

ANTERO TANEGA, PLAINTIFF-APPELLEE, VS. MAXIMINO NAZARENO, DEFENDANT-APPELLANT.

G.R. No. 47928. October 30, 1941

Ponente: OZAETA, J.

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OZAETA, J.:

This case presents the following question: When a judgment of the trial court absolving the defendant from the complaint without special pronouncement as to costs is reversed by the Court of Appeals, which renders judgment in favor of the plaintiff-appellant "with costs against the appellee," do the costs so awarded include those in the Court of First Instance?

The facts are briefly as follows:

The plaintiff sued the defendant in the Court of First Instance of Cavite to recover the possession of a portion of land. The court ordered the government surveyor to make a resurvey of the lot in question with the understanding that "any expense which said surveyor might incur to comply with said order shall be advanced by the plaintiff and once the case is finally decided the same shall be taxed as costs which shall be paid by the losing party." Thereafter the court decided the case by absolving the defendant from the complaint without any pronouncement as to costs. The plaintiff appealed to the Court of Appeals, where he prevailed and obtained a reversal of the judgment of the trial court, "with costs against the appellee."

The clerk of the Court of Appeals taxed the costs in that court at P84. Upon the return of the record to the trial court the plaintiff filed a bill of costs corresponding to the Court of First Instance and to the Court of Appeals aggregating P314.77. The defendant objected thereto and the clerk of the Court of First Instance of Cavite taxed the costs at P224.96, which included the costs of P84 in the Court of Appeals and the sum of P90 which the plaintiff had advanced as expenses for the resurvey of the land. The defendant appealed to the court, which sustained the taxation made by the clerk of court. From that order of the court the defendant appealed to this Court, contending that the costs awarded by the Court of Appeals referred only to the costs in that court.

Section 1 of rule 131 (formerly section 487 of Act No. 190) provides as follows:

"Section 1. Costs ordinarily follow results of suit,—Unless otherwise provided in these rules, costs shall be allowed to the prevailing party as a matter of course, but the court shall have power, for special reasons, to adjudge that either party shall pay the costs of an action, or that the same be divided, as may be equitable. No costs shall be allowed against the Commonwealth of the Philippines unless otherwise provided by law."

Since the plaintiff was the party that finally prevailed, he was entitled to the costs as a matter of course, unless the court for special reasons adjudged otherwise. In the instant case, the Court of Appeals not only did not adjudge otherwise but expressly awarded the costs to the plaintiff. "Where * * * the prevailing party is entitled to costs as a matter of course, the words 'with costs' in an order of reversal or affirmance in the court of appeals will be construed to mean all costs made in both the appellate court and the court below * * * "(15 C. J. 260; 20 C. J. S. 590). In the absence, therefore, of any qualification, the costs awarded by the Court of Appeals in the instant case

should be construed to mean the costs of suit from its commencement to its termination.

The order appealed from is affirmed, with costs against the appellant. So ordered.

Abad Santos, Diaz, Moran, and Horrilleno, JJ., concur.

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