

GREGORIO NUVAL, PETITIONER AND APPELLANT, VS. NORBERTO GURAY ET AL., RESPONDENTS. NORBERTO GURAY, APPELLEE.

G.R. No. 30241. December 29, 1928

Ponente: VILLA-REAL J.

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VILLA-REAL J.:

This appeal was taken by the petitioner Gregorio Nuval from the judgment of the Court of First Instance of La Union, upholding the defense of res judicata and dismissing the quo warranto proceeding instituted by the said Gregorio Nuval against Norberto Guray and others, with costs against the petitioner.

In support of his appeal, the appellant assigns the following alleged errors as committed by the trial court in its judgment, to wit:

"1. The lower court erred in holding that the judgment rendered upon Gregorio Nuval's petition for the cancellation of Norberto Guray's name on the election list of Luna is conclusive and constitutes res judicata in the present case.

"2. The trial court erred in not holding that Norberto Guray at the time of his election, was ineligible for the office of municipal president of Luna, not having had one year's residence in said municipality.

"3. The lower court erred in not finding in its judgment that the petitioner is entitled to hold the office in question."

In regard to the first assignment of error, the evidence adduced during the trial of the case shows:

That on May 11, 1928, and within the period fixed by section 437 of the Administrative Code, as amended by Act No. 3387, Gregorio Nuval filed, in civil case No. 1442 of the Court of First Instance of La Union, in his dual capacity as a voter duly qualified and registered in the election list of the municipality of Luna, and as a duly registered candidate for the office of municipal president of said municipality, a petition against Norberto Guray asking for the exclusion of his name from the election list of said municipality, not being a qualified voter of said municipality since he had not resided therein for six months as required by section 431 of the said Administrative Code.

Proceedings were had upon the petition in accordance with sections 437 and 438 of the same Code, as amended by Act No. 3387, and Judge E. Araneta Diaz, rendered judgment dismissing it because, in his opinion, Norberto Guray was a bona fide resident of the municipality of Luna from January 1, 1927. As that order was not appealable, Norberto Guray's name remained in the election list of the municipality of Luna.

The general elections having been held on June 5, 1928, Norberto Guray was elected to the office of municipal president of Luna by a plurality of votes, Gregorio Nuval obtaining second place. On June 7, 1928, the municipal council of Luna, acting as the municipal board of canvassers, proclaimed the respondent, Norberto Guray, elected to the office of municipal president of the said municipality of Luna for the next triennium.

On June 18, 1928, Gregorio Nuval filed the present action of quo warranto as provided in section 408 of the Administrative Code, as amended by Act No. 3387, asking that Norberto Guray be declared ineligible for the office of municipal president of Luna, for not having had a legal residence of one year previous to the election as required by section 2174 of the said Administrative Code in order to be eligible to an elective municipal office.

The question to be solved under the first assignment of error is whether or not the judgment rendered in the case of the petition for the exclusion of Norberto Guray's name from the election list of Luna, is *res judicata*, so as to prevent the institution and prosecution of an action in quo warranto, which is now before us.

The procedure prescribed by section 437 of the Administrative Code, as amended by Act No. 3387, is of a summary character and the judgment rendered therein is not appealable except when the petition is tried before the justice of the peace of the capital or the circuit judge, in which case it may be appealed to the judge of first instance, with whom said two lower judges have concurrent jurisdiction.

The petition for exclusion was presented by Gregorio Nuval in his dual capacity as qualified voter of the municipality of Luna, and as a duly registered candidate for the office of president of said municipality, against Norberto Guray as a registered voter in the election list of said municipality. The present proceeding of quo warranto was interposed by Gregorio Nuval in his capacity as a registered candidate voted for the office of municipal president of Luna, against Norberto Guray, as an elected candidate for the same office. Therefore, there is no identity of parties in the two cases, since it is not enough that there be an identity of persons, but there must be an identity of capacities in which said persons litigate. (Art. 1259 of the Civil Code; *Bowler vs. Estate of Alvarez*, 23 Phil., 561; 34 Corpus Juris, p. 756, par. 1165.)

