

D. HAMANO, PETITIONER, VS. FRANCISCO ZANDUETA, JUDGE OF FIRST INSTANCE OF MANILA, AND ANGELA MONTENEGRO DE PAPA, EXECUTRIX OF THE WILL OF THE DECEASED RAMON R. PAPA, RESPONDENTS.

G.R. No. 44407. October 18, 1935

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

In civil case No. 40251 of the Court of First Instance of Manila, G. R. No. 39659[1] of this court, entitled, D. Hamano, plaintiff, vs. Angela Montenegro de Papa, executrix of the will of the deceased Ramon R. Papa, defendant, this court rendered the following judgment:

"For the foregoing reasons, the appealed judgment is set aside, and the case is remanded to the court of origin with instructions to hold a new trial on the plaintiff's claim, at which the latter and the appellee may adduce all material and competent evidence available to them, and the court shall then render judgment as justice may require, without special pronouncement as to the costs in this instance."

After the case was remanded to the court of origin, the respondent judge set it for a new trial. At this trial, the attorney for the plaintiff offered as evidence a certified copy of the transcript of the testimony of the witnesses of said plaintiff in civil case No. 27079 of the same court, including the latter's testimony and that of several witnesses. All of it, of course, tended to establish the claim presented by him. After the second witness, Fukute, had stated his personal data and before the court admitted the documentary evidence offered, the attorney for the defendant objected to the latter's admission and to further testimony of the witness for these reasons: (1) Because the court had no jurisdiction to proceed with the hearing of the case or the new trial inasmuch as the "court of origin" referred to in the judgment of this court was the committee on claims, named in the will, and not the court, and (2) because the evidence offered was incompetent and irrelevant, and urged, consequently, that the case be summarily dismissed. The court sustained the objection and dismissed the case, without prejudice to plaintiff's adducing his evidence before the committee on claims of the will, without costs. The plaintiff excepted thereto and filed a motion for reconsideration and after this was denied, announced his intention to appeal and present his bill of exceptions seasonably. The latter, as far as the record shows, has neither been filed nor approved. Thereafter the plaintiff instituted this petition for mandamus to require the respondent judge to continue with the trial, to receive and hear his evidence, and, eventually, to render the corresponding judgment.

We hold that the respondent court is the court of origin referred to in our judgment. It could not be the committee on claims, because the latter ceased to exercise jurisdiction over the plaintiff's claim from the time its resolution was appealed and the plaintiff commenced an ordinary action, pursuant to the provisions of sections 775 and 776 of the Code of Civil Procedure. Consequently, an error of law was committed in concluding and deciding that the respondent court lacked jurisdiction to hear the new trial.

The dismissal *ex abrupto* of the case was not warranted either by the law or by the circumstances and was a plain

non-compliance with the judgment rendered by this court. We restate the discretion of judges to receive or reject the evidence offered at a trial or proceeding, but we cannot hold that they are empowered to abridge the right of a litigant to adduce competent and material evidence. We do not attempt to review the proceeding bearing on the documentary evidence offered, but it is evident that the plaintiff was indisputably entitled to present his witnesses, particularly if their testimony tended to establish his claim which has been pending, resolution for many years. Therefore, we hold that it was the duty of the court to allow the plaintiff to present all his competent and material evidence to substantiate his claim.

The remedy sought by the petitioner is proper because, in view of the judgment of this court, it was the inescapable duty of the respondent court to hear the pertinent and material testimony of the plaintiff's witnesses (sec. 222 of the Code of Civil Procedure), it being unlawful to curtail or restrict unreasonably a right thus countenanced by law.

Wherefore, setting aside the judgment subject of the petition, let the writ of mandamus prayed for issue, and the respondent judge shall proceed with a new trial of the case, allowing both the plaintiff and the defendant to adduce all their competent and material evidence bearing on the unpaid claim of the plaintiff, with the costs to the respondent. So ordered.

Malcolm, Villa-Real, Abad Santos, and Goddard, JJ., concur.

Petition granted.

[1] Promulgated September 5, 1934 (60 Phil, 1038).

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