

ALIPIO DAIS, PLAINTIFF AND APPELLEE, VS. JOSE Y. TORRES AND LEONA IBAÑEZ, THE LATTER SUBSTITUTED BY HER ADMINISTRATOR ALFONSO DADIVAS, DEFENDANTS. ALFONSO DADIVAS, APPELLANT.

G.R. No. 36621. February 25, 1933

Ponente: VICKERS, J.

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VICKERS, J.:

This is an appeal by the defendant Alfonso Dadivas, administrator of the estate of the deceased Leona Ibañez, from a decision of Judge Leonardo Garduño of the Court of First Instance of Capiz, dated January 6, 1930. The other defendant, Jose Y. Torres, attempted to appeal, but his bill of exceptions was not filed within the time fixed by law and was disallowed by the trial judge. His petition for a writ of mandamus was denied by this court (G. R. No. 36476).[1] The decision of the trial court has therefore become final as to him.

On September 23, 1926 the plaintiff Alipio Dais filed a complaint in the Court of First Instance of Capiz, wherein he alleged that the defendant Jose Y. Torres, taking advantage of the fact that he was plaintiff's attorney, by means of fraud and deceit induced the plaintiff to sign a document which proved to be a sale with the right of repurchase of plaintiff's land for P10,000 in favor of Leona Ibanez, mother-in-law of Jose Y. Torres; that the plaintiff never sold any land to Leona Ibañez or to Jose Y. Torres or received any sum of money from either of them; that by the wrongful acts of said persons the plaintiff was damaged to the amount of P10,000.

Leona Ibañez denied all the allegations of the complaint, set up a counterclaim of P3,000, and in a cross-complaint alleged that on or about the month of May, 1926 the plaintiff had sold her a certain parcel of land for P10,000, reserving the right to repurchase it on or before September 13, 1926; that the plaintiff had failed to repurchase the property; that immediately after the execution of said contract the plaintiff had placed her in possession of the property, but that later he deprived her of the possession of said land and refused to restore the possession thereof to her, thereby causing her damages in the sum of P11,000 and further damages at the rate of P7,000 a year.

The defendant Jose Y. Torres denied all the allegations of the complaint, and alleged as a special defense that he had never fraudulently induced the plaintiff to sign any document; that the allegations of the complaint were malicious, libelous, and incriminating, and that the plaintiff had instituted the action to avoid paying said defendant's fees as plaintiff's attorney in civil cases 1896 and 2051 of the Court of First Instance of Capiz, and as a counterclaim alleged that he was entitled to recover from the plaintiff P25,000 as attorney's fees and P50,000 as damages.

Plaintiff in his answer to the cross-complaint of Leona Ibañez alleged as a special defense that the document mentioned therein was the same document which Jose Y. Torres through deceit had induced him to sign, taking advantage of the fact that he was at that time representing the plaintiff in a case pending in court and that the plaintiff had no opportunity to inform himself as to the contents of said document; that the plaintiff did not receive

any sum in consideration of the execution of said document.

The dispositive part of the decision in question, which consists of seventy-two pages, is as follows:

"Por tanto el Juzgado es de opinion que debe fallar y falla: (a) declarando nulo, sin ningun valor ni efecto, el documento de venta con pacto de retro, Exhibit B, otorgado por Alipio Dais, a favor de Leona Ibañez, y el gravamen que figura consignado en la contestacion presentada por Alipio Dais en el expediente catastral No. 18, G. L. R. O. Cadastral Record No. 714 intitulado El Director de Terrenos contra Justo Abiertas y otros, de este Juzgado de Primera Instancia de Capiz, referente al Lote No. 744, reclamado por Alipio Dais, Exhibit C; (b) ordenando al Registrador de Titulos de la Provincia de Capiz que cancele la inscripcion de lis pendens concerniente al terreno Lote No. 744 objeto de esta causa; (c) condenando a los demandados al pago de una indemnizacion de P2,000 a favor del demandante en concepto de daños y perjuicios, y de las costas; y (d) absolviendo al demandante de las reconvencciones y contrademanda de los demandados."

