

MIGUEL BALTAZAR AND JACOBA LIMPIN, PLAINTIFFS AND APPELLANTS, VS. BARTOLOME LIMPIN AND THE DIRECTOR OF LANDS, DEFENDANTS AND APPELLEES.

G. R. No 24636. March 25, 1926

Ponente: MALCOLM, J.

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MALCOLM, J.:

As preliminary to a decision on the merits in this case, a question disclosed by the record relating to the report of the referee must be decided.

Miguel Baltazar and Jacoba Limpin were applicants in the Court of First Instance of Pampanga to have certain parcels of land registered in their names. Oppositions were entered by Bartolome Limpin and the Director of Lands. They asked for the inscription of the lands described in their oppositions, the first in his name and the second in the name of the Government of the Philippine Islands.

On petition of the parties, Mr. Jose Gutierrez David was named referee. He entered upon his duties, made an inspection of the land in controversy, and rendered a report favorable to the applicants. No timely and specific exceptions to the referee's report were taken. Instead, without any further proceedings, the trial judge handed down a decision in which he concurred in part with the report of the referee and dissented in part from the report. From this decision, the applicants who were favored by the report of the referee but who were not favored by the decision of the trial judge have appealed.

In this court, the bill of exceptions was presented and the brief for the appellants was filed without incident. The next step taken by the parties was the presentation of a petition by counsel for the appellee, in which it was asked that the stenographer who reported the testimony taken at the session held by the referee in this case on February 13, 1925, be ordered to transcribe his notes. This motion was denied by a resolution of January 27, 1926, on the grounds that the referee was appointed by agreement between the parties, that all the evidence in the case was received by him, that he rendered his report in accordance with law, and that no objection or opposition was presented to said report by any of the parties. On a further consideration of the above-mentioned motion in connection with a study of the case on the merits, we now think that our action was ill advised.

In the first place, it is a well recognized rule of practice that the findings of the trial court must ordinarily be accepted as conclusive, when all of the stenographic notes and the exhibits are not offered in the appellate court. Here the application of this rule would work, curiously enough, to the great injury of the appellee, on the supposition that the referee's report is now unassailable. Yet the appellee was victorious when the case came before the trial judge and has been diligent in securing that victory by the presentation of a motion asking for the transcription of the portion of the stenographic notes not transcribed.

In the second place, further consideration must be given to the effect of the trial judge setting aside a part of the report of the referee when no exceptions are taken. Heretofore, the proper procedure to be followed in dealing with a referee's report has been pointed out by decisions of this court. It has been held that a person aggrieved by

the report of a referee should make specific exceptions thereto after its presentation to, but before its adoption by, the court. If the party fails to make such exceptions and the report is confirmed by the trial judge, he is bound by the findings and cannot be heard to dispute their truthfulness or escape the legal consequences flowing therefrom. The clause "and the report is confirmed by the trial judge" should not be lost sight of. (*Kriedt vs. E. C. McCullough & Co.* [1918], 37 Phil., 474; *Santos vs. De Guzman and Martinez* [1924], 45 Phil., 646.)

Section 140 of the Code of Civil Procedure permits the trial judge, for cause shown, to set aside the report of the referee, or order it to be recommitted to that officer for further findings. Section 36 of the Land Registration Law, Act No. 496, contains similar provisions but with the addition of this important proviso: "Provided, nevertheless, That the court may in its discretion accept the report in part or set it aside in part. * * * " It is, therefore, believed that the principles heretofore announced by this court having to do with the reports of referees should be limited in their application to cases where the report is confirmed by the trial judge without exceptions having been taken to the referee's report, and should not be extended to cases where the trial judge in his discretion accepts the report in part and sets it aside in part or reverses it entirely.

Agreeable to the foregoing pronouncements, the resolution of this court of January 27, 1926, shall be revoked, and an order shall issue directed to the stenographer who reported the testimony taken at the session held by the referee in this case on February 13, 1925, directing him to transcribe his notes, after the accomplishment of which the case shall be considered as submitted on the bill of exceptions and briefs, allowing each party fifteen days from the date of the receipt in this court of the transcribed notes to file such memoranda as they may desire.

Avanceña, C. J., Street, Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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