy of which is as follows:

"Now comes the attorney for the plaintiffs (petitioners herein) in the above entitled cause of action and moves the court for a new trial on the ground that the finding of this court is contrary to law and the evidence in this case."

(Signed by attorney for plaintiffs.);

- (5) That on the 24th day of April, 1921, the petitioners, as they allege, believing that the respondent judge had granted their motion for a rehearing, filed an exception to that alleged order, but, as a matter of fact, the judge had not even considered said motion for a new trial, as copied above;
- (6) That on the 23d day of May, 1921, the above motion for a new trial not having been decided, the petitioners presented another motion praying that the said motion, copied above, for a new trial be set down for hearing on the 28th day of May, 1921;
- (7) That on the 6th day of July, 1921, the respondent judge decided that the "motion for a new trial" not having been presented in time, the decision rendered in the cause was final;
- (8) That a copy of the decision of the respondent judge, with reference to said motion for a new trial, was received by the petitioners herein on the 14th day of July, 1921.

It will be noted that the motion for a new trial, copied above, fixed no time or place for the hearing of the same, and that the petitioners herein did not attempt to fix the time and place for the hearing of the said motion until the 23d day of May, 1921.

The original action commenced in the Court of First Instance was an ordinary civil action, and the petitioners herein, having been defeated in that action, had a right to present a motion for a rehearing within a period of thirty days (sec. 27, Act No. 2347). Did they present such a motion within thirty days? Rule 10 of the Rules of the Court of First Instance provides:

"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 (notices of motions) shall be accompanied with copies of the affidavits and other papers on which the motion is based. No demurrer or motion shall be accepted for filing without proof of notice thereof having been given the adverse party, at least three days in advance, that same will be submitted on the next motion day or on a date specifically designated by the court."

In view of that provision of Rule 10, was the motion for a new trial presented on the 15th day of April, 1921, as copied above, a motion which the court could consider?

We are of the opinion, and so decide, following the decision of this court in the case of Roman Catholic Archbishop of Lipa vs. Municipality of Unisan (R. G. No. 14562, August 6, 1919, not reported), and that of Albendia vs. Martinez (R. G. No. 15618, September 14, 1920 and March 23, 1921, not reported), that the alleged motion, copied above, was not in fact, a motion at all, for the reason that it did not comply with the requirements of Rule 10 of the Rules of the Court of First Instance. It was nothing but a piece of paper filed with the court. It presented no question which the court could decide. The court had no right to consider it, nor had the clerk any right to receive it without a compliance with Rule 10. It was not, in fact, a motion. It did not comply with the rules of the court. It did not become a motion until the 23d day of May, 1921, when the petitioners herein fixed a time for hearing of said alleged motion.

It follows, therefore, that no motion for a new trial was presented until the 23d day of May, 1921, or forty-one days after they had received notice of the decision. The petitioners not having presented a motion for a new trial within the period prescribed by law, nor having taken any other steps necessary to perfect the appeal, the judgment of the 7th day of April, 1921, became final and nonappealable. A motion for a new trial having been presented outside of the period prescribed by law, the judge of the lower court was fully justified in his order of July 14, 1921.

Therefore, the demurrer in the present case is hereby sustained, with costs against the petitioners, and unless the petitioners amend their petition within five days from notice hereof, let a final judgment dismissing the petition be entered, with costs. So ordered.

Araullo, Street, Avancena, and Villamor, JJ., concur.

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