

GREGORIO PASCUA ET AL., PETITIONERS, VS. BUENAVENTURA OCAMPO, JUDGE OF FIRST INSTANCE OF TARLAC, AND HILARIA AGUILAR ET AL., RESPONDENTS.

G.R. No. 40494, December 08, 1933

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an original petition for mandamus tiled by Gregorio Pascua and others against Buenaventura Ocampo, Judge of First Instance of Tarlac, Hilaria Aguilar and others, to compel the respondent judge, on the alleged grounds stated therein, to approve and certify the bill of exceptions, copy of which is attached thereto.

The following pertinent facts are necessary for the resolution of the questions raised in this appeal:

On April 29, 1933, the Court of First Instance of Tarlac rendered judgment in civil case No. 3261 of the said court, wherein Gregorio Pascua and others were the plaintiffs and Hilaria Aguilar and others were the defendants. The said plaintiffs received notice of said judgment on May 8, 1933. Inasmuch as the judgment in question was adverse to them, on May 26, 1933, that is, eighteen days after they received notice of the decision, they filed a motion to no other effect than that the trial court reconsider its appreciation of the evidence presented and its conclusions of fact and, that it modify the judgment rendered therein. On July 13, 1933, the court denied the aforesaid motion for reconsideration. On July 20, 1933, that is, seventy-three days after they had been notified of the decision, the plaintiffs therein and petitioners herein filed a motion for a new trial based on the alleged grounds that the evidence presented by the defendants during the trial was not sufficient to justify the decision and that the decision in question was contrary to the law. The said motion was denied by the court by an order dated July 22, 1933, and upon being notified of the order in question on July 25, 1933, the aforesaid plaintiffs filed their exception and notice of intention to appeal therefrom on July 29, 1933. On August 5, 1933, they filed their bill of exceptions which was rejected by the respondent court by an order dated September 21, 1933, on the ground that the motion for new trial was filed after the thirty-day period fixed by section 145 of Act No. 190, as amended by Act No. 2347.

Section 145 of the Code of Civil Procedure, as amended by section 27 of Act No. 2347, reads as follows:

"Sec. 145. New trial.—Within thirty days after notice of a decision rendered by a Court of First Instance, the judge thereof may at the petition of the party aggrieved, and after due notice to the adverse party, set aside the judgment and grant a new trial, provided the petition is based on any of the following causes materially affecting the legitimate rights of the petitioner:

"1. Accident or surprise which ordinary prudence could not have guarded against and by reason of which the party applying has probably been impaired in his rights.

"2. Newly discovered evidence, material to the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial.

"3. Because the judge has become satisfied that excessive damages have been awarded, or that the evidence was insufficient to justify the decision, or that it is against the law."

Section 146 of the same Code prescribes the method of procedure in applications for a new trial as follows:

"SEC. 146. Method of procedure in applications for new trial.—The application shall be made by motion in writing, stating the ground therefor, of which the adverse party shall have such reasonable notice as the judge may direct. When the application is made for a cause mentioned in the first or second subdivisions of the last section, it must be made upon affidavits, and counter affidavits from the adverse party may likewise be received.

"The overruling or granting of a motion for a new trial shall not be a ground of exception, but shall be deemed to have been an act of discretion on the part of the judge, within the meaning of the second sentence of section one hundred and forty-one. If, however, the motion for a new trial was made on the ground that the evidence was insufficient to justify the decision, an exception may be taken to the order overruling such motion, and such exception may be reviewed by the Supreme Court as in other cases."

It will be seen from the legal provisions cited above that in order to obtain annulment of a judgment and the holding of a new trial, it is necessary that, within thirty days after notice of the decision in question is received by the petitioner, a petition to that effect be presented, based on any of the grounds enumerated in section 145 of the Code of Civil Procedure aforesaid, and made in the form and under the conditions prescribed by section 146 of the same Code, also cited above. Any other petition, which does not comply with the aforementioned legal requisites, is not a motion for a new trial within the meaning of the law. A motion for a new trial, which complies with the requisites prescribed by the law, is the only one whose presentation within the reglementary period of thirty (30) days suspends the running of the said period. The motion for reconsideration, filed by the plaintiffs with the trial court eighteen days after receipt of notice of the decision, did not comply with the requisites prescribed by the law and, therefore, was not a motion for a new trial in the legal sense and did not suspend the running of the period of thirty (30) days fixed by the law. The real motion for a new trial, which complied with all the formalities of the law, was filed by the plaintiffs seventy-three (73) days after receipt of notice of the decision, that is, after the thirty-day period fixed by the law, inasmuch as the motion for reconsideration filed by the plaintiffs within the said thirty-day period did not suspend the running thereof on the aforesaid ground that it was not a motion for a new trial in the legal sense.

The doctrine laid down in the case of *San Miguel Brewery vs. Legarda* (48 Phil., 507), is not applicable in this case on the ground that the question raised in that case referred to two motions filed within the thirty-day period from the date the petitioner received notice of the decision, deducting therefrom the period during which the court had the first motion under advisement. The first motion was based upon newly discovered evidence and the second upon the grounds that the judgment was not supported by the evidence submitted during the trial and that it was contrary to the law. These are the grounds enumerated in the aforesaid section 145 of the Code of Civil Procedure. This court held that the law does not limit to only one, the petition for a new trial which may be presented upon the said grounds but that more than one may be presented as long as it is done within the period of thirty days from the date the petitioner is notified of the decision, deducting therefrom the period during which the judge has each motion under advisement.

In view of the foregoing considerations, we are of the opinion and so hold that a motion for reconsideration, which is not based upon any of the grounds enumerated in section 145 of the Code of Civil Procedure, as amended by Act No. 2347, and wherein the annulment of the judgment and the holding of a new trial are not prayed for, is not a motion for a new trial within the meaning of the law, and the filing thereof does not suspend the running of the period of thirty days stated in the section aforesaid.

Wherefore the petition for a writ of mandamus filed herein is hereby denied, with the costs against the petitioners.
So ordered.

Avanceña, C. J., Malcolm, Hull, and Imperial, JJ., concur.

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