

ESCOLASTICO BUENAVENTURA, PETITIONER, VS. ISABELO Z. ECHAVEZ, ET AL., RESPONDENTS

G.R. No. 46635. October 31, 1939

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Isabelo Z. Echavez, receiver of certain property in litigation, filed in the Court of First Instance of Zamboanga, a rendition of accounts which was assailed by the herein plaintiff-appellant Escolastico Buenaventura. Said accounts appear in the amended bill of exceptions which the appellant filed in civil case No. 493 of the said Court of First Instance of Zamboanga in Dipolog, as well as the opposition or objections made by him, to whom the property in receivership was adjudicated. The Court of First Instance of Zamboanga in Dipolog approved the accounts ordering, however, the deduction of the sum of P102.30 from the total balance in favor of the owner. The order thus issued on August 18, 1934, was amended by another order of May 6, 1935, upon motion for reconsideration filed by the plaintiff-appellant. In said amendatory order the court held that the balance in favor of the receivership is the sum of P11.50 which should be turned over to the plaintiff. On July 11, 1935, the receiver Isabelo Z. Echavez filed a motion asking that the court set aside the amendatory order of May 6, 1935, and reinstate the amended order of August 18, 1934, without alteration. The court granted the motion by its order of July 11, 1935, and to this last order the plaintiff excepted and announced his intention to appeal. The bill of exceptions concluded with the prayer that the court approve and certify the same, and once approved, certified and signed, that it elevate the same to the Supreme Court together with all the documentary evidence presented, without specifying the said evidence.

On October 31, 1938, the Court of Appeals rendered the following decision:

"This case has been elevated to this court on appeal from an order of the Court of First Instance of Zamboanga approving an accounting of a former receiver of a property involved in a litigation, which finally was adjudicated to the appellant.

"The appeal raises only questions of fact. Yet if any evidence on the points in dispute was presented before the commissioner appointed by the court, the deputy clerk of court, such evidence has not been sent up; and without the evidence before us no review of the facts is possible. This would be true even if the so-called affidavits of Pascual Cajocon and Juan Elumbaring transcribed in the bill of exceptions be considered as evidence for the appellant, since these statements are mere conclusions of the declarants.

"For this reason, the order appealed from is affirmed, without special pronouncement as to costs."

On November 14, 1938, the appellant filed a motion for reconsideration asking for the annulment of the aforesaid decision and for the entry of another after ordering the deputy clerk of court of Dipolog, Zamboanga, to forward the evidence found in the 7 documents attached to the record of this same case, specified—it is said—in the motion filed on June 15, 1937, in accordance with the prayer of the bill of exceptions or record on appeal. The Court of Appeals denied this motion on December 3, 1938. hence, this petition for certiorari asking that we order "the

Honorable Court of Appeals to elevate to this court all the record of the above-entitled case, and to desist from taking any action in the case during the pendency of the present petition."

We do not believe that the Court of Appeals, in deciding this case as it did, has exceeded its jurisdiction, as alleged in the petition, because the evidence not having been elevated to it, it was not possible to pass upon the questions of fact involved in the appeal, wherefore, it was justified in affirming the appealed order.

In his brief the appellant assigns various errors allegedly committed by the Court of First Instance of Zamboanga, but no specific one committed by the Court of Appeals, he merely contends that the Court of Appeals should have ordered that all the evidence in support of his case be brought together for the correct decision of the case. In this connection there appears in the petition filed by the appellant with the Court of Appeals on June 15, 1937, a motion asking that the deputy clerk of Zamboanga forward to said Court the papers or documents specified in his motion.

On July 25, 1937, the Court of Appeals ordered that the said motion of the appellant be attached to the record and that the court's attention be called thereto when the case is considered on the merits. The appellant did nothing to have said papers and documents mentioned in his motion elevated to the Court of Appeals, despite the fact that on November 19, 1937, he was notified that this case will be included for consideration in the calendar for January, 1938; and from said notice until the date of the decision rendered by the Court of Appeals on October 31, 1938, almost a year has gone by. For this length of time the appellant likewise made no effort to have the pertinent papers or documents forwarded to the Court of Appeals. He contends that it was not his duty, but that of the clerk of the Court of Appeals, to require the elevation of the said papers and documents to the court; but this does not discharge him from the duty of requiring the clerk of court to comply with his duty of requiring the clerk of court to comply with his duty, because no one better than the appellant can and should take the requisite steps to have all the evidence forwarded to the Court of Appeals by making all the proper arrangements and payments of fees and expenses necessary for this purpose.

The Court of Appeals not having exceeded its jurisdiction, the appealed decision is affirmed, with the costs to the petitioner. So ordered.

Avanceña, C.J., Villa-Real, Imperial, Diaz, Laurel and Moran, JJ., concur.

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