

**EMILIANO R. FLORENDO, SR., PROTESTANT-APPELLEE, VS.
PLAMASUR BUYSER, PROTESTEE-APPELLANT.***G.R. No. 24316. November 28, 1967*

Ponente: CASTRO, J.

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In the election for barrio captain of Bad-as, Placer, Surigao del Norte, held on January 12, 1964, Plamasur Buyser was on the same day proclaimed elected following a canvass by the local board of election tellers. The official tally gave him a total of 232 votes as against 213 for his opponent, Emiliano Florendo, Sr.

His election was thereupon contested by Florendo who, in a petition lodged with the municipal court of Placer, charged that there was error in the appreciation of the ballots; that the number of ballots used and unused after the election exceeded that issued before the election; and that there was a discrepancy between the number of voters who registered on January 5, 1964 and the number of those who voted on January 12 as a result of the "fraudulent" registration of additional voters on January 11 and 12.

Buyser moved to dismiss the petition; when his motion was denied, he filed an answer, after which the case was heard.

The municipal court thereafter rendered judgment in favor of Buyser; it held that there was neither error in the appreciation of ballots nor proof of fraud arising from the discrepancy in the number of ballots. It declared the registration of voters held on January 11 and 12, 1964 valid, because consented to by both Florendo and Buyser. It ruled that, while the registration of new voters on a date other than that fixed by law was irregular, of the 57 late registrants only 7 were new voters whose ballots, even if they are considered as having been cast for Florendo, could not have reversed the results of the election.

From this judgment Florendo appealed to the Court of First instance of Surigao del Norte, pursuant to section 8 of the Revised Barrio Charter,[1] with which he filed an amended protest. He alleged, among other things, that after the re-registration of voters on January 5, 1964, 33 more were registered on January 11 and 12 and that these 33 unlawfully voted for Buyser. The case was tried de novo, after which the court directed the parties to submit memoranda on three issues: (1) whether the registration of voters on January 11 and 12, 1964 was valid; (2) if it was illegal, whether the court could annul the election; and (3) in the event that the election is annulled, whether it could order a new election.

After the submission of memoranda by the parties, the court issued on July 20, 1964 an order stating:

"The Commission on Elections fixed the date of registration of voters in its resolution to be not later than January 5, 1964. The resolution does not provide for any other day of registration. The resolution also provides that if no election is held on the day fixed by the Commission on Elections which is January 12, 1964, it may be held on any other day within the month of January, to be determined in a resolution by the council and if it is not held within the month of January, it shall be held on a day to be fixed by the Provincial Governor upon petition by the barrio council which will not be beyond forty days from the date of the said petition.

"Clearly the registration of voters on January 11 and 12, 1964, was not authorized and the same was null and void. The election on January 12 having included voters registered on said days is also null and void.

"WHEREFORE, the Court hereby declares that the election of Barrio Council Members of Bad-as, Placer, on January 12, 1964, is null and void, and pursuant to the provisions of the resolution of the Commission on Elections of December 5, 1963, the Court hereby directs that the Provincial Governor be furnished with a certified copy of this order so that pursuant to this order he shall call new elections to be held on a fixed day not later than 40 days from this date for the election of the Members of the Barrio Council of barrio Bad-as, Placer, Surigao del Norte."

From this order, Buyser appealed to this Court. He contends that the trial court erred (1) in not allowing him to present evidence of his agreement with Florendo to permit the registration of additional voters after January 5, 1964, and (2) in annulling the registration of voters held on January 11 and 12, 1964 and the election held on the latter date.

The first contention is palpably without merit as no manner or form of agreement by the parties can validate registration of voters held subsequent to the deadline date fixed by law, in this case January 5, 1964.

The second contention is likewise devoid of merit.

Section 8 of the Revised Barrio Charter provides in part that ?

"Not later than the first Sunday of January of the election year in accordance with this section, there shall be a registration of new voters to be conducted by the board of tellers. . . ."

The registration of voters on January 11 and 12, 1964 was void, but this is not sufficient reason for the annulment of the election. As this Court has said in another case,[2] "the power to throw out an entire division is one which ought to be exercised with the greatest care and only under circumstances which demonstrate beyond all reasonable doubt either that the disregard of the law has been so fundamental or so persistent and continuous that it is impossible to distinguish what votes are lawful and what are unlawful, or to arrive at any certain result whatever, or that the great body of the voters have been prevented by violence, intimidation, and threats from exercising their franchise."

True it is that in *Reyes v. Biteng*[3] this Court annulled the election in two precincts on account of the registration of voters made outside the days fixed by law, but this action was justified by its findings that as a result of the irregularity "many voters, without any qualification whatsoever . . . succeeded in having their names inscribed in the official list" and that it was "impossible to segregate the legal from the illegal votes and because the frauds and irregularities committed had affected the entire election to such an extent that it is impossible to ascertain the true will of the voters authorized to exercise the right of suffrage." [4]

In contrast, here there is no allegation either that the voters registered on January 11 and 12, 1964 are disqualified or that it is impossible to separate their votes from those cast by the rest of the voters in Bad-as so as to warrant the annulment of the entire election.

In many respects this case is similar to *Deles v. Alkonga*[5] in which the following findings and ruling were made by this Court:

"With reference to the third assignment of error, the fact that the first registration of voters was held in the town of San Dionisio instead of the barrio of Bagacay, which was the place fixed by the resolution of the municipal council, and the second registration in the barrio of Bagacay, and the voting in the town of San Dionisio, while it constitutes an irregularity, said fact is not sufficient to annul the whole election in precinct No. 3 of San Dionisio where 185 electors had voted, inasmuch as it does not appear that the forty-eight electors

registered in said precinct were not able to vote by reason of said change, and not for any other reason, nor does it appear that had they voted, they would have voted for the protestant, Ramon Deles. The only qualified elector whom the protestant could present and who was not able to vote on account of said change, was Fermin Montejo. Anatolio Begaforo, even if he had wanted to vote, would not have been able to do so, because he was not registered as a voter in said precinct."

In the case at hand, instead of annulling the election, the court a quo should have proceeded to ascertain not only who registered after January 5, 1964 but also for whom each of them voted, in order to determine the correctness of Florendo's allegation that all the illegal registrants voted for Buyser. The necessary adjustment in the number of votes cast for each of the candidates could then accordingly be made. The trial court has to make these vital findings of fact, because the factual findings of the municipal court were necessarily vacated by the appeal,[6] and the case stood for trial de novo, "as though the same had never been tried before and had been originally there commenced."

ACCORDINGLY, the order a quo of July 20, 1964 is set aside, and this case is remanded to the Court of First Instance of Surigao del Norte for further proceedings. No pronouncement as to costs.

Dizon, Acting C.J., Makalintal, Bengzon, Zaldivar, Sanchez, Angeles, and Fernando, JJ., concur.
Concepcion, C.J., and Reyes, J., on official leave.

[1] Rep. Act 3590, effective June 22, 1963, repealed Rep. Act 2370.

[2] *Demetrio v. Lopez*, 50 Phil. 45, 60 (1927), citing 20 C .J. 179-181

[3] 57 Phil. 100 (1932).

[4] *Id.* at 113-114.

[5] 53 Phil. 93, 96-97 (1929).

[6] Rule 40, Sec. 9.

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