

BENITO LOPEZ, ADMINISTRATOR OF THE ESTATE OF MARCELA EMRADURA, DECEASED, PLAINTIFF AND APPELLEE, VS. TOMAS VALDEZ, DEFENDANT AND APPELLANT.

G.R. No. 9113. December 24, 1915

Ponente: MORELAND, J.

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MORELAND, J.:

This is an action begun by the administrator of the estate of Marcela Emradura, deceased, against Tomas Valdez for the recovery of possession of the land described in the complaint on the payment by the plaintiff of the sum of P30. Judgment was for plaintiff and the court ordered delivery of possession of the land described in the complaint on the payment by plaintiff of the P30 mentioned in the complaint. The court also ordered the cancelation of the registration of that portion of the land of Gregorio San Agustin which includes the land in litigation in this action.

Several errors are assigned on this appeal. The first is that there is no proof in the record that appellee was appointed administrator of the estate of Marcela Emradura, deceased.

An examination of the record discloses that this error is well assigned. There is no evidence in the record showing that Benito Lopez was ever appointed administrator of the estate of Marcela Emradura, deceased; nor is there any indication in the record that the parties to the action acted on the assumption that such appointment had been made or that the defendant, by any act of his, estopped himself on this appeal from alleging the error assigned. On this ground alone the judgment would have to be set aside. (*Craig vs. Leuterio*, 11 Phil. Rep., 44.)

The second error assigned is based on the procedure adopted by the court when objections were interposed by counsel for appellant to questions designed to adduce evidence of the contents of written documents when the destruction or the loss of the documents had not been properly established. It appears from the record that appellee relied on certain written contracts entered into between the appellant and Marcela Emradura during her lifetime to prove the cause of action set out in the complaint. The documents themselves were not produced and when counsel for appellee sought to prove by certain witnesses the contents of these documents, without presenting facts justifying secondary evidence with reference thereto, counsel for appellant made the objection that the evidence was incompetent and improper as the documents themselves were the best evidence. Several of these objections were made, to each of which the court, without a decision on the objections, stated: "The objection of Mr. Reyes will be taken into consideration." The witnesses were thereupon allowed, over the exception of appellant, to answer the questions to which the objections were interposed. A decision on these objections was thus left in abeyance and the trial terminated without a resolution of the questions presented. In spite of that the trial court in its final decision took into consideration the secondary evidence thus introduced and based its decision thereon.

We are of the opinion that this procedure was prejudicial to the rights and interests of the appellant. Parties who offer objections to questions on whatever ground are entitled to a ruling at the time the objection is made unless

they present a Question with regard to which the court desires to inform itself before making its ruling. In that event it is perfectly proper for the court to take a reasonable time to study the question presented by the objection; but a ruling should always be made during the trial and at such time as will give the party against whom the ruling is made an opportunity to meet the situation presented by the ruling. The disadvantageous position in which a party may be put by the reservation of a ruling on an objection to a question is illustrated by the case in hand. If the court had given a prompt ruling on the objections, appellant would have had an opportunity to meet the situation presented. If his objection had been overruled, he could have taken his exception and offered evidence to rebut that adduced by the objectionable questions. If the ruling had been the other way, appellee would have been under the necessity of offering the documents themselves, at which time appellant would have been able to present any defense to them which the facts and circumstances might have required or permitted. There having been no decision during the course of the trial, appellant's counsel had no means of knowing what the ruling of the court would be on the objection and, consequently, he could not know whether or not he would be compelled to meet any evidence at all; for, if the objection were sustained, then appellee had offered no competent evidence to support his case; whereas, if the objection were overruled, then appellant would not have the benefit of a ruling on his objection or of the exception taken thereto. We do not regard the procedure objected to as permissible under the facts and circumstances of this case and we believe that it prejudiced the substantial rights of appellant.

We are also of the opinion that the error assigned on the merits is also well assigned. We do not believe that the plaintiff has proved that the estate which he represents is entitled to possession of the lands in question. For the reason that the judgment must be reversed on the other grounds mentioned, we do not enter into a lengthy discussion of the evidence. We are of the opinion that the evidence does not support the finding of the court that plaintiff is entitled to possession. In making this decision we do not touch the title to the property, the action being simply for possession.

The judgment appealed from is reversed and the complaint dismissed on the merits, without costs in this instance. So ordered.

Arellano, C.J., Torres, Johnson, Carson, and Araullo, JJ., concur.

Judgment reversed; case dismissed.

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