

HERMOGENES SANTIAGO, PETITIONER AND APPELLANT, VS. TIMOTEO C. IGNACIO, RESPONDENT AND APPELLEE.

G.R. No. 30141. November 14, 1928

Ponente: VILLA-REAL J.

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VILLA-REAL J.:

This is an appeal taken by Hermogenes Santiago from the order of the Court of First Instance of Bulacan dismissing the motion of protest filed by him against Timoteo C. Ignacio, on the ground that said court lacks jurisdiction to try the same, sufficient facts not having been alleged to constitute a cause of protest, and denying the petition to amend presented by the protestant.

In support of his appeal the appellant makes the following assignments of error as committed by the trial court in said order, to wit:

- "1. The trial court erred in disclaiming jurisdiction over this election contest.
- "2. The trial court erred in dismissing the motion of protest instead of proceeding with it, and ordering the introduction of evidence by both parties as well as the revision of the votes and ballots boxes.
- "3. The trial court erred in not permitting the protestant to file an amended motion of protest."

The pertinent facts necessary for the solution of the question raised in this appeal are as follows:

In the general elections held on June 5, 1928, the protestant Hennogenes Santiago and the protestee Timoteo C. Ignacio were duly registered candidates and voted for the office of municipal president of Obando, Province of Bulacan, the former having obtained 765 votes, and the latter 792. Timoteo C. Ignacio having obtained a plurality of 27 votes over his opponent he was proclaimed elected to the presidency of Obando by the municipal board of canvassers of said municipality in its session of June 7, 1928.

Dissatisfied with his defeat, Hermogenes Santiago on June 18, 1928, filed the following motion of protest:

"Comes now the undersigned attorney in behalf of the protestant and respectfully alleges:

- "1. That protestant and the protestee are of age and residents of the municipality of Obando, Province of Bulacan.
- "2. That protestant and protestee are qualified electors of the municipality of Obando, Province of Bulacan, and are the only registered candidates voted for, having filed their proper certificates of candidacy for the office of municipal president of the municipality of Obando, Province of Bulacan, in the general elections held in said municipality on June 5, 1928.
- "3. That in its session held on June 7, 1928, the municipal board of canvassers of the municipality of Obando declared that the protestant obtained 765 votes and the respondent 792 votes, that is, a plurality of 27 votes in favor of the respondent, in accordance with the following table showing the votes of each of the two only registered candidates voted for the office of municipal president of the municipality of Obando:

Polling places

Names of candidates

Total

Timoteo C. Ignacio

63

220

96

149

119

145

792

Hermogenes Santiago

160

90

120

155

129

111

765

Difference

27

"4. That as a consequence thereof the municipal board of canvassers of Obando, in said session of June 7, 1928, proclaimed the protestee Timoteo C. Ignacio elected to the office of municipal president of the municipality of Obando.

"5. That the protestant contests the proclamation and election of the protestee to the office of municipal president of the municipality of Obando, for the following reasons :

" (a) That in precincts 2, 4, and 5, of the municipality of Obando the respective boards of inspectors failed to read and count in favor of the protestant not less than ten (10) ballots validly cast in favor of said protestant for the office of municipal president.

"(b) That no less than six (6) qualified and registered voters on the election list for the elections of 1925 and 1926 in the municipality of Obando, Province of Bulacan, and who desired to vote for the protestant for the office of municipal president in the elections held on June 5, 1928, were prevented from voting under the pretext that their names were not included in the election list in the elections last held.

"(c) That in precincts 4, 5 and 6 no less than thirty (30) registered voters qualified by education feigned to be incapacitated to prepare their own ballots in order that the latter might be, as they were, filled in by the protestee's partisans, so that the ballots of said voters might be cast in favor of said protestee.

"(d) That in precincts numbers 2, 3, 4, 5, and 6 a number of votes were adjudicated to the protestee, either because he is not the one voted for therein, or because they are fatally defective.

"(e) That in precinct No. 4, no less than two ballots legally filled out by the corresponding voters, instead of being deposited in the valid ballot boxes, were put into the box for invalid ballots, thus depriving said electors of their vote, the latter being in favor of the protestant.

"6. That, if the aforementioned frauds and irregularities had not been perpetrated, the protestee would have obtained less, and the protestant more votes, the latter thus receiving the necessary plurality over the protestee to be proclaimed president elect of the municipality of Obando.

