

MANUEL LOPEZ ET AL., PLAINTIFFS AND APPELLEES, VS. RAMON N. OROZCO ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 4381. August 04, 1908

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

The decision in this case was rendered on the 28th of December, 1906, and on the following day, the 29th, the defendants excepted thereto; on the same day the defendant, Orozco, moved for a new trial on the ground that the decision was not in accordance with the weight of the evidence offered by both the plaintiff and the defendant. On making the motion he further prayed that, in the event of his motion being denied, his exception be noted for the appeal.

In the bill of exceptions there appears a writing from the same defendant, Orozco, which reads as follows:

"Pending the decision of this petition and in view of the limited time at our disposal under the provisions of the law, we present tin's bill of exceptions within the legal term, reserving our right to amend it in due course. Iloilo for Bacolod, January 5, 1907."

According to section 497, paragraph 3, of the Code of Civil Procedure, if the excepting party files a motion in the Court of First Instance for a new trial, the judge overrules said motion, and due exception is taken to his overruling, the Supreme Court may review the evidence, make such findings upon the facts, and render such final judgment, as justice and equity require. Inasmuch as in this case the motion for a new trial does not appear to have been overruled, and that the corresponding exception was taken, the Supreme Court can not review the evidence. Therefore, it will only determine the questions of law raised in the bill of exceptions as provided in the first portion of the said section.

The assignment of errors presented by the appellants is as follows:

"(1) The court below erred, apparently with malice as may be seen in the record, in delaying judgment in this matter for the long period of four years from the time of the trial. (2) The court below erred when accepting the allegation of the plaintiffs to the effect that the hacienda of Nacab, the old house of Don Pedro Hernaez in the town of Talisay (Occidental Negros), and the hacienda of Alasigan did not belong to the intestate estate of Don Pedro Hernaez, but to the claimants, Manuel Lopez, a compadre of Judge Jocson, and Rosendo Hernaez, a relative and client of Manuel Lopez. (3) The court below erred because it took cognizance of a case of wrongful entry and detainer, as the plaintiffs describe it in their complaint, since the act being but recently accomplished was therefore within the jurisdiction of the justice of the peace. (4) The court below erred when taking into consideration the affidavit of Rosendo Hernaez in intervening in the matter of the hacienda of Alasigan and setting out in Exhibits Nos. 8 and 9 ,of the record that he had obtained the said hacienda by donation, while in another document of the same date he makes a sworn statement to the effect that he had obtained it by exchange."

The first point is not worthy of consideration by this court; the second and fourth are based on facts, whereof the evidence can not be reviewed in the present case, and the third can not be considered by this court because it was

not set up in the first instance.

The findings contained in the decision of the Court of First Instance of Occidental Negros, namely: (1) That the land in the sitio of Nacab and the improvements thereon, and the house that stands opposite the church of Talisay described above and marked "A" and "B," are owned by SeSor Manuel Lopez, and (2) That the land in the sitio of Alasigan, in the same town of Talisay, also described above and lettered "C," belongs to the other plaintiff, Rosendo Hernaez, are conclusions correctly deduced from the facts stated in the said decision, which are as follows:

"(1) That the parcel of land located in Nacab, within the limits of Talisay, and the house with nipa roof and the lot upon which it stands, opposite the church of the said pueblo, formerly belonged to Julio Hernaez and to Domingo Hernaez, respectively, and through sale by the heirs of the first and second named, the ownership of the said property was directly conveyed to the plaintiff, Manuel Lopez. (2) That the parcel of land in the sitio of Alasigan within the limit of Talisay, indicated above by the letter "C" belongs to the other plaintiff, Rosendo Hernaez. (3) That the said three estates were levied upon and sold at auction by the sheriff, notwithstanding the protest of the plaintiffs, by virtue of a writ of execution issued by this Court of First Instance in the civil case of Ramon N. Orozco vs. Mateo Hernaez, for the recovery of fees."

Therefore, the judgment appealed from is hereby affirmed with the costs of this instance against the appellants. So ordered.

Torres, Mapa, Carson, Willard, and Tracey, JJ., concur.

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