

ANTONIO LARENA, PETITIONER AND APPELLEE, VS. PEDRO TEVES, RESPONDENT AND APPELLANT.

G. R. No. 42439. December 10, 1934

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the respondent, Pedro Teves, from the judgment of the Court of First Instance of Oriental Negros, the dispositive part of which reads as follows:

"For the foregoing considerations, the court declares the election of the respondent, Pedro Teves, to the office of municipal president of Dumaguete, Oriental Negros, null and void, and, consequently, he is not entitled to assume said office, with costs against said respondent. So ordered."

In support of his appeal, the appellant assigns the following alleged errors as committed by the court a quo in its decision in question, to wit:

"1. The lower court erred in not holding that the legal residence of the respondent-appellant, Pedro Teves, from 1904 at least, up to the present, has always been, and still is, the municipality of Dumaguete, Oriental Negros.

"2. The lower court erred in holding that Pedro Teves changed his legal residence from Dumaguete to the municipality of Bacong, Oriental Negros, in 1919, when the respondent-appellant registered as an elector in the latter municipality and ran for representative of the second district of Oriental Negros.

"3. Even admitting, for the sake of argument that Pedro Teves' residence was changed from Dumaguete to Bacong in 1919, the lower court erred in not holding that Pedro Teves re-acquired his legal residence in the municipality of Dumaguete much more than one year prior to June 5, 1934.

"4. The lower court erred in holding that the cases of Yra vs. Abano (52 Phil., 380), and Vivero vs. Murillo (52 Phil., 694) are not applicable to the case at bar.

"5. The lower court erred in holding that Pedro Teves is ineligible to the office of municipal president of Dumaguete, Oriental Negros.

"6. The lower court erred in not granting respondent-appellant's motion for a new trial."

The principal question to be decided in this appeal is whether or not the respondent-appellant, Pedro Teves, who was born in the municipality of Dumaguete, Oriental Negros, and who, from the year 1904 up to the present, has had his own house in said municipality and lived with his family in said house, may be considered a resident thereof for the purposes of the Election Law, notwithstanding the fact that in the year 1919 he registered in the list of voters of the municipality of Bacong; ran for representative for the second district of Oriental Negros to which said municipality of Bacong belongs; again ran for reelection in the year 1922; and launched his candidacy for member of the provincial board of Oriental Negros in 1925, stating under oath in his certificates of candidacy that he was a resident of said municipality of Bacong, Oriental Negros, without having ever registered as elector in any of the precincts of the municipality of Dumaguete from said year, 1919, up to the present, and having ordered

the cancellation of his name in the list of voters of said municipality of Bacong only on April 5, 1934.

In the case of Nuval vs. Guray (52 Phil., 645), this court laid down the following doctrine:

"* * * "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.)"

In 20 Corpus Juris, page 68, paragraph 26, it is also stated as follows:

"* * * The term 'residence' as used in constitutional and statutory provisions relating to the qualifications of electors is synonymous with home or domicile, denoting a permanent dwelling place, to which the party when absent intends to return. While one cannot by intention' alone fix his dwelling place, yet the fact of residence for the purpose of voting depends largely on the intention of the person offering to vote, and a sojourn in a place, however long, without the intention of making it a permanent home, will not qualify the sojourner as an elector, unless it is otherwise provided by constitution or statute. Hence the right to vote in a certain precinct requires the concurrence of two things—the act of residing coupled with the intention to do so. * * *"

In the case of Vivero vs. Murillo (52 Phil., 694), this court laid down the following rule:

"ELECTIONS; RESIDENCE OF CANDIDATE.—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 voter in the municipality to which the new one originally belonged has not been cancelled."

In the case of Yra vs. Abano (52 Phil., 380), this court laid down the following doctrine:

"2. ID.; ID.; ID.; ID.; ID.—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."

In this case the respondent-appellant, Pedro Teves, from the year 1904 has had his own house in the municipality of Dumaguete, Oriental Negros, wherein he has constantly been living with his family and he has never had any house in which he lived either alone or with his family in the municipality of Bacong of said province. All that he has done in the latter municipality was to register as elector in 1919, through an affidavit stating that he was a resident of said municipality; run for representative for the second district of the province of Oriental Negros and vote in said municipality in said year; run again for reelection in the year 1922; launch his candidacy for member of the provincial board of said province in 1925, stating under oath in all his certificates of candidacy that he was a resident of said municipality of Bacong.

The affidavit made by him upon registering as elector in the municipality of Bacong in the year 1919, stating that he was a resident of said municipality; his two certificates of candidacy for the office of representative for the second district of the Province of Oriental Negros, which were filed, the former in the year 1919 and the latter in the year 1922, and the certificate of candidacy for the office of member of the provincial board filed by him in the year 1925, in every one of which he stated that he was a resident of the municipality of Bacong, are at most a prima facie evidence of the fact of his residence in the municipality of Bacong, which is required by law in order that the corresponding officials could register him as an elector and candidate, and not conclusive, and may be attacked in a corresponding judicial proceeding. If, according to the ruling laid down in the case of Vivero vs.

Murillo, cited above, mere registration in a municipality in order to be an elector therein does not make one a resident of said municipality; if, according to constant rulings the word "residence" is synonymous with "home" or "domicile", and denotes a permanent dwelling place, to which an absent person intends to return; if the right to vote in a municipality requires the concurrence of two things, the act of residing coupled with the intention to do so; and if the herein respondent-appellant, Pedro Teves, has always lived with his family in the municipality of Dumaguete and never in that of Bacong, he has never lost his residence in Dumaguete. The fact that his registration as elector in the municipality of Bacong was cancelled only on April 5, 1934, upon his petition, did not disqualify him to be a candidate for the office of municipal president of said municipality of Dumaguete on the ground that, as has been stated in the case of Yra vs. Abano, cited above, registration in the list of voters is not one of the conditions prescribed by section 431 of the Election Law in order to be an elector; neither does failure to register as such constitute one of the disqualifications prescribed in section 432 of said law.

Inasmuch as the respondent-appellant, Pedro Teves has had his legal residence in the municipality of Dumaguete from the year 1904 up to the present, without having acquired another outside said municipality, and as he has all the other qualifications prescribed by law in order to be a qualified elector, his election to the office of a municipal president is valid and in accordance with law.

For the foregoing considerations, this court is of the opinion and so holds that a person, who has his own house wherein he lives with his family in a municipality without having ever had the intention of abandoning it and without having lived either alone or with his family in another municipality, has his residence in the former municipality, notwithstanding his having registered as an elector in the other municipality in question and having been a candidate for various Insular and provincial positions, stating every time that he is a resident of the latter municipality.

Wherefore, the judgment appealed from is reversed and the election of the respondent, Pedro Teves, to the office of municipal president of Dumaguete, Oriental Negros, is declared lawful and valid, with the right to assume said office, with costs against the appellee. So ordered.

Malcolm, Imperial, Butte, and Goddard. JJ., concur.

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