

PILAR AGRA ET AL., PETITIONERS, VS. FRANCISCO ZANDUETA, JUDGE OF FIRST INSTANCE OF LAGUNA, JUAN FUENTES AND RAMONA SANTIAGO, RESPONDENTS.

G.R. No. 36666. February 16, 1932

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is a petition filed by Pilar Agra et al., against Judge Francisco Zanduetta et al., praying, for the reasons given, that a writ of mandamus be issued requiring the respondent judge to approve and certify the bill of exceptions of which a copy is attached to the petition.

The following relevant facts are necessary to decide the questions raised:

On August 23, 1930, Juan Fuentes and his wife, Ramona Santiago, petitioned the court, after the proper proceedings, to confirm them in the possession of certain parcels of land, among others, which they had purchased of Pilar Agra, and to have said land registered in their name.

On October 20, 1930, Aurora Guysayco, alleging that she was a daughter of Pilar Agra, opposed the application upon the ground that the parcels of land in question belonged to her mother.

On December 2, 1930, Pilar Agra and her husband, Regino Arevalo, filed an opposition to the application, amended on February 28, 1931, contending that Pilar Agra is the owner of those parcels of land, and that her sale of them was null, because she was a married woman, and did not have her husband's consent to the transaction.

On September 10, 1931, the respondent judge rendered judgment in favor of the applicants and against the opponents, who were notified thereof on September 12, 1931.

On October 1, 1931, Pilar Agra moved for a new trial.

On October 5, 1931, the opponents were notified that the court had denied their motion.

On October 10, 1931, they excepted to said order and announced their intention to appeal; and on October 16, 1931, they filed the bill of exceptions for the court's approval and certification.

On October 27, 1931, the applicants objected to the admission of the bill of exceptions on the following grounds:

"1. Exception to the judgment in this case has not been duly and legally taken.

"2. All the opponents ask for the approval of the bill of exceptions, whereas, only the opponent, Pilar Agra, moved for a new trial.

"3. The bill of exceptions was filed outside the period prescribed by the law.

"4. The bill of exceptions does not include the following pleadings:

"(a) The first opposition to the application, signed by Aurora Guysayco, and dated October 28, 1930.

"(b) The so-called 'Exception and Notice of Appeal signed by Pilar Agra and dated October 7, 1931.

"5. The pleading dated October 8, 1931, on page 18 of the bill of exceptions should not be included."

On November 14, 1931, the respondent judge entered an order sustaining the opposition and disapproving the bill of exceptions upon the second, third and fourth grounds alleged in the objection.

There is some question as to whether the opponents were notified of the judgment on the 11th or on the 12th of September, 1931. The attorney for the petitioners states under oath in the petition that his clients were notified of it on September 12, 1931, and that the date of September 11, 1931, found in the bill of exceptions is a mistake. The respondents do not deny this, but merely say that the petitioners have made no correction in the aforesaid bill of exceptions. We may therefore admit that the true date is September 12, 1931.

With reference to the second and fourth grounds, although the motion for a new trial should have been filed by Pilar Agra and her husband, Regino Arevalo, the omission of the latter's name by the attorney for the opponents may and should be corrected.

As for opponent Aurora Guysayco, there is no need of including her opposition in the bill of exceptions, for she there acknowledges that the property in question belongs to her mother, Pilar Agra.

With regard to the third ground, upon which the respondent judge mainly relied in declining to approve the bill of exceptions: From September 12, 1931, when the petitioners were notified of the judgment in the registration case, until October 1, 1931, when the motion for a new trial was filed, nineteen days elapsed; from the 1st to the 5th of October, 1931, when the opponents were notified of the order denying said motion for a new trial, four days elapsed; from the 5th to the 10th of October, 1931, when the opponents filed their notice of exception and appeal, five days elapsed; and from the 10th to the 16th of October, 1931, when the bill of exceptions was filed, six days elapsed. All in all, from September 12, 1931, when the opponents-petitioners were notified of the judgment rendered against them, until October 16, 1931, when they filed the bill of exceptions, thirty-four days elapsed. According to the rule laid down in *Director of Lands vs. Maurera and Tiongson* (37 Phil., 410), and *Roman Catholic Archbishop of Manila vs. Ruiz Sunico and Catli* (36 Phil., 279), which were cited in *Santiago vs. Manuel and Tumale* (39 Phil., 869), even in registration cases, the time during which a motion is pending, must not be counted. Taking then, from the total of thirty-four days the four during which the motion for a new trial was pending, we have thirty days left, which is the period fixed in section 14 of Act No. 496, as amended by section 26 of Act No. 2347.

Wherefore, the petition is hereby granted, and the respondent judge or the present judge of the Court of First Instance of Laguna, is hereby ordered to approve and certify the bill of exceptions, after amendment to include Regino Arevalo as an opponent, with costs against the respondents Juan Fuentes and Ramona Santiago. So ordered.

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

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