45 Phil. 117

[G.R. No. 21183. August 31, 1923]

THE GOVERNMENT OF THE PHILIPPINE ISLANDS EX REL., THE DIRECTOR OF LANDS, APPLICANT, VS. JESUS SANZ ET AL., OBJECTORS. GABINO BARRETTO PO EJAP, OBJECTOR AND APPELLEE. THE MUNICIPALITY OF TACLOBAN, OBJECTOR AND APPELLANT.

D E C I S I O N

JOHNSON, J.:

The appellee, Gabino Barretto Po Ejap, presented a motion to dismiss the appeal of the municipality of Tacloban. The action was commenced by the Director of Lands in cadastral survey No. 3, G. L. R. O. No. 153. The motion is based upon the ground that the bill of exceptions was not presented within a period of thirty days from the date of the notice of the decision. It is alleged in the motion to dismiss that the lower court rendered its decision on the 30th day of January, 1923; that the attorney for the municipality of Tacloban received notice of said decision on the second day of February, 1923, and that a motion for a new trial was presented on the 6th day of February, 1923.

The motion to dismiss further alleges that the motion presented in the lower court for a new trial did not state "generally the nature and grounds of the motion and when and where it would be heard," and that said motion did not have the effect of extending the time within which the bill of exceptions should have been presented, and cites in support of that allegation the case of Manakil and Tison *vs*. Revilla and Tuaño (42 Phil., 81).

In reply to the motion of the appellee, the attorney for the appellant alleges that final decision by the lower court was not rendered until the 2d day of June, 1923; that he had thirty days from notice of that decision within which to present his bill of exceptions, and that the bill of exceptions was presented within thirty days from notice of said decision.

An examination of the bill of exceptions shows that the same was presented, in the Court of First Instance of the Province of Leyte, on the 20th day of June, 1923. It will be seen, therefore, that if the allegation of the appellant is correct, that the decision of the lower court was not rendered until the 2d day of June, 1923, that his bill of exceptions was presented within thirty days required for presentation of bills of exceptions in land registration cases.

An examination of the record, in relation with the motion to dismiss and the answer thereto, shows the following facts:

(1) That after the close of the trial of the cause on the 12th day of September, 1922, the Honorable Eulalio E. Causing, judge, rendered what is generally known as a "sin perjuicio" decision on the 30th day of January, 1923, which decision was a mere pronouncement of his judgment, without stating any of the facts in support of his conclusion;

(2) That notice of said decision (30th day of January, 1923) was sent and received by the attorney for the municipality of Tacloban, the appellant herein; that the attorney for the appellant (municipality of Tacloban) on the 6th day of February, 1923, presented a motion for a new trial, together with an exception to the decision of the 30th day of January, 1923, and that a copy of said decision was served personally upon the attorney for the defendant, Gabino Barretto Po Ejap on the 5th day of February, 1923;

(3) That on the 2d day of June, 1923, the attorney for Gabino Barretto Po Ejap presented a motion praying that the so-called motion of the appellant for a new trial should be disregarded, for the reason that it had not complied with the rules of the Court of First Instance, and that the decision of the 30th day of January, 1923, be declared final and cited in support of his motion the case of Manakil and Tison *vs*. Revilla and Tuaño (42 Phil., 81). The Judge denied the motion for a new trial upon the ground "that it was unfounded and had not been presented in accordance with the rules of the court."

(4) That on the same day (2d day of June, 1923) the Judge denied the motion presented by the attorney for the appellee, Gabino Barretto Po Ejap, to dismiss the motion of the appellant for the reason "that he had not presented any objections thereto with reference to its sufficiency and had renounced his right

to be notified of said motion;"

(5) That on the same day (2d day of June, 1923), the trial judge prepared and filed with the clerk his decision amplifying his decision theretofore rendered on the 30th day of January, 1923, in which he sets out in full all of the facts upon which he relied to justify the conclusion announced in his "sin perjuicio" decision of the 30th day of January, 1923;

