

MODESTO YUMUL, PROTESTANT AND APPELLANT, VS. GREGORIO PALMA, PROTESTEE AND APPELLEE.

G.R. No. 30174. December 10, 1928

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the protestant Modesto Yumul from the order of the Court of First Instance of Tarlac granting the motion of dismissal made by the protestee Gregorio Palma, and dismissing the protest with costs against the protestant on the ground that the court lacked jurisdiction to try the case.

In support of his appeal, the protestant assigns the following alleged errors as committed by the lower court in the appealed order, to wit:

"1. The court below erred in disclaiming jurisdiction over the motion of protest simply because no expression or indication is contained therein to show that said motion of protest was filed within the legal period, that is, within two weeks after the proclamation of the appellee.

"2. The court below likewise erred in holding it unnecessary to discuss the allegations made in the motion of protest concerning the violation of the secret of the ballot, for lack of jurisdiction thereof, and also in holding that, at first sight, they cannot give rise to the nullity of the Votes cast, but at most and in any case, only to criminal liability for the election."

The pertinent facts necessary for the solution of the questions raised by the appellant in his brief are as follows:

On June 25, 1928 Modesto Yumul filed the following motion of protest with the Court of First Instance of Tarlac:

"Comes now the undersigned protestant, and to the Honorable Court respectfully shows:

"That the protestant and the protestee are of age and reside in the municipality of Concepcion, Province of Tarlac Philippine Islands, who, having presented their respective certificates of candidacy within the required period, were the only registered candidates voted for the office of municipal president of the aforesaid municipality and province, at the general elections held on June 5, 1928.

"That the municipal board of canvassers, acting in such a capacity, certified in its resolution that the protestee is the municipal president elect with 906 votes in his favor as against 707 in favor of the protestant, but that in reality the latter, the protestant, should have received a greater number of votes had it not been for the fraudulent anomalies and machinations committed by the protestee and his partisans in election precincts Nos. 6 and 7, for which reason the protestant contests the election of the protestee on the following grounds:

"1. That in precinct No. 6 (barrio of Balas), the members of the board of inspectors, acting in collusion with the partisans of the protestee, all of whom are men of influence in that barrio, with the deliberate purpose of obtaining a greater number of votes for the protestee, allowed and permitted the latter's said partisans to enter the booths in order to electioneer, watch and see what the voters were writing; the said inspectors also allowed and permitted said partisans of the protestee to see and read the ballots of the electors who had not been accompanied by them at the time of casting their votes before said votes were deposited in the ballot box, and

thus knew the candidate for whom said electors voted; therefore, the protestant alleges that the 160 votes obtained by the protestee in said precinct No. 6, are not the true expression of the will of the electors.

"2. That in election precinct No. 7 (barrio of Santa Monica) the members of the board of inspectors together with the protesters partisans, entered the booths to electioneer, watch and see what the electors wrote, thus assuring a greater number of votes for the protestee, and the protestant therefore, alleges that the 125 votes obtained by the protestee in said precinct No. 7, likewise are not the true expression of the will of the electors.

"3. That if the elections held in precincts Nos. 6 and 7 above mentioned are declared void upon the facts alleged in this motion, the result would be that the herein protestant and not the protestee would have the greater number of votes.

"Wherefore, the protestant respectfully prays the honorable court:

"(a) To fix the bond to be filed by the protestant;

"(b) That the municipal secretary of Concepcion, Tarlac, be ordered to forward immediately to the court, the election lists, election returns, records, registers and other papers used in precincts Nos. 6 and 7 in addition to the minutes or resolution of the municipal board of canvassers with respect to the office of the municipal president for their examination by the court in due time;

"(c) That judgment be rendered annulling the election held in election precincts Nos. 6 and 7, and in consequence that the plurality of votes be adjudicated to the protestant for the office of municipal president of Concepcion, Tarlac, after notifying the municipal board of canvassers of said municipality, and the interested parties of such decision of the court, with costs against the protestee; and

"(d) That the provincial sheriff of Tarlac be ordered to summon and notify the protestee immediately, delivering a copy of this motion to him; and that the date for the hearing of said proceedings be set within the legal period.

