

PEDRO GALLEGO, PETITIONER, VS. VICENTE VERRA, RESPONDENT.*G.R. No. 48641. November 24, 1941*

Ponente: OZAETA, J.

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This case is before us on petition for certiorari to review the decision of the Court of Appeals affirming that of the Court of First Instance of Leyte, which declared illegal and void the petitioner's election to the office of municipal mayor of Abuyog, Leyte, in the general elections of December, 1940, on the ground that he did not have the residence qualification, and ordered that he be ousted from said office. Respondent Vicente Verra (petitioner below) was the unsuccessful opponent of the petitioner Pedro Gallego, who was declared elected by the municipal board of canvassers with a majority of nearly 800 votes.

The undisputed facts as found by the trial court and the Court of Appeals may be briefly stated as follows:

Pedro Gallego is a native of Abuyog, Leyte. After studying in the Catarman Agricultural School in the province of Samar, he was employed as a school teacher in the municipality of Catarman, Samar, as well as in the municipality of Burawen, Dulag, and Abuyog, province of Leyte, and also in the province of Agusan. In 1937 he resigned as a school teacher of Abuyog, Leyte, and presented his candidacy for municipal mayor of his home town, but was defeated. After his defeat in that election, finding himself in debt and unemployed, he went to Mindanao in search of a job. He first went to Oriental Misamis, but finding no work there he proceeded to the sitio of Kaato-an, municipality of Malaybalay, Bukidnon, whereat he arrived on June 20, 1938, and immediately found employment as nurseryman in the chinchona plantation of the Bureau of Forestry. On July 30, of the same year he returned to Abuyog because he had been offered an employment as teacher in the public school of the barrio of Union, municipality of Sogod, Leyte; but as he did not accept the offer he returned to Kaato-an on August 23, 1938, and resumed his employment there as nurseryman of the Bureau of Forestry. He stayed in the chinchona plantation until he resigned in September, 1940. But during the period of his stay there, his wife and children remained in Abuyog, and he visited them in the month of August of the years 1938, 1939, and 1940. Altho the Government offered him a free house in the chinchona plantation, he never took his family there. Neither did he avail himself of the offer Government of a parcel of ten hectares of land within the reservation of the chinchona plantation. He and his wife own real property in Abuyog, part of which he acquired during his stay in Malaybalay.

Nevertheless, on October 1, 1938 he registered himself as an elector in precinct No. 14 of Lantapan, municipality of Malaybalay, Bukidnon, and voted there in the election for assemblymen held in December, 1938. The trial court noted that in his voter's affidavit (exhibit B) he did not fill the blank space corresponding to the length of time he had resided in Malaybalay. On January 20, 1940, he obtained and paid for his residence certificate from the municipal treasurer of Malaybalay, in which certificate it was stated that he had resided in said municipality for one year and a half.

Based upon the facts stated in the next preceding paragraph, namely, (1) his registration as a voter (2) his having actually voted in Malaybalay in the 1938 election for assemblymen, and (3) his certificate for 1940, the trial court and the Court of Appeals declared that the herein petitioner Pedro Gallego had acquired that the herein petitioner

Pedro Gallego had acquired a residence or domicile of choice in the municipality of Malaybalay, Bukidnon, and had lost his domicile of origin in the municipality of Abuyog, Leyte, and that, therefore, his election, his election was void, following the decisions of his Court in the cases of Tanseco vs. Arteche, 57 Phil., 227, and Nuval vs. Guray, 52 Phil., 645.

In this Court the petitioner assigns the following errors:

"1. The Court of Appeals erred in holding that the petitioner Pedro Gallego was a legal resident of Malaybalay, Bukidnon, and not of Abuyog, Leyte, at the time of his election as minicipal mayor of the latter municipality on December 10, 1940.

"2. The Court of Appeals erred in affirming the decision of the trial court holding the election of Pedro Gallego to the office of municipal mayor of Abuyog, Leyte, null and void and ordering the exclusion of Gallego from the office to which he was elected."

The only question presented is whether or not Pedro Gallego had been a resident of Abuyog for atleast one year prior to December 10, 1940. That question may be approached from either of two angles: Did he lose his domicile in Abuyog by the mere fact that he worked in Malaybalay as a government employee, registered himself as a voter and voted there in the election for assemblymen in December, 1938, and secured his residence certificate there for the year 1940; and assuming that he did, had he reacquired his domicile of origin at least one year prior to his election as mayor of Abuyog on December 10, 1940?

The term "residence" as used in the election law is synonymous with "domicile," which imports not only intention to reside in a fixed place but also personal presence in that place, coupled with conduct indicative of such intention (Nuval. vs. Guray, 52 Phil., 645). In order to acquire a domicile by choice, there must concur (1) residence or bodily presence in the new locality, (2) an intention to remain there, and (3) an intention to abandon the old domicile. In other words, there must be an animus non revertendi and an animus manendi. The purpose to remain in or at the domicile of choice must be for an indefinite period of time. The acts of the person must conform with his purpose. The change of residence must be voluntary; the residence at the place chosen for the domicile must be actual; and to the fact of residence there must be added the animus manendi. (17 Am. Jur., section 16, pages 599-601.)

