

**ROSENDO E. SANTOS, PETITIONER, VS. THE COURT OF FIEST  
INSTANCE OF CAVITE, FRANCISCO ADVINCULA, ISIDORO MARTINEZ  
AND TOMAS E. DIAZ, RESPONDENTS.**

*G.R. No. 26423. September 24, 1926*

Ponente: VILLAMOR, J.

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**VILLAMOR, J.:**

The present action originally instituted in this court is for the purpose of obtaining an order directing the immediate forwarding to this court of the record of election protest No. 1747 of the Court of First Instance of Cavite and after a hearing, it be declared that the Court of First Instance of Cavite proclaimed Francisco Advincula candidate-elect for the office of municipal president in an illegal manner and in excess of its jurisdiction, and that after annulling the decision Exhibit C, the petitioner Rosendo E. Santos be declared the candidate-elect for the office of municipal president of Cavite, with the costs against the respondent Advincula.

It is alleged as the grounds for the issuance of the writ of certiorari (a.) that, according to the election returns of the Board of Canvassers of the Province of Cavite, the following votes were cast for the office of municipal president :

**Votes**

Rosendo E. Santos

.....

874

Francisco Advincula

.....

915

Isidoro E. Martinez

.....

903

Tomas E. Diaz

.....

233

and in view thereof Francisco Advincula was proclaimed the candidate-elect for the office of municipal president by the election board; (b) that Isidoro E. Martinez contested the election of Francisco Advincula, all the other

candidates having been notified of the protest; (c) that after the hearing of the protest the court found that the protestant Isidoro Martinez had obtained 828 votes and the protestee Francisco Advincula 845 votes, the protestee, therefore, having been declared the candidate-elect for the office in question with a plurality of 17 votes over the protestant Isidoro Martinez; (d) that on April 8, 1926, the petitioner filed a motion for reconsideration of the decision of the court praying, in view of the result of the judicial canvass, that the petitioner be declared the candidate-elect for the office of municipal president of Cavite with a plurality of 29 votes over the protestee, the herein respondent Francisco Advincula; (e) that by an order of July 27, 1926, the court denied the motion for reconsideration, copy of which order is attached to the complaint, Exhibit F; (f) that the decision, Exhibit C, of the respondent court is illegal and was rendered by the court without jurisdiction to proclaim, in said decision, the respondent Francisco Advincula as candidate-elect when the latter, according to a copy of the decision, had obtained only 848 votes as against 874 adjudicated to the petitioner Rosendo E. Santos by the municipal board of canvassers, and (g) that the respondent court in recounting the ballots deposited in the ballot boxes in order to resolve the motion for reconsideration after the introduction of the evidence and after the promulgation of its decision, exceeded its jurisdiction.

The respondents set up the following special defense in their answer:

1. That the number of votes which in paragraph 2 of the motion of protest mentioned in the complaint are given to each of the candidates and, therefore, to the petitioner Rosendo E. Santos, has been denied by the respondent Francisco Advincula in his answer and counter-protest filed in the Court of First Instance in said election contest, as appears from paragraph 1 of his answer, Exhibit B, attached to the complaint.
2. That the petitioner Rosendo E. Santos having been duly summoned to answer the motion of protest above mentioned failed to do so within the period prescribed by the rules, and is therefore deemed to have denied generally all the allegations of the protest, among which is said paragraph 2, which alleges the votes said to have been received by each of the candidates, including the said Rosendo E. Santos.
3. That during the hearing of the protest referred to, a revision was made of all the ballots of the precincts which were the subject-matter of the protest and counter-protest, and at said revision the commissioners of the respondent Francisco Advincula objected to 444 of the ballots adjudicated to Rosendo E. Santos by the boards of inspectors upon the ground that the said ballots were illegal for various reasons.
4. That during the hearing of said protest the said Rosendo E. Santos did not appear nor claim any ballot or vote in his favor, nor present any evidence, nor prove the legal votes that he had received; whereas the respondent Francisco Advincula again presented to the court the objection made by his commissioners to the 444 ballots or votes adjudicated to Rosendo E. Santos by the election inspectors.
5. That the court took into account all the objections made to the ballots of Rosendo E. Santos and rejected said 444 ballots objected to, even though in its decision, Exhibit C of the complaint, it made no reference to them, believing it unnecessary, according to the fourth and seventh paragraphs of the order, Exhibit F, attached to the complaint.
6. That the statement made by the court in the penultimate paragraph of Exhibit F, attached to the complaint is but the ground for sustaining the objections made to the 444 votes in favor of Rosendo E. Santos, because in just two of the ten precincts concerned with the revision, the trial court found more than 75 ballots in favor of Rosendo E. Santos which should have been rejected.
7. That deducting the 444 contested and rejected votes from the 874 votes that the board of canvassers adjudicated to Rosendo E. Santos, it results that the latter obtained but 430 legal votes while Isidoro Martinez obtained 828

