

BENIGNO MADALANG, PETITIONER, VS. THE COURT OF FIRST INSTANCE OF ROMBLON, SEVENTEENTH JUDICIAL DISTRICT, AND ANDRES MALBAS, RESPONDENTS,*G. R. No. 26591. October 25, 1926*

Ponente: VILLA-REAL, J.

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This is a mandamus proceeding originally instituted in this court by Benigno Madalang against the Court of First Instance of Romblon, Seventeenth Judicial District, and Andres Malbas, praying that a peremptory order be issued to the respondent Court of First Instance of Romblon to permit the petitioner to present additional witnesses in his favor in the new trial which is being held in civil case No. 438 of the said court.

The pertinent and essential facts in this case are as follows:

Civil case No. 438 for the recovery of possession, in which Andres Malbas, one of the herein respondents, was the plaintiff, and Benigno Madalang, the herein petitioner, defendant, was tried by the Court of First Instance of Romblon on appeal from the justice of the place court of Badajoz, Province of Romblon. After the proper proceedings and introduction of the evidence of both parties in that case, the respondent Court of First Instance of Romblon, on September 6, 1922, rendered judgment against the said petitioner Benigno Madalang and in favor of the said respondent Andres Malbas, ordering the former to return the possession of the land in litigation to the latter. The petitioner in the present appeal and defendant in the former action, made timely exception and filed a motion for a new trial upon the ground that the decision was contrary to law and the weight of evidence. One day in December, 1922, while the resolution of the said motion for a new trial was pending, a fire took place in the provincial building of Romblon where the Court of First Instance of said province was located, and destroyed the entire record in civil case No. 438, including the oral and documentary evidence introduced during the trial of the case, as well as the stenographic notes.

In accordance with the provisions of Act No. 3110 of the Philippine Legislature, Andres Malbas, the plaintiff in said case and respondent in this, filed a petition praying for the reconstruction of civil case No. 438. The court below granted the petition and issued the proper order. In compliance with said order the plaintiff and the defendant in said civil case reproduced, by means of authentic copies, some of them certified, their respective pleadings, the documentary evidence, which were admitted without objection identified with the same marks as the originals which were destroyed, and the judgment rendered in the same, minus the transcript of the stenographic notes of the testimony of the witnesses 'for both parties, the same having been destroyed by fire, together with the original stenographic notes. In view of the impossibility of reproducing said oral evidence, the court ordered a new trial for the presentation and reception of the testimony of the witnesses. After several continuances—all granted at the instance of the herein petitioner—the new trial was finally held, during which said petitioner Benigno Madalang, defendant in said case, after having introduced the same witnesses who had testified in the original trial, attempted to present additional witnesses. The herein respondent Andres Malbas,

plaintiff in the former action, objected, the respondent court sustaining his objection and denying the petition of the petitioner.

The only question to be decided in the present proceeding is whether or not, under the provisions of Act No. 3110, in the holding of a new trial for the reconstruction of the record of a civil case destroyed by fire, pending the resolution of a motion for a new trial based upon the ground that the decision is contrary to law and the weight of evidence, the defeated party may be permitted to present additional oral evidence which was not presented during the original trial.,

The pertinent provisions of Act No. 3110 are contained in the following sections:

"SEC. 6. Testimony of witnesses taken in civil cases shall be reconstituted by means of an authentic copy thereof or a new transcript of the stenographic notes. If no authentic copy can be obtained and the stenographic notes have also been destroyed, the cases shall be tried de novo as if called for trial for the first time.

"SEC. 7. If a civil case has already been decided, the decision shall be reconstituted by means of an authentic copy. In case an authentic copy cannot be found, the court shall make a new decision, as if the case had never been decided."

It appears from section 7 above quoted that a new judgment can be rendered, as if the case had never been decided, only when the original decision cannot be reconstructed by means of an authentic copy. So that if an authentic copy of the original decision exists, the latter must be reconstructed by means thereof. If this is so, the reconstruction of the oral evidence introduced at the original trial of civil cases, when no authentic copy thereof exists, or when the stenographic notes have been destroyed and it is impossible to secure another transcript of the same, the testimony of the witnesses who testified at the original trial shall be taken again; because, as the original decision is reconstructed by means of an authentic copy of the same, it is not necessary to render a new one, and the reconstruction of the oral evidence is only for the purpose of permitting the court of appeal to review it and determine whether the appealed decision is in accordance therewith.

Consequently, Act No. 3110 in providing in its section 7 that if an authentic copy exists the decision shall be reconstructed by means thereof, it was the intention that in the reconstruction of the oral evidence, provided in section 6, only the testimony of the same witnesses who testified at the original trial must be taken again and not the testimony of additional witnesses, because neither the literal meaning of the verb "reconstitute," used in said law, nor the spirit, nor the object of the same warrants a different interpretation.

In this proceeding the decision entered in civil case No. 438 was reconstructed by means of an authentic copy thereof. At the time that the record was destroyed by fire there was a motion for a new trial pending. Said motion was based upon the ground that the decision was contrary to law and the weight of the evidence. In case the motion for a new trial should have been granted upon the ground alleged therein, the court might have limited itself to taking into consideration only the evidence already introduced in order to determine whether or not its original decision was in conformity therewith and the law applicable thereto. If, on the contrary, said motion for a new trial should be denied and an appeal taken, the appellant could not bring, on his appeal to this court, more evidence than was originally introduced.

Having, then, reconstructed the original decision by means of an authentic copy thereof, and there being a motion for a new trial upon the ground that the said decision was contrary to law and the weight of evidence which, in case it is granted, only authorizes the revision of the same evidence originally introduced, the respondent court did not commit any violation of law in connection with its ministerial duties nor abuse its discretion in not permitting the petitioner to present additional witnesses in the new trial ordered, in accordance with the provisions of Act No. 3110 of the Philippine Legislature.

By virtue of the foregoing, the remedy prayed for is denied and the petition is dismissed, with the costs against the petitioner. So ordered.

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

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