In the light of these principles, we are persuaded that the facts of this case weigh heavily against the theory that the petitioner had lost his residence or domicile in Abuyog. We believe he did not reside in Malaybalay with the intention of remaining there indefinitely and of not returning to Abuyog. He is a native of Abuyog. Notwithstanding his periodic absences from there previous to 1937, when he was employed as teacher in Samar, Agusan and other municipalities of Leyte, he always returned there. In the year 1937 he resigned as a school teacher and presented his candidacy for the office of mayor of said municipality. His departure therefrom after his defeat in that election was temporary and only for the purpose of looking for employment to make up for the financial drawback he had found as a result of his defeat at the polls. After he had found employment in Malaybalay, he did not take his wife and children thereto notwithstanding the offer of a free house by the Government. He bought a piece of land in Abuyog and did not avail himself of the offer of the Government of ten hectares og land within the chinchona reservation in Malaybalay, where he worked as nurseryman. During the short period of about two years he stayed in Malaybalay as a government employee, he visited his home town and his family no less than three times notwithstanding the great distance between the two places.

The facts of this case are more analogous to those of Larena vs. Teves (61 Phil., 36), Yra vs. Abaño (52 Phil., 380), and Viveno vs. Murillo (52 Phil., 694) than to those of Nuval vs. Guray (52 Phil., 645) and Tnaseco vs. Arteche (57 Phil., 227) which were followed herein by the Court of Appeals. In the Teves case this Court, in

reversing the judgment of the trial court, among other things said:

"In this case the respondent-appellant, Pedro Teves, from the year 1904 has had his own house in the municipality of Dumaguete, Oriental Negros, wherein he has constantly been living with his family and he has never had any house in which he lived either alone or with his family in the municipality of Bacong of said province. All that he has done in the latter municipality was to register as elector in 1919, through an affidavit stating that he was a resident of said municipality; run for representative for the second district of the province of Oriental Negros and vote in said municipality in said year; run again for reelection in the year 1922; launch his candidacy for member of the provincial board of said province 1925, stating under oath in all his certificates of candidacy that he was a resident of said municipality of Bacong.

"The affidavit made by him upon registering as elector in the municipality of Bacong in the year 1919, stating that he was a resident of said municipality; his two certificates of candidacy for the office representative for the second district of the Province of Oriental Negros, which were filed, and the former in the year 1919 and the latter in the year 1922, and the certificate of candidacy for the office of member of the provincial board filed by him in the year 1925, in every one of which he stated that he was a resident of the municipality of Bacong, are at most a prima facie evidence of the fact of his residence in the municipality of Bacong, which is required by law in order that the corresponding officials could register him as an elector and candidate, and no conclusive, and may be attacked in a corresponding judicial proceeding. If, according to the ruling laid down in the case of *Vivero vs. Murillo*, cited above, mere registration in a municipality in order to be an elector therein does not make one a resident of said municipality; if according to constant rulings the word 'residence' is synonymous with 'home' or 'domicile', and denotes a permanent dwelling place, to which an absent person intends to return; if the right to vote in a municipality requires the concurrence of two things, the act of residing coupled with the intention to do so; and if the herein respondent-appellant, Pedro Teves, has always lived with his family in the municipality of Dumaguete and never in that of Bacong, he has never lost his residence in Dumaguete. The fact that his registration as elector in the municipality of Bacong was cancelled only on April 5, 1934, upon his petition, did not disqualify him to be a candidate for the office of municipal president of said municipality of Dumaguete on the ground that, as has been stated in the case of *Yra vs. Abaño*, cited above, registration in the list of voters is not one of the conditions prescribed by section 431 of the Election Law in order to be an elector; neither does failure to register as such constitute one of the disqualifications prescribed in section 432 of said law." (61 Phil., 36, 39-41.)

Applying the foregoing pronouncement to the facts of the present case, we find sufficient ground for the revocation of the judgment appealed from. Petitioner also contends that even assuming that he had lost his residence or domicile in Abuyog, he reacquired it more than one year prior to December 10, 1940. In support of that contention he invokes his letter or note, exhibit 9, addressed to "Varel" (Valeriano Tupa), vice-president of the political faction to which petitioner belongs, in which note he announced his intention to launch his candidacy again for municipal mayor of Abuyog as early as the month of May, 1939. But we do not deem it necessary to pass upon said contention in view of the conclusion we have reached that the petitioner did not lose his domicile of origin.

We might add that the manifest intent of the law in fixing a residence qualification is to exclude a stranger or newcomer, unacquainted with the conditions and needs of a community and not identified with the latter, from an elective office to serve that community; and when the evidence on the alleged lack of residence qualification is weak or inconclusive and it clearly appears, as in the instant case, that the purpose of the law would not be thwarted by upholding the right to the office, the will of the electorate should be respected. Petitioner is a native of Abuyog, had run for the same office of municipal mayor of said town in the election preceding the one in question, had only been absent therefrom for about two years without losing contact with his townspeople and without the intention of remaining and residing indefinitely in the place of his employment; and he was elected with an overwhelming majority of nearly 800 votes in a third-class municipality. These considerations we cannot

disregard without doing violence to the will of the people of said town.

Wherefore, the judgment of the Court of Appeals is reversed, with the costs of this instance against the respondent. So ordered.

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

Abad Santos, J., concur. in the result.

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