"Concepcion, Tarlac, June 25, 1928.

"MODESTO YUMUL

"Protestant

"Concepcion, Tarlac

"That I, Modesto Yumul, the protestant in this motion of protest, after being duly sworn, depose and say: That I have read the foregoing motion and that everything alleged therein is true and correct, to the best of my knowledge and belief.

"Tarlac, Tarlac, June 25, 1928.

"MODESTO YUMUL

"Protestant

"Subscribed and sworn to before me on this twenty-fifth day of June, 1928. Affiant exhibited his cedula certificate No. F-1766284, issued in Concepcion, Tarlac, on April 11, 1928.

"VICTORIANO V. VALLE

"Clerk of Court"

On July 12, 1928, the protestee filed in the same court a motion for the dismissal of the protest on the following grounds: "(1) This honorable court lacks jurisdiction over the case, the motion of protest failing to allege facts necessary to confer jurisdiction; and (2) the motion of protest does not allege facts sufficient to constitute a cause of action."

Passing upon the preceding motion for dismissal, the lower court issued the order from which this appeal was taken.

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

"2. ID.; FACTS ESSENTIAL TO CONFER ON A COURT JURISDICTION TO TAKE COGNIZANCE OF AN ELECTION CONTEST.—Sections 44 and 45 of Act No. B030, 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 case of *Nisperos vs. Araneta Diaz and Flores* (47 Phil., 806) this court also laid down the following doctrine:

"ELECTIONS; ELECTION PROTEST; TIME FOR FILING OF; JURISDICTION; PLEADINGS.—The omission of the contestant to allege in his protest the fact that the same was filed within the period fixed by the law does not prevent the court from acquiring jurisdiction over the subject matter, if it appears in the record that it was really presented within the period fixed by the law."

It will be seen that in both cases it was held essential that the motion of protest be filed within the two weeks following the proclamation of the elected candidate and that such fact appears in the motion of protest, either expressly or by implication. The legal provision that motions of protest be filed within the two weeks following the proclamation of the elected candidate is mandatory, and in contrast to the provisions of law upon the prescription of ordinary actions, this defense of prescription of action cannot be waived, so that if the protestant does not file his motion of protest within said time, but afterwards, the court does not acquire jurisdiction over it, even if the protestee does not plead said defense (37 *Corpus Juris*, 720, par. 40). Therefore, since the period fixed by the law for the filing of a motion of protest is a jurisdictional provision, the fact that said motion was filed within such period must in some way appear in the motion of protest.

The motion of protest quoted above does not show the date of the proclamation but only the date on which the general elections were held. It appears, it is true, that said motion was filed on April 25, 1928; but that fact alone does not enable the court to determine whether the motion was filed within the two weeks following the proclamation and whether it acquired jurisdiction to take cognizance of it.

Therefore, since the motion of protest does not show either expressly or by implication that it was filed within the two weeks following the date of the proclamation of the elected candidate, the lower court did not acquire jurisdiction over said motion of protest by its mere presentation, and said court did not err in dismissing it for lack of jurisdiction.

Having arrived at this conclusion we deem it unnecessary to discuss the second assignment of error.

In view of the foregoing, we are of opinion and so hold that since it is a mandatory provision of law that an

election protest must be filed within the two weeks following the date of the elected candidate's proclamation, the compliance of such mandate is jurisdictional and must appear either expressly or by implication in the motion of protest filed to that effect, and its omission prevents the court where it is filed from acquiring jurisdiction over it.

By virtue thereof, not finding any error in the appealed order, the same is affirmed in all its parts, with costs against the appellant. So ordered.

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

Street, J., reserves his vote.

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