

102 Phil. 937

[ G. R. No. L-11248. January 30, 1958 ]

**ANACLETA VILLAROMAN AND PEDRO VILLAROMAN, JR., PETITIONERS, VS. QUIRINO STA. MARIA AND HON. AGUSTIN P. MONTESA, AS JUDGE OF THE COURT OF FIRST INSTANCE OF NUEVA ECIJA, RESPONDENTS.**

## **D E C I S I O N**

### **FELIX, J.:**

Pedro Villaroman, Jr., and Anacleta Villaroman, husband and wife, were the defendants in a civil case filed by Quirino Sta. Maria with the Court of First Instance of Nueva. Ecija (Civil Case No. 2141). On July 16, 1956, the Court rendered judgment therein finding the spouses Villaroman liable as charged and ordered them to return the palay deposited by plaintiff in their warehouse or pay the value thereof amounting to P745.00, with legal interest from the date of the filing of the action, plus the sum of P200.00 for damages and attorney's fees, and for costs. A copy of this decision was said to have been received by defendants on *July 19, 1956*. On *August 7, 1956*, or 19 days thereafter, defendants filed a motion for reconsideration of the decision on the ground that the findings of the Court were contrary to law and the evidence adduced during the trial, with additional prayer for leave to file a third party complaint, which motion was denied by the Court in its order of August 16, 1956, received by defendants on *August 20* of the same year. The prayer for leave to file a third party complaint was also denied for having been presented out of time.

It appears from the record that on *August 20, 1956*, plaintiff Sta. Maria filed a motion for execution of the decision of July 16, 1956, contending that same had already become final as no appeal was taken therefrom, and the Court, despite the objection of defendants, granted the same and issued on *August 24, 1956*, a writ of execution which was correspondingly registered with the Register of Deeds of Nueva Ecija on August 28, 1956. This prompted the defendants to file on this later date separate motions seeking to set aside the order of execution and for the approval of the appeal bond and record on appeal, but the Court, also in separate orders dated August 30, 1956, denied the first for lack of merit and the second

for having been filed out of time.

From these orders, defendants filed with Us the instant petition for certiorari which was given due course by resolution of this Court of September 26, 1956, and upon petitioners' filing a bond for P200.00, the preliminary injunction enjoining the respondent Judge from enforcing his order of August 24, 1956, was consequently issued. Notwithstanding the summons sent in connection with this case, We find that respondents Quirino Sta. Maria and the Judge of the Court of First Instance of Nueva Ecija did not file their respective answers to the petition. Petitioners also failed to elaborate their stand by means of any memorandum. In resolving, therefore, the issue presented by this action, i.e., whether or not the lower Court acted properly in ordering the execution of the decision of July 16, 1956, and in denying the approval of the appeal bond and record on appeal, We have to rely solely on the facts and circumstances stated in the petition.

It is a fundamental rule of procedure that the execution of a judgment or order shall issue only upon the expiration of the period to appeal where no such appeal has been perfected (Section 1, Rule 39, Rules of Court) and the filing of a motion for the reconsideration of such decision or order suspends the running of the period of its finality.

In the case at bar, defendants were notified of the decision on *July 19, 1956*, and the motion for the reconsideration filed on August 7 of the same year was presented 19 days after receipt of said decision. Considering that the order denying the motion for reconsideration was received by defendants on August 20, 1956, and that the prescriptive period within which to perfect an appeal continued to run again only on that date, We find that defendants had 11 days more to perfect their appeal. The writ of execution issued by the Court on August 24, 1956, pursuant to the motion of respondent Sta. Maria, who appeared to have been notified of and furnished with copy of said motion for reconsideration, was made 23 days after the promulgation of the decision, that is, before the expiration of the period that defendants had to appeal.

We looked into the possibility that the motion for reconsideration might have been a *pro forma* one which would, thus justify the Court's action, for such kind of motion will not suspend the running of the period to appeal. But a reading of the same—delineating the facts relied upon by defendants in their desire to secure a reconsideration of the decision—convinces Us that it is not a mere *pro forma* pleading. Moreover, there is no such allegation to that effect in the motion for execution filed by the plaintiff, nor that was even mentioned in the order of the court denying the said motion for reconsideration.

We are also aware that there are instances where the Court, in the exercise of its discretion, may order the execution of a decision even before the expiration of the period to appeal, but in these cases the reason therefor must be specifically stated in the order (Section 2, Rule 39, Rules of Court). Nothing of this sort, however, appears in the case at bar, and taking into account the circumstances surrounding the present action, there seems to be no valid and special reason that would justify the issuance by the Court *a quo* of the writ of execution before the expiration of the statutory period to appeal and the disapproval of the appeal bond and record on appeal which We find to have been filed on time.

Wherefore, the orders of the Court of August 24, 1956, issuing the writ of execution, of August 30, 1956, denying the motion to annul said writ, and of August 30, 1956, denying the approval of the record on appeal and appeal bond, are hereby set aside and this case is remanded to the lower court for further proceedings. The preliminary injunction issued by this Court is hereby made permanent. Costs taxed against respondent Quirino Sta. Maria. It is so ordered.

*Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A. Bautista Angelo, Labrador and Endencia, JJ., concur.*

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