The appellant Alfonso Dadivas makes the following assignments of error:

"I. The trial court erred in not giving due weight and credit to the letter of the appellee Exhibit 7 and the contract Exhibit 6.

"II. The trial court erred in holding that the signature of the appellee on the right hand margin of the cadastral answer Exhibit C filed by him is not genuine and that the annotation of encumbrance ('gravamen') in said exhibit was written posterior to the filing of same and without the knowledge of appellee.

"III. The trial court erred in holding that the deed of sale Exhibit B is null, void and without any effect.

"IV. The trial court erred in dismissing the cross-complaint of the appellant Leona Ibañez and in not adjudicating the damages claimed by the said appellant against the appellee in the said cross-complaint.

"V. The trial court erred in awarding damages to the appellee for the sum of P2,000 against the appellant Leona Ibañez."

In his brief the appellant says:

"Said decision can hardly be called a 'decision' for it is more of a brief for the appellee and a 'charge' or 'complaint' against the other defendant Jose Y. Torres. This attitude of the trial judge Hon. Leonardo Garduño is probably due to the fact that at the time the present case was tried and decided the strained or hostile relation between said judge and the other defendant Jose Y. Torres was at its climax for said defendant attorney Jose Y. Torres filed his charges against the trial judge which has been acted upon by this Hon. Court."

It appears that the trial of the case was begun on September 16, 1927, but was continued to July 11, 1929. There is nothing to indicate that the defendants were responsible for the delay in resuming the trial of the case. On the date mentioned Jose Y. Torres asked for the transfer of the trial to the next month on the ground that his principal witness, Andres Quiachon, was sick, and that Torres' wife, Maria Basa, whom he wished to present as a witness, was in Manila. Judge Garduño refused to grant the transfer.

Torres then filed a motion of recusation, in which he challenged the competency of Judge Garduño to hear and decide the case and prayed him to abstain from doing so for the following reasons:

- That in the month of January, 1929, the said Jose Y. Torres filed a complaint against Judge Garduño with the Supreme Court;
- That by reason of said complaint the Supreme Court ordered Judge Garduño to remove from his court room the iron cage where he was accustomed to keep persons accused of crimes of violence during the trial of their cases;
- That the said Jose Y. Torres filed another complaint against Judge Garduño, with the necessary specification of

facts;

- That many of the charges were for partiality, bias, and hostility against the said Jose Y. Torres in various cases, and that the present case was particularly mentioned in both complaints;
- That said defendant honestly believes that taking into consideration said incidents Judge Garduño cannot administer impartial and unbiased justice in any case where said defendant is either a party or attorney;
- That Judge Garduño entertains hatred, ill will, and prejudice against said defendant, as evidenced by a public address at Calivo, Province of Capiz, on June 21, 1929, wherein he held the defendant up to public ridicule, and repeated said action in the court room at Capiz on July 2, 1929;
- That for the sake of justice, fairness, and a square deal Judge Garduño should abstain from hearing this case.

Judge Garduño overruled the motion on the ground that it was without merit.

It appears from an examination of the record of the charges filed by Attorney Torres against Judge Garduño that the first charges were filed on June 17, 1929, and that as a result thereof Judge Garduño was ordered to remove from the court room the iron cage hereinabove mentioned; that other charges of a serious nature were filed on June 28, 1929, and that Judge Garduño's answer thereto was filed on September 6, 1929; that supplementary charges were filed on October 28, 1929; and that the Solicitor-General began the investigation of the charges on February 22, 1930.

It is true therefore, as alleged by the appellant, that certain charges filed by Attorney Jose Y. Torres against Judge Garduño were pending investigation at the time of the trial and the decision of the case now before us.