legal votes and the respondent Francisco Advincula 845 legal votes, as found by the court, as may be seen from its decision, Exhibit C and its order Exhibit F, both attached to the complaint.

8. That the Court of First Instance of Cavite found the election returns incorrect, upon which the petitioner Rosendo E. Santos bases his claim to the number of votes now claimed by him as shown by petitioner's Exhibits C and F.

In view of the allegations of the complaint and the answer, we are of the opinion that the trial court, in deciding the protest filed by Isidoro Martinez against Francisco Advincula, to which the other candidates voted for in said election were parties, must have made pronouncement as to the result of that protest in view of the votes obtained by the parties, according to the canvass of the court. And the fact that the candidate Rosendo E. Santos, the herein petitioner, did not file an intervention nor take an active part in the trial of the case, is no ground for not doing so, because as he was an interested party in that protest, being a candidate who had received votes in that election and who was notified of the filing of the protest, there was no necessity for filing a separate protest, (*Manalo vs. Sevilla*, 24 Phil., 609.) It was sufficient to be present as an interested party in that proceeding and to abide by the result of the protest. Supposing that the petitioner filed no intervention, nor appeared, nor presented any evidence in said protest, if the result of the canvass made by the court had given him a greater number of votes than the protestant and the protestee in that protest, could the court refrain from ordering the correction of the canvass made by the municipal board so as to agree with the judicial canvass, just because he had not filed an intervention? Evidently it could not for, according to the law, such of the candidates voted for in an election protest as may have received the highest number of votes in the judicial decision, must be proclaimed by the board of canvassers, acting in pursuance to the order of the court, elected to said office. We are of the opinion that the court committed an error of law in not making any finding as to the other candidates interested in the result of the protest. Such error, however, was corrected in the order disposing of the motion for reconsideration presented by the petitioner.

According to said order, the court recounted the ballots of precincts Nos. 9 and 10 of the municipality of Cavite and found that 75 ballots should be deducted from the petitioner Rosendo E. Santos. Accepting this finding of fact by the trial court, it is clear that, deducting 75 votes from those obtained by the petitioner, it leaves him 799 votes, a lesser number than that obtained by the respondent Advincula who was proclaimed elected in the decision of the court.

As to whether or not the court had the power to recount the ballots of Rosendo E. Santos in disposing of his motion for reconsideration, we are of the opinion that the trial court had the power to do so. As a matter of court practice the courts, undoubtedly, have the power to reexamine the evidence that they have before them in order to decide the question raised, when one of the parties asks for a reconsideration of the original decision, and we see no valid reason why this rule, which is followed in ordinary actions, cannot be applied to election contests.

Furthermore, if the petitioner's contention is sustained, the result will be to make this remedy a means of correcting errors of fact or of law committed by the court in the exercise of the functions within its jurisdiction, which is contrary to the legal nature of the writ of certiorari.

By virtue of the foregoing the writ prayed for must be, as it is hereby, denied, with the costs against the petitioner. So ordered.

Avanceña, C. J., Johnson, Street, Ostrand, Johns, Romualdez, and VillaReal, JJ., concur.

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