(6) That on the 8th day of June, 1923, the attorney for the municipality of Tacloban presented an exception to the decision of the 2d day of June, 1923, and on the 12th day of June, 1923, he gave notice of his intention to present a bill of exceptions. On the 15th day of June, 1923, he presented a motion for a new trial upon the ground that the decision of the lower court was "contrary to the law and the evidence adduced during the trial of the cause," which motion for a new trial was denied by the court on the 19th day of June, 1923. On the 20th day of June, 1923, the attorney for the appellant excepted to the order denying his motion for a new trial and gave notice of his intention to present a bill of exceptions;

(7) That on the 20th day of June, 1923, the bill of exceptions was presented in the Court of First Instance of the Province of Leyte.

Granting, for the purposes of the argument, (*a*) that the "sin perjuicio" decision of January 30, 1923, was a final decision; (*b*) that the motion presented by the appellant on the 6th day of February, 1923, complied with the rules of the Court of First Instance; (*c*) that the appellee had due notice thereof, and (*d*) that said motion was not acted upon until the 2d day of June, 1923, then, and under those conditions, the bill of exceptions which was presented on the 20th day of June, 1923, was presented within thirty days, eliminating the time during which the court was considering said motion (from the 6th day of February, 1923 to the 2d day of June, 1923). (Layda *vs*. Legazpi, 39 Phil., 83; Roman Catholic Bishop of Tuguegarao *vs*. Director of Lands, 34 Phil., 623; Estate of Cordoba, and Zarate *vs*. Alabado, 34 Phil., 920; Bermudez *vs*. Director of Lands, 36 Phil., 774; Director of Lands *vs*. Municipality of Dingras, 40 Phil., 242; Director of Lands *vs*. Maurera and Tiongson, 37 Phil., 410; Santiago *vs*. Manuel and Tumale, 39 Phil., 869; Government of the Philippine Islands *vs*.

Abural, 39 Phil., 996.)

The purpose of the law and the rules requiring that a bill of exceptions shall be presented within a definitely fixed period, is to definitely and finally fix the time when a decision is final so that it may be executed and the litigation terminated. Without some fixed way of determining when a decision is final, the parties litigant could never know when they could enforce their rights under the judgment or when the litigation is, in fact, terminated.

But was the "sin perjuicio" decision of January 30, 1923, a final decision? Suppose the defeated party had perfected his appeal and presented his bill of exceptions, would this court have considered the appeal, in view of the provisions of section 133 of Act No. 190? A reading of the "sin perjuicio" decision shows that it was nothing more or less than the conclusion of the lower court with reference to the rights of the parties. It did not contain a statement of the facts which were essential to a clear understanding of the issues presented by the respective parties as to the facts involved. Had the appeal come to this court it would, undoubtedly, in view of what it has done heretofore, have returned the record to the lower court, requiring it to comply with the mandatory provisions of said section 133. (Braga *vs*. Millora, 3 Phil., 458.) That being true, did not the appellant have a right to wait until the lower court should render a decision in accordance with the requirements of the law?

In view of the decision of this court in the case of Braga *vs*. Millora, *supra*, and many other published decisions, in which the doctrine there announced has been followed, we are of the opinion, and so declare, that the appellant, even though he attempted to perfect an appeal against the "sin perjuicio" decision, had a perfect right to wait until the final decision was filed, complying with said section 133, and then to perfect his appeal, thereby avoiding a possible delay of having the record returned to the lower court with directions to prepare and file a decision in accordance with the provisions of said section.

If we are correct in that conclusion, then the bill of exceptions in the present case was presented within the thirty days required by law, and the motion to dismiss the appeal should be, and is hereby, denied, without any

finding as to costs.

The practice of the lower court in pronouncing "sin perjuicio" decisions and then later, after the expiration of many months, complying with section 133, is a practice which should not be followed and cannot be looked upon with favor. So ordered.

Araullo, C.J., Street, Malcolm, Avanceña, Villamor, and *Johns, JJ.,* concur.

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