In said case of the petition for the exclusion, the object of the litigation, or the litigious matter was the exclusion of Norberto Guray as a voter from the election list of the municipality of Luna, while in the present quo warranto proceeding, the object of the litigation, or the litigious matter is his exclusion or expulsion from the office to which he has been elected. Neither does there exist, then, any identity in the object of the litigation, or the litigious matter.

In said case of the petition for exclusion, the cause of action was that Norberto Guray had not the six months legal residence in the municipality of Luna to be a qualified voter thereof, while in the present proceeding of quo warranto, the cause of action is that Norberto Guray has not the one year's legal residence required for eligibility to the office of municipal president of Luna. Neither does there exist, therefore, identity of causes of action.

In order that *res judicata* may exist the following are necessary: (a) Identity of parties; (b) identity of things; and (c) identity of issues (*Aquino vs. Director of Lands*, 39 Phil., 850). And as in the case of the petition for exclusion and in the present quo warranto proceeding, as there is no identity either of parties, or of things or litigious matter, or of issues or causes of action, there is no *res judicata*.

For the above considerations, the trial court erred in holding that the judgment rendered in the case on the petition of Gregorio Nuval asking for the "cancellation of Norberto Guray's name in the election list of Luna is conclusive and, constitutes *res judicata* in the present case.

With respect to the second assignment of error, the evidence establishes the following facts:

Up to June 27, 1922, Norberto Guray had resided in the municipality of Luna, his birthplace, where he had married and had held the office of municipal treasurer. On that date he was appointed municipal treasurer of Balaoan, Province of La Union. The rules of the provincial treasurer of La Union, to which Norberto Guray was subject as such municipal treasurer, require that municipal treasurers live continuously in the municipality where they perform their official duties, in order to be able to give an account of their acts as such treasurers at any time.

In order to qualify and be in a position to vote as an elector in Balaoan in the general elections of 1925, Norberto Guray asked for the cancellation of his name in the election lists of Luna, where he had voted in the general elections of 1922, alleging as a ground therefor the following: "On the ground of transfer of my residence which took place on the 28th day of June, 1922. My correct and new address is Poblacion, Balaoan, La Union;" and in order to be registered in the election lists of Balaoan in the general elections of 1925, he subscribed affidavit Exhibit F-1 before the board of election inspectors of precinct No. 1 of Balaoan, by virtue of which he was registered as an elector of the said precinct, having made use of the right of suffrage in said municipality in the general elections of 1925. In his cedula certificates issued by himself as municipal treasurer of Balaoan from the year 1923 to 1928, included, he made it appear that his residence was the residential district of Balaoan. In the year 1926, his wife and children who, up to that time, had lived in the municipality of Balaoan, went back to live in the town of Luna in the house of his wife's parents, due to the high cost of living in that municipality. Norberto Guray used to go home to Luna in the afternoons after office hours, and there he passed the nights with his family. His children studied in the public school of Luna. In January, 1927, he commenced the construction of a house of strong materials in Luna, which has not yet been completed, and neither he nor his family has lived in it. On February 1, 1928, Norberto Guray applied for and obtained vacation leave to be spent in Luna, and on the 16th of the same month he filed his resignation by telegraph, which was accepted on the same day, also by telegraph. Notwithstanding that he was already provided with a cedula issued by himself as municipal treasurer of Balaoan on January 31, 1928, declaring him a resident of said town, he obtained another cedula from the municipality of Luna on February 20, 1928, which was dated January 15, 1928, in which it was represented that he resided in the barrio of Victoria, municipality of Luna, Province of La Union. On February 23, 1928, Norberto Guray applied for and obtained the cancellation of his name in the election list of the municipality of Balaoan, and on April 14, 1928, he applied for registration as a voter in Luna, alleging that he had been residing in said municipality for thirty years. For this purpose he made use of the cedula certificate antedated.

