

95 Phil. 622

[G.R. No. L-6850. August 04, 1954]

AMPARO BAUTISTA ANGELO, BEATEIZ BAUTISTA ANGELO AND FELIX BAUTISTA ANGELO, APPLICANTS AND APPELLEES VS. PABLO ALFARO OPPOSITOR AND APPELLANT.

D E C I S I O N

CONCEPCION, J.:

This is an appeal taken by Pablo Alfaro from an order of the Court of First Instance of Bulacan, denying a motion for reconsideration and directing the issuance of a writ of possession in favor of applicants Amparo, Beatriz and Felix, all surnamed Bautista y Angelo.

It appears that before the year 1943, a decision was rendered in land registration case No. 894, G.L.R.O. Record No. 47320, adjudicating Lot No. 7 thereof in favor of said applicants. That year, Pablo Alfaro moved for a revision or reconsideration of said decision, but the motion was denied on June 19, 1943. In or about August of the same year, Alfaro filed a record on appeal, although nothing appears to have been done thereafter. On or about March 19, 1951, the applicants filed a motion praying that the record of the case, which had been lost or destroyed during the liberation, be reconstituted on the basis of said record on appeal filed by oppositor Alfaro. By an order, dated March 29, 1951, Alfaro was granted a period, expiring on April 16, 1951, within which to file his opposition to said motion. Upon Alfaro's request, the court granted him on April 30, 1951, an extension of twenty (20) days to file said opposition. Another extension of fifteen (15) days was, on motion of Alfaro, granted him on May 8, 1951. Notwithstanding the expiration of these extensions of time, no such opposition was filed. Hence, on July 6, 1951, the applicants filed a motion praying that the record of the case be ordered or declared reconstituted, as prayed for in their original motion dated March 19, 1951.

Soon later, or on July 12, 1951, they moved, also for the issuance of a writ of possession, alleging that the decision adjudicating lot No. 7 to them was already final and executory,

upon the ground that the appeal, which Alfaro had sought to take from the order of June 19, 1943, by filing said record on appeal, had not been perfected in the manner provided in the Rules of Court, and that Alfaro, who held said lot, refused to surrender its possession. Alfaro opposed this motion stating that the record had not been reconstituted as yet. Accordingly, the court directed that applicant's motion for reconstitution, of March 19, 1951, be set for hearing on November 29 of the same year. Two days prior thereto, Alfaro filed the following statement:

"If the Court pleased, the undersigned leaves it to the Court whatever action it wants to take regarding the 'Petition for Reconstruction of Proceedings on Motion for Revision Filed by Pablo Alfaro' which was filed by Amparo Bautista Angelo, Beatriz Bautista Angelo, and Felix Bautista Angelo, dated March 19, 1951, at 9:00 A.M." (Record on Appeal, p. 15)

Consequently, on December 5, 1951, the court issued an order, the dispositive part of which is as follows:

"Wherefore, the Court hereby declares this land registration case fully reconstituted in so far as the proceedings on the aforementioned motion for revision is concerned, considering the pleadings and orders found in the record on appeal as authentic for all purposes of the law." (Record on Appeal, p. 17)

On December 12, 1951, Alfaro filed a motion for reconsideration, but, on January 25, 1952, the court issued an order reading:

"No resolution can be rendered on the motion for reconsideration and rehearing dated December 12, 1951, filed by the oppositor, Pablo Alfaro until the same is set for hearing by the movant with proper notice to the parties concerned." (Record on Appeal p. 22).

In compliance with this order, Alfaro filed on January 29, 1952 a notice setting his motion for reconsideration for hearing on February 23, 1952. Copy of this notice and of said motion for reconsideration were served, on February 1, 1952, to the applicants, who objected to the motion upon the ground that the order of reconstitution of December 5, 1951, was already

final. At the same time, applicants urged the court to order the issuance of a writ of possession as prayed for in their motion dated July 12, 1951. After due hearing, the court, by an order dated April 30, 1952, found that said order of December 5, 1951 had become final and executory and that it had no jurisdiction to entertain the motion for reconsideration and, accordingly, directed the issuance of the aforementioned writ of possession. Alfaro has appealed from this order and his counsel now maintains that:

“I. The lower court erred in the manner in which the case was reconstituted and in ordering the issuance of a writ of possession dated April 30, 1952.

“II. The lower court erred in not considering appellant’s motion for reconsideration on the order of the lower court dated December 5, 1951.” (Brief for the Appellant, pp. 1-2)

The present appeal is predicated upon the theory that Alfaro had duly appealed from the order of June 19, 1943 denying the motion for revision filed by him prior thereto, for, admittedly, he had filed a record on appeal in or about August 1943, and, it must be assumed, according to him, that he had perfected his appeal from said order. It should be noted, however, that, on motion of applicants herein, which was not objected to by Alfaro, the pertinent records were reconstituted on the basis of said record on appeal filed by Alfaro, in or about August 1943. What is more, by his statement dated November 27, 1951, Alfaro not only did not object to applicants’ petition for reconstitution, but, also, in effect, induced the court to grant said petition.

Upon the other hand, said record on appeal did not contain any order of approval thereof. In fact, Alfaro states in his brief that “there was no order of the court approving or ordering the amendment of the record on appeal.” What is more, he did not try to prove, or even allege, in the lower court, that the corresponding appeal bond had been filed by him. In other words, the records as reconstituted fail to show that Alfaro had perfected his appeal from the order of June 19, 1943.

Indeed, considering that the record on appeal was filed in or about August 1943, it seems obvious that it would have been forwarded to the Court of Appeals long before the liberation of the Philippines, late in 1944, had the requisite steps been taken by Alfaro to perfect his appeal. Had he done so, he would have, likewise, taken appropriate measures to prosecute his (Alfaro’s) appeal or to reconstitute the record thereof in the Court of Appeals. His

absolute inaction from 1943 to 1951, when applicants initiated the reconstitution proceedings, and his failure even to allege that said appeal bond had ever been filed, leave no room for doubt that said appeal had not been perfected.

Again, copy of the order of the judge *a quo* of December 5, 1951, reconstituting the record of this case, was served on Alfaro on December 8, 1951. Although four (4) days later, or on December 12, Alfaro filed a motion for reconsideration of said order, copy of said motion was not served on the applicants, and notice of hearing was not given by Alfaro, until February 1, 1952. Inasmuch as his aforementioned motion did not comply with the provisions of section 4, Rule 27, and section 2, Rule 37, of the Rules of Court, it may be said paraphrasing the decision in the case of Manakil and Tison vs. Revilla and Tuafio (42 Phil. 81, 84):

“ * * that the alleged motion, * * * was not in fact, a motion at all, for the reason that it did not comply with ,the requirements of * * * the Rules of Court of First Instance. It was nothing but a piece of paper filed with the court. It presented no question which the court could decide. The court had no right to consider it, nor had the clerk any right to receive it without a compliance with Rule 10. It was not, in fact, a motion. It did not comply with the rules of the court.*

In short, Alfaro’s motion for reconsideration, dated December 12, 1951, did not have such status until February 1, 1952, or more than fifty (50) days after December 8, 1951, when notice of the order of December 5 reconstituting the records of this case was served on him. Obviously, therefore, said order was, on February 1, 1952, final and executory.

WHEREFORE, said order of December 5, 1951, as well as the order of April 30, 1952, directing the issuance of the writ of possession, are hereby affirmed, with costs against oppositor-appellant Pablo Alfaro. So ordered.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Labrador and Reyes J. B. L., JJ., concur.