"7. That the protestant hereby offers to furnish the bond which the honorable court may deem it reasonable to fix in accordance with section 482 of the Election Law.

"Wherefore, it is respectfully prayed:

"(a) That the bond be fixed which the protestant must file by virtue of this protest;

"(b) That the proceeding be taken in this protest in accordance with law;

"(c) That this court order the immediate forwarding to it of all the ballot boxes, election lists and other documents and objects used in the general elections of June 5, 1928, in the municipality of Obando, including the election lists for 1925 and the special election of 1926.

"(d) That immediate revision and examination of the ballots in the ballot-boxes, of their contents, and all the documents used in the elections held on June 5, 1928 in the municipality of Obando be ordered and the proper revision committee appointed.

"(e) That after the proper proceedings the protestant be declared elected to the office of municipal president of the municipality of Obando in the elections held on June 5, 1928, with the costs and expenses of the action against the protestee, and that the herein protestant be granted such further remedy as may be proper in law and equity.

"Manila for Malolos, Bulacan, June 18, 1928.

"GREGORIO PERFECTO

"96 Legaspi, Manila"

[OATH]

On June 29, 1928, the respondent filed the following answer and counter-protest:

"Comes now the protestee through the undersigned attorneys and in answer to the motion of protest, alleges:

"1. That he admits paragraphs 1, 2, 3, and 4 of the protest.

"2. That he denies each and every one of the allegations contained in paragraphs 5 and 6 of the said protest.

"As special defense he alleges:

"That the motion of protest does not allege facts sufficient to constitute a cause of action.

"As counter-protest he alleges:

"1. That he reproduces paragraphs 1, 2, and 4 of the protest.

"2. That in precincts 1 and 3, the board of inspectors in collusion with the protestant counted and adjudicated to the protestant not less than twenty-five ballots in which he was not voted for the office of municipal president and twenty-five others which were invalid because the ballots were marked and countersigned.

"3. That had it not been for this fraud the protestee would have received; a plurality of not only 27 but 77 votes.

"For the foregoing, it is respectfully prayed that the honorable court fix the bond for the counter-protest, order the immediate forwarding to this court of all the ballot boxes, election lists and other documents and effects used in the general elections held on June 5, 1926, in the municipality of Obando, Province of Bulacan, in the precincts referred to in the counter protest; that the immediate revision and examination of the valid and invalid ballots in said precincts be ordered, and that after the proper proceedings the protest be dismissed and the counter-protest allowed and protestee declared to have been legally elected municipal president of Obando, Bulacan.

"FRANCISCO, RECTO & LUALHATI

"Attorneys for the respondent"

[OATH]

On July 7, 1928, the protestee filed the following motion for dismissal:

"Comes now the protestee in the above-entitled case through the undersigned attorneys, and to the honorable court respectfully prays that the protest be dismissed on the ground that the facts alleged therein do not constitute a sufficient cause of action. Even if the allegations in the protest were true, the result of the election cannot now be changed."

The above-quoted motion for dismissal having been discussed, the protestant filed a motion that he be permitted to present an amended protest, the amendment to consist in the insertion in clause (c) of paragraph 5 of the original protest between the word "education" and the phrase "incapacitated to" of the following words: "that is, by knowing how to speak, read, and write Spanish, English, or Tagalog, upon presenting themselves to vote, and before having taken the oath prescribed by law, fraudulently and fictitiously feigned;" and in clause (d) of said fifth paragraph of the original protest, between the words "That in" and "precinct," the phrase "every one," and after the words "fatally defective," the sentence "and the number of said ballots is in itself alone sufficient to change the result of the election apart from the other irregularities mentioned in the other clauses."

On July 18, 1928, the Court of First Instance of Bulacan issued the order of dismissal mentioned at the beginning

of this opinion and from which this appeal was taken.

As to the first assignment of error, the lower court disclaimed jurisdiction to try the motion of protest and dismissed the same on the ground that the facts alleged therein do not constitute a cause of action.