In view of the facts just related, the question arises whether or not Norberto Guray had the legal residence of one year immediately prior to the general elections of June 5, 1928, in order to be eligible to the office of municipal president of Luna, Province of La Union.

There is no question but that when Norberto Guray accepted and assumed the office of municipal treasurer of Balaoan, La Union, he transferred his residence from the municipality of Luna to that of Balaoan.

The only question to determine refers to the date when he once more established his residence in the municipality of Luna.

It is an established rule that "where a voter abandons his residence in a state and acquires one in another state, he cannot again vote in the state of his former residence until he has qualified by a new period of residence" (20 Corpus Juris, p. 71, par. 28). "The term 'residence' as so used is synonymous with 'domicile,' which imports not only intention to reside in a fixed place, but also personal presence in that place, coupled with conduct indicative of such intention." (People vs. Bender, 144 N. Y. S., 145.)

Since Norberto Guray abandoned his first residence in the municipality of Luna and acquired another in Balaoan, in order to vote and be a candidate in the municipality of Luna, he needed to reacquire residence in the latter municipality for the length of time prescribed by the law, and for such purpose, he needed not only the intention to do so, but his personal presence in said municipality.

By reason of his office as municipal treasurer of Balaoan and on account of the rules of the provincial treasurer of La Union, under whose jurisdiction was such municipality, Norberto Guray had to reside and in fact resided in said municipality until the 16th of February, 1928, when he filed his resignation from his office, which was

accepted on the same date. The fact that his family moved to the municipality of Luna in the year 1926 in order to live there in view of the high cost of living in Balaoan; the fact that his children studied in the public school of said town; the fact that on afternoons after office hours he went home to the municipality of Luna and there passed the night with his family, are not in themselves alone sufficient to show that from said year he had transferred his residence to said municipality, since his wife and children lived with his father-in-law, in the latter's house, and that only in the month of January, 1927, did he begin the construction of a house of strong materials, which is not yet completed, nor occupied by himself or his family. His afternoon trips to Luna, according to his own explanation given to the provincial treasurer, were made for the purpose of visiting his sick father. His own act in recording in his cedula certificates for the years 1927 and 1928, issued by himself in his favor as municipal treasurer of Balaoan, that his place of residence was that municipality, and in taking out a new cedula in the municipality of Luna on February 20, 1928, and having the date of its issuance surreptitiously put back to January 15, 1928, show that until the date of his resignation he did not consider himself as a resident of the municipality of Luna. The fact that his wife and children lived in Luna, not in his own house but in that of his wife's father since the year 1926, cannot be looked upon as a change of residence, since a change of residence requires an actual and deliberate abandonment of the former (20 Corpus Juris, p. 71) and one cannot have two legal residences at the same time.

The present case is different from that of Doctor Apacible cited by the appellee in his brief. Doctor Apacible never had abandoned his legal residence in the Province of Batangas, notwithstanding that he had been living with his family in the City of Manila, taking out his cedula certificates here, but he never exercised the right of suffrage here. Norberto Guray abandoned his legal residence in the municipality of Luna, transferring it to the municipality of Balaoan by reason of his office of municipal treasurer of said municipality and on account of the requirements of the rules of the provincial treasurer of La Union, under whose jurisdiction is said municipality, exercising his right of suffrage in the latter.

For the foregoing considerations, we are of opinion and so hold that in fact and in law Norberto Guray only abandoned his legal residence in the municipality of Balaoan, and began to acquire another in the municipality of Luna from February 16, 1928, when he filed his resignation from the office of municipal treasurer of Balaoan which he had been holding, and which resignation was accepted; and on being elected municipal president of Luna in the general elections of June 5, 1928, he had not reacquired the legal residence necessary to be validly elected to said office.

