

BENIGNO MADALANG, PETITIONER, VS. THE COURT OF FIRST INSTANCE OF ROMBLON, SEVENTEENTH JUDICIAL DISTRICT, AND ANDRES MALBAS, RESPONDENTS.

G.R. No. 27117. March 11, 1927

Ponente: VILLA-REAL J.

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VILLA-REAL J.:

This is a petition for a writ of certiorari presented by Benigno Madalang against the Court of First Instance of Romblon, seventeenth Judicial District, and Andres Malbas in which, for the reasons stated, the following is prayed for:

- (a) That an order be issued directing the respondent judge to certify and transmit to this court a complete transcription of the record, judgment and proceedings in civil case No. 438, entitled Andres Malbas, plaintiff, vs. Benigno Madalang, defendant, pending in said Court of First Instance of Romblon, for revision by this court;
- (b) That meanwhile the respondents be restrained from taking any further action in connection with said case;
- (c) That in view of the facts appearing in said civil case No. 438 and after hearing of the respective parties, judgment be rendered declaring the order of the court of June 10, 1926, null and void, as well as all other proceedings had in connection therewith.

As we have before us the record of all of the proceedings had in the trial court in civil case No. 438 necessary for the decision of this petition, we believe it unnecessary to order the record in this case transmitted to this court.

The pertinent and essential facts for the decision of the present petition are as follows:

On September 17, 1926, Benigno Madalang filed a petition in this court for a writ of mandamus, registered under R. G. No. 26591, in which, among other things, he prayed that a mandate be issued directing the Judge of the Court of First Instance of Romblon to permit the petitioner to present additional evidence at the trial of the reconstruction of the record in civil case No. 438.

After consideration of the petition, this court, in its decision of October 25, 1926, denied the same.[1]

The motion for a new trial presented by the petitioner in December, 1922, in civil case No. 438, which was destroyed by fire, was set for hearing on January 27, 1923, but due to the said conflagration was not tried on that date.

After the reconstruction of the above-mentioned record had been finally completed and after the petitioner had been formally notified of the reconstruction of the record, a hearing could not be had due to the repeated motions for postponement by the petitioner. Finally, on October 10, 1925, an order was issued declaring the record in said civil case No. 438 completely reconstructed.

The attorney for the petitioner was notified of said order on November 20, 1925, without having taken any

exception thereto.

On March 5, 1926, the respondent Andres Malbas presented a motion praying that a writ of execution be issued upon the judgment entered on August 6, 1922. The attorney for the petitioner was notified of the hearing of said motion which, after various motions for postponement, was set for trial on June 10, 1926. On June 8, 1926, the petitioner filed a telegraphic motion wherein he alleged that he had presented a petition for a writ of mandamus and prayed for a further postponement of the hearing. The court denied said motion for postponement and on June 10, 1926, issued an order for the execution of the above-mentioned judgment.

The provincial sheriff of Romblon, however, did not take any action of said execution except on November 21, 1926, and after having received notification of the decision of this court denying the writ of mandamus.

The respondents set up the defense of *res judicata*, alleging that the question at issue in the present proceeding had already been raised in the petition for a writ of mandamus between the same parties.

This contention is groundless because the question involved in the mandamus proceeding was whether or not at the trial of the reconstruction of the record, which contained an authentic copy of the judgment, the parties had the right to present additional evidence which was not introduced at the original trial, while in this proceeding the question raised is whether or not, after the reconstruction of the record, the judge has the power to issue a writ of execution upon the judgment entered in the case, the record of which was under reconstruction, without first passing upon the motion for a new trial filed in said case within the time provided by law.

As will be seen, there is not the identity of subject-matter, or of parties which is essential in order that the question raised in the certiorari proceeding may be held to have been decided in the mandamus proceeding.

In regard to the question at issue in this case, the destruction of the record in which a motion for new trial was filed made the consideration and disposition of said motion impossible until said record was formally reconstructed. The order declaring said record reconstructed was entered only on October 10, 1925, the petitioner having received notification thereof on November 20, 1925.

There being, as there was, a petition for a writ of mandamus to compel the trial court to permit the presentation of additional evidence at the trial of the reconstruction of the record, the petitioner could not ask for the decision of the motion for a new trial in order to perfect his appeal, because, if the petition for a writ of mandamus was decided in his favor and he was permitted to present additional evidence, the lower court would have to render a new decision in the reconstructed record; and, on the contrary, if said petition for a writ of mandamus was denied, it would be necessary for the petitioner to have knowledge of that fact in order to take the necessary steps for the perfection of his appeal.

After the petition for a writ of mandamus was denied and the record reconstructed, the respondent court should have decided the motion for a new trial that was pending, the decision of which motion was suspended by the destruction, by fire, of the record in which said motion was filed.

The doctrines laid down in the cases of *Manakil and Tison vs. Revilla and Tuaño* (42 Phil., 81), and *Roman Catholic Bishop of Lipa vs. Municipality of Unisan* (44 Phil., 866), are not applicable to the present proceeding. The question raised in said cases was whether or not a motion for a new trial was valid in which no date had been set for hearing and the adverse party had not been notified, and this court resolved the question in the negative. In the present case it appears that a copy of the motion for a new trial was sent to the adverse party, containing a statement of the date and place where the movant would ask the court to decide his motion. In view of the special circumstances of the case, the destruction of the record, the fact that sessions were held periodically and the attorneys resided in other provinces, the interests of justice would have been better served and the rights of the

parties better protected if the respondent court, before declaring its decision final, and issuing the corresponding writ of execution, there being a motion for a new trial pending, would have ordered the said motion set for hearing, as it was its duty, when the motion, for any reason, could not be heard on the date set for the same; because, it always lies within the discretion of the court to set the date for hearing motions, after they have been legally filed, as was the motion for a new trial now before us; and if the court felt that the petitioner was negligent in complying with his duty to ask a hearing upon his motion, it should have denied it, notifying the movant so that he might perfect his appeal.

In conclusion, we hold that the court exceeded its jurisdiction in the exercise of its powers in ordering the issuance of a writ of execution without having previously passed upon the motion for a new trial, after the reconstruction of the record and the decision by this court of the petition for a writ of mandamus, thus depriving the petitioner of his right to appeal.

For the foregoing, the remedy applied for is granted and the order of June 10, 1926, is declared null and of no effect, as well as all proceedings had in connection therewith. So ordered.

Johnson, Street, Malcolm, Villamor, Ostrand, and Romualdez, JJ., concur.

[1] 49 Phil., 487.

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