

ENGRACIO ORENSE, PLAINTIFF AND APPELLEE, VS. CIRILO JAUCIAN, DEFENDANT AND APPELLANT.

G.R. No. 5619. March 11, 1911

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of the Province of Albay, Hon, Grant T. Trent presiding, in favor of the plaintiff and against the defendant for the sum of P2,042.42, and costs.

On or about the 20th day of April, 1902, the appellant, by a written instrument, duly executed, ratified the sale to the plaintiff of a certain house and parcel of land which had been tentatively made on the 6th day of October, 1898. By said writing the vendor warranted the title to said premises and agreed to protect the purchaser in his possession. Later the plaintiff was dispossessed of a part of said land by virtue of a final judgment in an action prosecuted against him by Mariano Perfecto. The appellant in this case was duly notified of the pendency of said action and, while he did not intervene as a suitor, he urged the plaintiff in this case to defend the action and prosecute an appeal from the judgment rendered by the trial court.

On this appeal the appellant presents the following assignment of errors:

- The court erred in fixing P650 as the value of that portion of the land lost by the plaintiff.

As to this alleged error, it appears that the plaintiff lost about two-thirds or three-quarters of the land purchased from the appellant. The appellant, in his testimony, placed the value of such portion at about P700. A witness for the plaintiff testified that the value thereof was about P600. The learned trial court found the correct value to be P650. There is no evidence whatever in the record contradicting the evidence upon which this finding was made.

- The court erred in assessing as damages against the appellant the sum of P325, fees of stenographers and an interpreter who served on the trial by interpreting and transcribing the record of the action in which was entered the judgment depriving plaintiff in this case of a portion of his land.

The appellant urges that these expenses do not fall within any of the provisions of article 1478 of the Civil Code and therefore ought not to have been allowed by the trial court. It is not necessary to determine whether this contention is sound or not. It appears uncontradicted in the record that the translation and transcription of the record and the payment of P325 therefor was made at the request of the appellant and on his promise to reimburse the plaintiff. In fact, it appears that the appellant induced the plaintiff to take the appeal on which said record was to be used. From these facts it is clear that the allowance of P325 was proper.

- The court erred in including in its judgment the sum of P70, being expenses of travel, etc., incurred by the plaintiff in the action which caused the loss of his land.

The appellant asserts that such expenses are not a part of the costs as defined in the Civil Code, article 1478, and in sections 487 to 492 of the Code of Civil Procedure. In this the appellant is partly right. Section 492 of the Code

of Civil Procedure reads:

"SEC. 492. Costs in Courts of First Instance. - In an action pending in a Court of First Instance, the prevailing party may recover the following costs, and no others:

"For the complaint or answer, eight pesos.

"For his own attendance, and that of his lawyer, down to and including final judgment, twenty pesos.

"For each witness necessarily produced by him, for each day's necessary attendance of such witness at the trial, one peso, and his lawful traveling fees.

"For each deposition lawfully taken by him, and produced in evidence, five pesos.

"For original documents, deeds, or papers of any kind produced by him, nothing.

"For official copies of such documents, deeds, or papers, the lawful fees necessarily paid for obtaining such copies.

"The lawful fees paid by him for the service of any process in the action, and all lawful clerk's fees paid by him."

From these provisions it is clear that the prevailing party is entitled to only P20 for the attendance of himself and lawyer. No provision is made for expenses of travel or other expenses of that nature. Bad faith in making the sale to the plaintiff not having been shown, these expenses can not be allowed as damages under paragraph 5 of article 1478 aforesaid. The contention of the appellant should, therefore, be allowed, at least to the extent of P50. But inasmuch as we shall later allow the other P20 as lawyer's fees, we now disallow the said sum of P70 included by the learned trial court in the judgment appealed from.

- The court erred in including in the judgment the sum of P850 as lawyer's fees in the said action in which plaintiff lost said part of his property.

We are of the opinion that the appellant is partly right in this contention. As we have already seen from section 492 of the Code of Civil Procedure, quoted above, the only allowance for lawyer's fees to the prevailing party in an action in the Court of First Instance is the sum of P20. Section 489 of that Code provides as follows:

"SEC. 489. Lawyer's fees as costs. - No lawyer's fees shall be taxed as costs against the adverse party, except as herein specially provided. But this section shall have no relation to the fees to be charged by a lawyer as against his client."

Section 494 reads in part:

"Sec. 494. Costs in Supreme Court. - In an action pending in the Supreme Court, the prevailing party may recover the following costs, and no others:

"For his own attendance, and that of his lawyers, down to and including final judgment, forty pesos."

This court has repeatedly held that the word "costs," as used in the law, includes no lawyer's fees except those fees specifically prescribed therein. Therefore, the only sums to which the plaintiff is entitled as lawyer's fees are P20 in the Court of First Instance and P40 on appeal. It follows that the learned trial court should have included in his judgment the sum of P60 as lawyer's fees instead of P850.

These are the only modifications which are required by the facts of record.

With the modification that the judgment against the appellant is the sum of P1,182.42 instead of P2,042.42, the

judgment appealed from is affirmed, without special finding as to costs of appeal.

Arellano, C. J., Torres, Mapa, and Carson, JJ., concur.

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