By virtue whereof, the election of respondent-appellee Norberto Guray to the office of municipal president of Luna is hereby held to be unlawful and quashed and, in consequence, he has no right to take possession of said office, petitioner Gregorio Nuval being the one legally elected to said office with a right to take possession thereof, having secured second place in the elections. With costs against the respondent. So ordered.

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

RULING ON THE MOTION FOR RECONSIDERATION

February 1, 1929

VILLA-REAL, J.:

This is a motion praying for the reasons given that the judgment rendered in this case on December 29, 1928 be reconsidered, and another rendered affirming the judgment appealed from.

In regard to the grounds of the motion with reference to the defence of *res judicata*, as the movant does not adduce any new argument in support thereof, and inasmuch as this court has already discussed said question at length, we find no sufficient reason to grant the motion on said grounds.

As to the other grounds touching this court's holding that Gregorio Nuval is the one who has been legally elected to the office of municipal president of Luna, La Union, and entitled to take possession thereof, having received second place, we consider them meritorious, for the reason that section 408 of the Election Law, providing the remedy in case a person not eligible should be elected to a provincial or municipal office, does not authorize that it be declared who has been legally elected, thus differing from section 479 of the said law, which contains such an authorization, and for the reason, furthermore, that section 477 of the said law provides that only those who have obtained a plurality of votes, and have presented their certificates of candidacy may be certified as elected to municipal offices. Elective offices are by nature different from appointive offices. The occupation of the first depends on the will of the elector, while that of the second depends on the will of the authority providing for it. In *quo warranto* proceedings referring to offices filled by election, what is to be determined is the eligibility of the candidate elect, while in *quo warranto* proceedings referring to offices filled by appointment, what is determined is the legality of the appointment. In the first case when the person elected is ineligible, the court cannot declare that the candidate occupying the second place has been elected, even if he were eligible, since the law only authorizes a declaration of election in favor of the person who has obtained a plurality of votes, and has presented his certificate of candidacy. In the second case, the court determines who has been legally appointed and can and ought to declare who is entitled to occupy the office.

In view of the foregoing, we are of opinion that the judgment rendered in this case on December 29, 1923, should be, and is hereby, amended, eliminating from the dispositive part thereof, the holding that Gregorio Nuval is the one who has been legally elected, so as to read as follows:

"By virtue whereof, the election of respondent-appellee Norberto Guray to the office of municipal president of Luna, is hereby declared unlawful and quashed and, consequently, that he has no right to take possession of said office, with costs against said respondent." So ordered.

Avanceña, C. J., Malcolm, Ostrand, Johns, and Romualdez, JJ., concur.

DISSENTING**VILLAMOR, J.:**

In consequence of my dissenting opinion from the decision in this case, I am compelled to dissent likewise from the ruling on the motion for reconsideration. And I take this opportunity of stating the grounds of my dissent. In the opinion promulgated on December 29, 1928, among other things, the following was stated: "Proceedings were had upon the petition in accordance with sections 437 and 438 of the same Code, as amended by Act No. 3387, and Judge E. Araneta Diaz, rendered judgment dismissing it because, in his opinion, Norberto Guray was a bona fide resident of the municipality of Luna from January 1, 1927. As that order was not appealable, Norberto Guray's name remained in the election list of the municipality of Luna."

The same decision states: "In said case of the petition for the exclusion, the object of the litigation, or the litigious

matter was the exclusion of Norberto Guray as a voter from the election list of the municipality of Luna, while in the present quo warranto proceeding, the object of the litigation, or the litigious matter is his exclusion or expulsion from the office to which he has been elected. Neither does there exist, then, any identity in the object of the litigation, or the litigious matter.

