

ANACLETA CORTES, VDA. DE CASTRO, PETITIONER, VS. COURT OF FIRST INSTANCE OF CAPIZ AND “LEDESMA HERMANOS & PEDRO DE LA VIÑA,” RESPONDENTS.

G.R. No. 30270. October 19, 1928

Ponente: MALCOLM, J.

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MALCOLM, J.:

Mandamus under section 499 of the Code of Civil Procedure directed to the Judge of First Instance of Capiz. Irrespective of all other features, there is one aspect to the case which discloses the reason why the petition cannot be allowed. This is the application to the facts of the principle of laches in mandamus proceedings.

The record begins with the decision in civil case No. 1875 on November 22, 1926. We may then turn to the disapproval of the bill of exceptions on September 29, 1927. The motion of reconsideration addressed to this order was denied on January 21, 1928. The attorney for the petitioner claims to have been notified of this lask order on March 2, 1927 (1928) and immediately to have excepted thereto. That then concluded the record in the trial court. The petitioner, however, did nothing until he prepared his petition for mandamus dated July 16, 1923, but which was received for filing in this court on September 3, 1928. To consolidate these admitted facts, nearly two years have passed since the decision in the trial court was handed down; approximately one year has passed since the disapproval of the bill of exceptions; and almost exactly a half year has passed since the last action in the lower court.

Section 499 of the Code of Civil Procedure permits the dissatisfied party to "apply at the next term of the Supreme Court" for a mandamus. While terms of court are pretty much disregarded in actual practice, the rules do provide for the calling of a calendar on the second Monday of July. The July term of court may, therefore, be here taken to be the next term of the Supreme Court mentioned in the law. But even under the most favorable aspect, from the second Monday of July to the first days of September, more than a month elapsed. Without deciding what would constitute an application within a reasonable time after the refusal of a trial judge to sign the bill of exceptions, it is apparent that the delay in ordinary cases should not be more than the longest period allowed in the lower court for the party to take action, which is thirty days. It is well settled that laches in making an application for the writ of mandamus affords sufficient cause for its denial. Also it should not be forgotten that during the pendency of the proceedings execution has issued and the property of the petitioner has been sold at public auction.

The court is, therefore, fully justified in the exercise of a sound discretion in denying the relief prayed for. Petition dismissed, with costs.

Johnson, Street, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

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