

**[ G. R. No. L-12809. July 25, 1958 ]**

**SALVADOR LAURILLA, PETITIONER, VS. REMEDIOS T. UICHANGCO, CONRADO B. UICHANGCO, HON. FROILAN BAYONA, JUDGE BRANCH I, COURT OF FIRST INSTANCE OF MANILA AND MACARIO OFILADA, EX-OFFICIO SHERIFF, CITY OF MANILA, RESPONDENTS.**

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

**REYES, J.B.L., J.:**

On August 20, 1955, Remedios T. Uichangco and Conrado B. Uichangco filed a complaint in the Court of First Instance of Manila (Civil Case No. 27228) against Salvador Laurilla for the recovery of the possession of Lot No. 28 Block No. 16, District of Malate, situated at 494 San Andres, Manila, and unpaid rentals in the amount of P623.00.

After trial, the court rendered judgment condemning defendant Laurilla to pay the plaintiffs back rentals in the amount of P868.00 and the monthly rentals from March, 1956 until he vacate the premises, as well as attorney's fees of 25% of the amount claimed, interests, and costs. From this judgment, defendant Laurilla appealed to the Court of Appeals.

Before the period for appeal expired, and prior to the perfection of defendant's appeal, plaintiffs moved for the execution of the judgment on the ground that defendant had not made any effort to pay either the back rentals or the monthly rentals accruing after the judgment. Defendant opposed the motion and filed a record of appeal; and the court, while approving the same, gave the appellant ten days to file a written memorandum in support of his opposition, which he failed to do. Whereupon, on February 7, 1957, the lower court ordered the execution of the judgment unless defendant filed a supersedeas bond in the amount of P2,000 within ten days. Instead of filing the required bond, defendant moved to have said order of execution set aside, claiming that as his record of appeal was approved by the court on January 12, 1957, his appeal was deemed perfected as of that date and consequently, the court had lost jurisdiction to issue its order of February 7, 1957. Plaintiffs, upon the other hand, argued that defendant's appeal had not yet been perfected because

defendant's appeal bond had not been approved by the court. On February 23, 1957, the lower court denied defendant's motion to have its order of February 7, 1957 set aside, and on March 14, 1957 issued a writ of execution commanding the sheriff to execute the judgment in the case, which writ was later nullified by the court because it did not conform to the dispositive portion of the judgment and so, an alias writ of execution was issued. In accordance with the second writ of execution, the sheriff advertised for sale at public auction the house of defendant located on the land in question which had been previously attached to satisfy the judgment in the case. Unable to have the sale of his house suspended, defendant filed the present petition for prohibition with preliminary injunction with this Court, and upon his putting up a bond of P1,500, we issued a writ of preliminary injunction.

Petitioner Laurilla claims, *first*, that the lower court did not have jurisdiction to issue its order of execution of February 7, 1957, because his appeal had been perfected when his record of appeal was approved by the court on January 12, 1957, and thereafter, the lower court lost jurisdiction over the case; and *second*, that the order of execution of February 7, 1957 was issued by the court below in grave abuse of its discretion because it did not state any special reasons for the execution pending appeal as required by section 2, Rule 39, of the Rules of Court.

The order approving the record of appeal is couched in the following terms:

"There being no opposition to the record on appeal filed by the appellant in this case, the same is hereby approved. Likewise, Atty. Balguna for the defendant Salvador Laurilla, is hereby given ten (10) days from today within which to file a written memorandum in support of his opposition to the motion for execution filed by Atty. Mariano M. de Joya, after which the said motion for execution will be deemed submitted for resolution." (Annex "B", Petition)

From the foregoing order it is apparent that the approval given to the record of appeal filed by the petitioner in the court below was merely provisional; and that both the court and the parties understood that such approval was not final, since there was another question still pending, to wit, whether a writ of execution should be issued pending appeal. It is to be presumed that the court and the parties knew that if the court granted the writ of execution, its order had to be included in the records to be elevated to the appellate court (Rule 39, sec. 2) and hence, the record of appeal, as it stood before the court acted on the motion for

execution, could not be considered complete and definitive.

It is plain that if the approval of the record was final and not merely provisional, there was no sense in giving the parties time to submit memoranda on the merits of the motion for execution. The fact that the appellant, now petitioner, did not call attention at the time to the futility of submitting a memorandum, since upon approval of the record of appeal the court would no longer have jurisdiction to issue execution, confirms our view that the approval of the record was understood by all concerned to be provisional in character. That being the case, the court retained jurisdiction to resolve the motion for execution and to order it issued unless the appellant filed the corresponding supersedeas bond. The subsequent issuance of the writs of execution were mere implementations of the power thus reserved and consequently, it can not be said that the court acted without or in excess of its jurisdiction in issuing the same.

With regard to the second ground, it is already settled jurisprudence that the reasons for issuing execution pending appeal need not appear in the order itself, and may appear by reference to the motion praying for the issuance of the writ (*Joven vs. Boncan*, 67 Phil. 562; *Lusk vs. Stevens*, 64 Phil. 154).

Wherefore, the petition for certiorari is denied and the preliminary injunction order dissolved, with costs against petitioner. So ordered.

*Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepcion, and Endencia, JJ., concur.*