"In said case of the petition for exclusion, the cause of action was that Norberto Guray had not the six months legal residence in the municipality of Luna to be a qualified voter thereof, while in the present proceeding of quo warranto, the cause of action is that Norberto Guray has" not the one year's legal residence required for eligibility to the office of municipal president of Luna. Neither does there exist, therefore, identity of causes of action."

Further on, it states: "In the year 1926, his wife and children who, up to that time had lived in the municipality of Balaoan, went back to live in the town of Luna in the house of his wife's parents, due to the high cost of living in that municipality. Norberto Guray used to go home to Luna in the afternoons after office hours, and there he passed the nights with his family. His children studied in the public school of Luna. In January, 1927, he commenced the construction of a house of strong materials in Luna, which has not yet been completed, and neither he nor his family has lived in it. On February 1, 1928, Norberto Guray applied for and obtained vacation leave to be spent in Luna, and on the 16th of the same month he filed his resignation by telegraph, which was accepted on the same day, also by telegraph. Notwithstanding that he was already provided with a cedula issued by himself as municipal treasurer of Balaoan on January 31, 1928, declaring him a resident of said town, he obtained another cedula from the municipality of Luna on February 20, 1928, which was dated January 15, 1928, in which it was represented that he resided in the barrio of Victoria, municipality of Luna, Province of La Union. On February 23, 1928, Norberto Guray applied for and obtained the cancellation of his name in the election list of the municipality of Balaoan, and on April 14, 1928, he applied for registration as a voter in Luna, alleging that he had been residing in said municipality for thirty years. For this purpose he made use of the cedula certificate antedated."

Considering the facts thus related in the majority opinion, I believe that, setting aside technicalities, the question of the residence of the protestee-appellee Guray was decided by the court holding that he was a bona fide resident of the municipality of Luna, since January 1, 1927. I believe it is plain that Norberto Guray's residence follows him as the shadow follows the body that casts it, whether it be in his capacity as voter, or in his eligibility for the office of municipal president. The fact is that the Court of La Union found Guray to be a bona fide resident of the municipality of Luna since January 1, 1927. From that date until the general elections (June 5, 1928), I believe more than one year has elapsed and, consequently, Guray had the legal residence of over one year at least, in the municipality of Luna at the time of his election as municipal president.

In this jurisdiction the courts have ever looked upon residence as purely a matter of intention, manifested by the acts, conduct and circumstances of the person choosing a place as his permanent dwelling place and home. It was so understood by the Philippine Commission in discussing the first election law, whose provisions upon the residence of voters and eligibles have not been amended up to the present time. The domicile or legal residence has been defined as the place where a person has a principal house or habitation, or where he keeps his family and his chief place of business. The intention in every case is the real object of investigation. If a man leaves his town and removes to another by reason of his business, but with the intention to return to it, he has not lost his residence in said town. The mere change of dwelling place does not involve a change of residence if it be not accompanied by intention. Hence it has been held that if one has removed to another town solely by virtue of his appointment as municipal treasurer, but with the intention to return to his original town, he has not lost his residence in his original town. The words good faith accompanying the word residence must be taken as a description of the state of mind of the person claiming residence. For example, if a man removes to a province

with the sole object of remaining one year in order to become a candidate for the governorship, he may be held to be a resident in bad faith, while he may be bodily absent from the province for a long time and yet have in his mind the constant intention to return. If it be so, he would be a resident in good faith of the place he had left.

It is evident that bodily presence in a place, accompanied by the intention to live therein forever, establishes domicile or residence. But bodily presence in a place is not residence; it is a mere proof, strong proof, if you wish, tending to demonstrate residence. At most, personal presence is presumptive proof that a person intends to reside where he is. But such a presumption may be rebutted by other acts, conduct, and circumstances of the person, clearly showing his intention to establish his home elsewhere. The herein protestee-appellee Guray, at least since January, 1927, kept his family in the municipality of Luna, he went there at night to sleep with them, his children studied in the public school of said municipality, and he had a house of strong materials built in Luna, although it was not yet completed, as stated in the majority opinion. But all these acts show his intention to establish his legal residence in the municipality of Luna.