The filing of these charges by Attorney Torres almost inevitably gave rise to resentment on the part of Judge Garduño, leading to bias or prejudice, which is reflected in the decision. For example, on page 29 the trial judge said: "Por tanto de ser verdad lo que alega y afirma Alipio Dais, el documento Exhibit B es fraudulento, es producto de un fraude, preparado habilidosamente y ejecutado por el Abogado Torres con el doble fin, o de cobrarse unos cuantiosos honorarios a que no tenia derecho por medio de una extorsion, o de apoderarse de una hacienda agricola simulando una compra por medio de su suegra Leona Ibañez, y parece ser que su finalidad actual es hacer real un contrato imaginario sobre la venta del lote numero 744, y tras de ello, cobrarse aun honorarios indebidos." And on pages 60 et seq.: "Que el abogado Torres es capaz de elaborar el fraude que se le imputa, dan muestras de su caracter y afan de enriquecerse a costa de sus clientes los Exhibitos siguientes." The trial judge then describes a certain mortgage, the complaint in case No. 2184, and four charges of malpractice against Torres, none of which appears to have been relevant in the case at bar.

The trial court then said: "Estas quejas administrativas culminaron con una suspension del Sr. Jose Y. Torres del ejercicio de su profesion de abogado hasta que la Corte Suprema disponga otra cosa."

Section 8 of the Code of Civil Procedure provides that no judge, magistrate, justice of the peace, assessor, referee, or presiding officer of any tribunal shall sit in any cause or proceeding in which he is pecuniarily interested, or related to either party within the sixth degree of consanguinity or affinity, computed according to the rules of the civil law, nor in which he has been counsel, nor in which he has presided in any inferior judicature when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

Although a judge may not have been disqualified under said section, nevertheless if it appears to this court that the appellant was not given a fair and impartial trial because of the trial judge's bias or prejudice, this court will order a new trial, if it deems it necessary, in the interest of justice.

It was said in *State vs. Board of Education* (19 Washington, 8; 67 A. S. R., 706, 713), that the principle of impartiality, disinterestedness, and fairness on the part of the judge is as old as the history of courts; in fact, 'the administration of justice through the mediation of courts is based upon this principle. It is a fundamental idea, running through and pervading the whole system of judicature, and it is the popular acknowledgment of the inviolability of this principle which gives credit, or even toleration, to decrees of judicial tribunals. Actions of courts which disregard this safeguard to litigants would more appropriately be termed the administration of injustice, and their proceedings would be as shocking to our private sense of justice as they would be injurious to the public interest. The learned and observant Lord Bacon well said that the virtue of a judge is seen in making inequality equal, that he may plant his judgment as upon even ground. Caesar demanded that his wife should not only be virtuous, but beyond suspicion; and the state should not be any less exacting with its judicial officers, in whose keeping are placed not only the financial interests, but the honor, the liberty, and the lives of its citizens, and it should see to it that the scales in which the rights of the citizen are weighed should be nicely balanced, for, as was well said by Judge Bronson in *People vs. Suffolk Common Pleas* (18 Wend., 550): "Next in importance to the duty of rendering a righteous judgment, is that of doing it in such a manner as will beget no suspicion of the fairness and integrity of the judge."

Contrary to the contention of appellee's attorney, the appellant has not lost his right to have the evidence reviewed by his failure to assign as error the order of the court overruling his motion for a new trial, because he has made assignments of error raising issues of fact. (*Granados and Granados vs. Bandelaria*, 45 Phil., 505.)

An examination of the record of this case shows that the decision must turn on the credibility of the witnesses, and in such a case the trial judge is in a better position than the appellate court to decide as to the truth or falsity of their testimony.

The importance of the trial court's findings of fact has been recognized by this court in many decisions. That doctrine is based upon the assumption that such findings of fact have been made by a fair and impartial judge. This court in the consideration of cases on appeal has a right to the assurance that the trial court's findings of fact are free from bias or prejudice.

Under the circumstances of the present case, we do not feel assured that the trial judge's findings were not influenced by bias or prejudice, and in the interest of justice we have decided to set aside the judgment as to the appellant and to order a new trial.

For the foregoing reasons, the decision appealed from is set aside as to the appellant Alfonso Dadivas, and the case is remanded to the lower court for a new trial before another judge. Without a special finding as to costs.

Villamor, Villa-Real, Hull, and Imperial, JJ., concur.

[1] Resolution of January 14, 1932.

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