In *Ferrer vs. Gutierrez David and Lucot* (43 Phil., 795), the following doctrine was laid down:

"2. ID.; FACTS ESSENTIAL TO CONFER ON A COURT JURISDICTION TO TAKE COGNIZANCE OF AN ELECTION CONTEST.—Sections 44 and 45 of Act No. 3030, amending sections 479 and 481 of the Election Law, and referring to contested elections for any office in general and the procedure for such cases in court, show the essential facts that confer jurisdiction upon the court to hear and determine such kinds of causes, to wit: (a) That the protestant has duly registered his candidacy and received votes in the election (*Tengco vs. Jocson*, 43 Phil., 715); (b) that the protestee has been proclaimed elected in said election (*Manalo vs. Sevilla*, 24 Phil., 609); (c) that the motion of protest be filed within two weeks after such proclamation (*Navarro vs. Veloso*, 23 Phil., 625; *Manalo vs. Sevilla*, supra; *Hontiveros vs. Altavas*, 39 Phil., 226); (d) that all the candidates registered and voted in the election were properly notified of the protest within twenty days following its filing; (e) that the notice be served by the sheriff or his deputy in the manner prescribed by the law, failing which, that the notice be published in a paper of general circulation in the locality or by notices posted in conspicuous places of the town as may have been ordered by the court.

"3. ID.; SUFFICIENCY OF PROTEST.—As regards the protestant, an election protest is sufficient if the facts enumerated in clauses (a), (b), and (c) of the preceding paragraph are alleged."

In the present case the original motion of protest was filed by Hermogenes Santiago, a duly registered candidate and voted for in the general elections held on June 5, 1928, for the office of municipal president of Obando, Province of Bulacan, against Timoteo C. Ignacio, who was proclaimed elected in said elections two weeks after such proclamation. These facts were alleged in the motion of protest before us, and according to the above cited doctrine are sufficient for the lower court to acquire jurisdiction over the case.

The sufficiency or the insufficiency of the facts alleged in the motion of protest to constitute a cause of action, is not a jurisdictional fact and, consequently, does not affect the acquisition of jurisdiction by the court, but affects only its exercise once acquired in the sense of permitting or forbidding the continuance of its exercise for the purpose intended. If the facts alleged in the motion of protest do not constitute a cause of action, the court cannot continue exercising its jurisdiction, inasmuch as it possesses that power when it appears that a right has been violated and an injury caused, requiring judicial intervention in order to protect the one and repair the other.

The insufficiency of the facts alleged in the motion of protest to constitute a cause of action is one of the grounds provided by law for a demurrer (sec. 91, Act No. 190), and the ruling of the court thereon may lead the court to continue its cognizance of the case should it be unfavorable, or to dismiss it, if favorable and the plaintiff refuses or is unable to cure the defect.

Therefore the sufficiency of the allegation of a motion of protest to constitute a cause of action is not essential for the acquisition of jurisdiction, but only to continue in its exercise, once it has been acquired.

Hence, the trial court committed the first error assigned.

As to the second assignment of error, construing the phrase "not less than" used in clauses (a), (b), (c), and (e), of the fourth paragraph of the original motion of protest in connection with the allegation in the sixth paragraph of the same motion, it appears that if the supposed frauds and irregularities alleged in the aforesaid motion of protest of the protestant had not been committed he would have obtained a greater number of votes and also the necessary plurality over his opponent in order to be elected municipal president of Obando. All the allegations in the original motion of protest, taken together and construed in relation with one another, express facts sufficient to

constitute a cause of protest.

For the foregoing reason, we believe that the trial court also committed the second error assigned.

The third assignment of error is a corollary of the first. And as in resolving the latter we held that the trial court acquired jurisdiction to try the present case by virtue of the filing of the protest in question and that the sufficiency of the allegations of a motion of this character in order to constitute a cause of action, is not a jurisdictional fact and, therefore, cannot affect the jurisdiction of the trial court, but rather the exercise of the same once it has been acquired, said defect must be raised in a demurrer and not by a motion for dismissal, and the protestant should be allowed to amend his motion should the demurrer be sustained. In the case of *De la Cruz vs. Revilla and Bustos* (40 Phil., 234), this court held that the motion for dismissal of a protest, based on the insufficiency of the allegations to constitute a cause of action, is in the nature of a demurrer.

We are likewise of the opinion that the trial court committed the third error assigned.

For all the foregoing, the order appealed from is reversed and it is ordered that the case be remanded to the court of origin for further proceedings, with costs against the appellee. So ordered.

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

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