The fact of having paid his personal cedula in Balaoan is of trivial importance in showing legal residence, for, as Governor-General Smith said in the resolution of the protest against the election of the provincial governor of Batangas, Apacible, hundreds of persons have taken out their cedulas outside of their residential province without having lost their legal residence as a result thereof. Governor-General Smith himself, who lived nine years in the Philippines, and took out his cedula in Manila, had his residence in San Francisco, California, because his intention was to go back and live there permanently.

There is no further need of amassing citations, but let a recently decided case be remembered, namely, the quo warranto proceeding of *Ira vs. Abaño* (p. 380, ante). The facts in that case are: Maximo Abaño is a native of the municipality of Meycauayan, Bulacan. At the competent age he removed to Manila to complete his education. While living temporarily in Manila, Abaño registered as a voter there. Shortly after having been admitted to the bar and after the death of his father, Abaño went back to live in Meycauayan. From May 10, 1927, up to the present Abaño has considered himself a resident of Meycauayan. When in 1928 the elections were about to be held, he filed a petition for the cancellation of his registration in Manila, which was dated April 3, 1928, but his petition was denied by the city officials because it had not been deposited in the mails on or before April 4, 1928. Nevertheless, Abaño presented himself as a candidate for the municipal presidency of Meycauayan in the 1928 elections and was by popular vote elected thereto. In that case it was held:

"1. A candidate who was elected to the office of municipal president and who at the time of the election was registered as a voter of Manila and not of the municipality in which he was a candidate, is nevertheless eligible to the office, and proceedings in the nature of quo warranto instituted by virtue of the provisions of section 408 of the Election Law, as amended, by the vice-president elect of the municipality, who challenged the right of the municipal president elect, to the position to which elected on the ground that the municipal president was ineligible, cannot be successfully maintained.

"2. The Election Law makes use of the terms 'qualified voter in his municipality,' and 'qualified elector therein.' To be a qualified voter, does not necessarily mean that a person must be a registered voter. It is sufficient for the candidate to possess all of the qualifications prescribed in section 431 and none of the disqualifications prescribed in section 432. The fact that a candidate failed to register as an elector in the municipality does not deprive him of the right to become a candidate and to be voted for.

"3. One may be a qualified voter without exercising the right to vote. Registering does not confer the right; it is but a condition precedent to the exercise of the right. Registration regulates the exercise of the right of suffrage. It is not a qualification for such right.

"4. The question of residence for the purposes of the Election Law is largely one of intention."

In another, and a yet more recent case (*Vivero vs. Murillo*, G. R. No. 30271)[1], it was held: "A student living with his parents in a certain barrio of a municipality, which barrio is later separated to be organized as an independent municipality, who for several years pursues his studies in several provinces of the archipelago, supported by his parents, returning to the latter's home during his vacations in the newly organized municipality, does not lose his residence in said municipality, either on account of having resided in different provinces as a student, or of having registered as a voter in the former municipality and is eligible as municipal president of the new municipality even if his registration as a voter in the municipality to which the new one originally belonged has not been cancelled."

The same view of the question of legal residence has been sustained by the Philippine Assembly in the protest against the election of the representative of the southern district of Manila, Fernando Guerrero, and in that of the representative for the second district of Manila, Luciano Cinco. (Journal of Sessions of the Assembly, December 6, 1917, and November 29, 1927, respectively.)

Wherefore, I am of opinion that the motion for reconsideration should be granted on the ground that the protestee and appellee had the legal residence to become eligible to the office of the municipal president of the municipality of Luna. With respect to the second ground of the motion for reconsideration, I agree with the majority opinion that a candidate who received second place in the election cannot be declared elected to said office simply because the one who received first place turned out to be ineligible.

Judgment of December 29, 1928, modified.

[1] P. 694, post.

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