

GUILLERMO DE LOS REYES, PETITIONER AND APPELLANT, VS. MOISES T. SOLIDUM, RESPONDENT AND APPELLEE.

G.R. No. 42798. August 31, 1935

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal¹ taken by the petitioner Guillermo de los Reyes from a judgment of the Court of First Instance of Capiz the dispositive part of which reads:

"Wherefore, it is held that the respondent is eligible to the office of municipal president of Ibajay, Capiz, and that the remedy applied for does not lie. Without costs."

In support of his appeal, appellant assigns the following alleged errors committed by the trial court in its judgment, to wit:

"1. The lower court erred in not declaring that the respondent, Moises T. Solidum, had not at the time of the general elections of June 5, 1934, the requisite qualification of one year residence in the municipality of Ibajay, Province of Capiz, in which he offered and announced himself a candidate for the office of municipal president.

"2. The lower court erred' in not declaring that the respondent, Moises T. Solidum, is ineligible to the office of municipal president of the municipality of Ibajay, Province of Capiz to which he has been proclaimed elected."

The instant petition arose from a motion filed by Guillermo de los Reyes against Moises T. Solidum praying, upon the facts alleged herein, the following: "Wherefore, petitioner prays this Honorable Court:

"1. To hold that the respondent was not a resident of the municipality of Ibajay on the date of the election, June 5, 1934, and, therefore, was not and is not now eligible to the office of municipal president of the aforesaid municipality of Ibajay.

"2. To hold that said respondent is not entitled to hold said office, not being eligible thereto.

"3. To hold that the said office is now vacant.

"4. To give the petitioner such other legal and equitable remedy as may be proper.

"5. To pay the costs of this case."

In answer to said motion, the respondent Moises T. Solidum denies each and all of the facts alleged therein and prays that he be absolved from the complaint and that the same be dismissed with double costs to the petitioner, in addition to such other relief as may be proper.

The pertinent facts, established both by the petitioner and by the respondent, necessary to resolve the questions raised in this appeal, are the following:

The respondent Moises T. Solidum was born in the municipality of Ibajay, Province of Capiz, on August 14,

1889, having lived and grown up in the house of Jose Tirol of said municipality. Moises T. Solidum married in 1916, but he continued to live in the house of Jose Tirol in Ibajay. During the lifetime of Jose Tirol's father, the latter appointed the respondent to administer his property, and in that capacity, the respondent purchased copra for him in Navas and sent it to Ibajay. The respondent constructed a house of mixed materials in the municipality of Navas in 1921 (Exhibit F) and there lived with his wife and children. His children were Expedito Solidum, born in Navas, Capiz, on February 14, 1922, who attended the primary and intermediate public schools of Capiz (Exhibits D and E), Araceli Solidum, born in Navas, Capiz, on August 11, 1924, who attended the primary and intermediate public schools of Capiz (Exhibits B and C); Renato Solidum, born in Navas, Capiz, on October 16, 1926, who attended the primary public school of Capiz (Exhibit A); and Maximo Rodolfo Solidum, born in Navas, Capiz, on November 18, 1930, who died in the same municipality on January 3, 1931 (Exhibits J and K).

However, in the said school records Exhibits B, C, D, and F, the name of the respondent Moises T. Solidum appears as the father or guardian whose post-office address was Navas, Capiz. The respondent is a merchant who has been engaged in business in the municipality of Navas, having obtained his last license for weights and measures in said municipality on May 3, 1935, for a period of one year, or until May 3, 1935 (Exhibit G). In his registry of tax payments as a merchant for 1933 (Exhibit H), it appears that said respondent runs an employment agency in the municipality of Navas, Capiz. The respondent likewise owns a lot situated in Navas and declared in his name for taxation purposes (Exhibit I). The respondent has been receiving correspondence addressed to him in Navas (Exhibit L) and has mentioned the said municipality as his residence in his motions filed in the Court of First Instance of Capiz (Exhibits N, O and P). In his homestead application (Exhibit R), the respondent gave Navas, Capiz, as his post-office address, and in his petition to cancel said application, dated March 22, 1926, he stated that he resided in Navas, Capiz (Exhibit S).

On the other hand, the respondent upon attaining the age to exercise the right of suffrage, registered as a voter in one of the municipal precincts of Ibajay and since then until the 1934 elections has voted in Ibajay, and has never registered nor voted in the municipality of Navas. During the general elections in 1912, the respondent held the office of election inspector in one of the polling places of the municipality of Ibajay. In the general elections which took place on June 6, 1922, the respondent was elected municipal president of Ibajay (Exhibits 6 and 7), and in the general elections of 1925 he was elected councilor of Ibajay (Exhibit 8). In the general elections of 1928 the respondent was again elected municipal president of Ibajay (Exhibits 9 and 10), an office which he held until the following general elections in 1931. Having his business in Navas, the respondent while municipal president of Ibajay, used to go to Navas and return to Ibajay every day, a distance of only nine kilometers, through good roads and with a continuous autobus service. The lot on which his house is constructed is not owned by him, but by Juan Solidum, as evidenced by the property declaration Exhibit 1, wherein it is also stated that the respondent is a resident of Ibajay. The respondent has invariably paid his personal cedula tax in Ibajay (Exhibits 2, 3, 4 and 5) and in the property declarations of his lands in Ibajay for purposes of taxations, he appears as a resident of Ibajay, Capiz.

The petitioner further testified that Jose Z. Solidum, brother of the respondent, turned over to him, in February, 1934, the letter Exhibit M, alleged to have been sent to him by the respondent, wherein it is stated that the latter has no thought of running in the 1934 elections inasmuch as he has ceased to be a resident of Ibajay. Jose Z. Solidum then told the petitioner that if the latter would join his party, he would help him in the elections. This statement, however, was contradicted by the respondent and by his brother Jose Z. Solidum, both of whom denied the authenticity of the signature appearing in said letter. The trial court did not give any credit to the contents of said Exhibit M; we even go further and deny the authenticity thereof. We cannot bring ourselves to believe that the respondent Moises T. Solidum had written from Navas to his brother Jose Z. Solidum in Ibajay—to inform Jose Tirol, who also resided in the latter municipality that he did not contemplate to run for municipal president of

Ibajay for the reason, among others, that his actual and permanent residence is Navas—in view of the fact that he returned to Ibajay every afternoon and he lived in the house of said Jose Tirol. Moreover, the form in which the letter was typewritten seems to indicate that it has been prepared on a piece of paper that had been signed in blank.

The principal question, raised in the first assignment of alleged error, to-be decided on appeal is whether or not at the time of the general elections on June 5, 1934, the respondent Moises T. Solidum had the requisite one-year residence in the municipality of Ibajay, Capiz, wherein he offered and announced himself as a candidate for municipal president.

In *Yra vs. Abano* (52 Phil., 380), this court held that "the question of residence for the purposes of the Election Law is largely one of intention"

In *Tanseco vs. Arteche* (57 Phil., 227, 235), it was likewise held:

"The question of domicile is admittedly a question largely of intention, but this intention must be sought in contemporaneous words and acts." (See also *Larena vs. Teves*, p. 36, ante.)

On the one hand, therefore, the evidence shows that the respondent Moises T. Solidum was born in the municipality of Ibajay, was married there and was living in the house of Jose Tirol, has invariably paid his personal cedula tax in said municipality, has registered as a voter therein, and has voted in all the elections held in said municipality for elective offices. He was appointed election inspector for Ibajay in 1912. He was elected president of said municipality of Ibajay from 1922 to 1925; councillor of the same municipality from 1925 to 1928; municipal president for the second time of Ibajay from 1928 to 1931; and in the general elections of 1934, municipal president for the third time of the same municipality from 1934 to 1937, which last election is challenged in the instant petition. He constructed a house of mixed materials in the municipality of Navas, and since 1931 has been living there with his wife and children, the latter having attended the public schools; but he returned to Ibajay every day, a distance of not more than 9 kilometers through good road and with good transportation facilities. The construction of a house of mixed materials in Navas was due to his being a purchaser of copra for Jose Tirol. He needed a place to store the copra which he purchased and someone to attend to it. The copra was deposited in the lower part of the house, and his wife and children lived upstairs to look after it.

On the other hand, we have in addition to the construction of the house of mixed materials, although on another's lot, in the municipality of Navas and the presence of his family in said house, the fact that he paid his business license in said municipality; that his children were born in said municipality and studied in its schools, their record showing that the respondent is their father or guardian and that his address is the municipality of Navas; that in his homestead application he gave Navas as his post-office address, and that in his petition to cancel said application, he stated that he resided in said municipality.

In the light of these facts established and admitted by the parties, may it be logically and legally deduced that the respondent intended to abandon his domicile in Ibajay to acquire a new one in Navas? Considering all the circumstances of the case, we cannot and do not believe that the respondent Moises T. Solidum has ever abandoned his actual residence in Ibajay or his intention to continue residing therein, as the voters of said municipality did not believe so when they continuously and consistently voted for him either as councilor or as municipal president from 1922 until 1934. It is not necessary that a person should have a house in order to establish his residence and domicile in a municipality. It is enough that he should live in said municipality, whether alone or with his family in his own dwelling, or in a rented house, or in that of a friend or relative, in order to acquire a residence and domicile in said municipality, provided that his stay is accompanied by an intention to reside therein permanently. (19 C. J., 402.)

For the foregoing considerations, we are of the opinion and so hold: (1) That the respondent, born in the municipality of Ibajay, baptized, grown up, married, paid his cedula tax, registered as a voter, exercised the right of suffrage, and elected once as councilor and three times as municipal president of said municipality, is legally a resident thereof notwithstanding the fact that he constructed a house in another municipality for purposes of business, had his family lived there and educated his children in the schools of said municipality; and (2) that the fact that the respondent stated in his petition to cancel his homestead application and in various motions filed with the Court of First Instance of Capiz, that his residence is the municipality of Navas, does not destroy his residence in Ibajay or his intention to reside therein permanently.

Wherefore, finding no error in the appealed judgment, the same is hereby affirmed in all its parts, with the costs to the appellant. So ordered.

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

Judgment affirmed.

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