

AMANDO MALLARE AND SUSANA PANGILINAN, PLAINTIFFS AND APPELLEES, VS. FLORA PANAHON, ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. L-8094. December 22, 1955

Ponente: REYES, J.B.L., J.

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

On March 10, 1947, appellees Amando Mallare and Susana Pangilinan filed Civil Case No. 234 in the Court of First Instance of Nueva Ecija, against appellants Flora Panahon, et al., for the payment of a loan of 260 cavanes of palay, which became due on February 29, 1940, and asking the foreclosure of a mortgage constituted by said defendants on a parcel of registered land located in Sta. Cruz, Gapan; Nueva Ecija, in case the loan was not paid. After trial, the Court below rendered judgment for the plaintiff as follows:

"Por las consideraciones arriba expuestas, el Juzgado dicta decision condenando a los demandados a pagar su deuda a los demandantes consistente en 260 cavanes de palay, sin interes alguno, hasta que se pague completamente, si los demandantes insisten en el pago en especie como aparece en el parrafo 3 del Exhibito A; pero siguiendo el parrafo (b) de la petitoria de la demanda, o sea que pasados los 90 dias si el credito no se paga, que se venda entonces la propiedad descrita en el Exhibit A, para que con su producto se pague la deuda, el Juzgado entiende que en este caso los demandados compraren 260 cavanes de palay con el producto de la venta del terreno descrito en el Exhibit A y los entregaran a los demandantes, sin interes alguno, Los demandados pagaran las costas del juicio." (Rec. of Appeal, p. 17)

but, applying the Moratorium Law, also held:

"Esta decision no podra ejecutarse en contra de ninguno de los demandados sino inmediatamente despues de pasar 6 años desde la fecha en que cada uno de ellos, los que presentaron reclamacion por daños de guerra, recibio el pago respectivo de su reclamacion, y en cuanto a los que no presentaron dicha reclamacion tampoco podra ejecutarse esta decision, amenos que se haya levantado la Orden Ejecutiva No. 32." (Rec. of Appeal, pp. 17-18).

On July 20, 1953, plaintiffs filed a petition for execution, citing the decision of this Court in the case of Rutter vs. Esteban^[1] declaring the Moratorium Law unconstitutional. On July 28, 1953, the Court below ordered the execution of the judgment; the sheriff sold the land mortgaged at public auction to the plaintiffs on October 20, 1953; and on November 21, 1953, the sale was confirmed by the Court.

Two motions for reconsideration were filed, by defendants, both of which were denied. Then defendants appealed.

The appellees urge the dismissal of the appeal on the ground that the same was not perfected on time. But as the printed record on appeal does not include the motions for reconsideration filed by appellants, nor the notice of appeal or the appeal bond, we ordered the Court below to elevate to us the original records, so that we could determine whether or not the appeal was seasonably perfected.

It should be noted that appellants have lost their right to appeal from the main decision of the Court below promulgated on June 29, 1949, because the same had long become final and unappealable. Neither could appellants have appealed from the lower Court's order of execution of July 28, 1953, copy of which they received on July 30, 1953, since the same became final and unappealable on August 29, 1953. What remains to be seen, therefore, is whether appellants seasonably filed their appeal from the order confirming the foreclosure sale, issued by the Court a quo on November 21, 1953.

From the original records, we find that appellants received copy of the order of confirmation of the foreclosure sale on November 28, 1953, so that the next day, November 29, the thirty-day period for the perfection of their appeal from said order started, to run. One day later, on December 1, 1953, however, appellants filed their first motion to reconsider, on two grounds: (1) that the price was inadequate, and (2) that they still had up to December 1 within which to pay the obligation. On December 7, appellants filed a supplementary pleading further alleging that the decision in the case had not become final because they had not yet received their war damage claims; and two days later, they filed another motion, "in lieu of all the pleadings already filed," but based on the same grounds as previously alleged by them.

The Court below denied appellants' motion to reconsider on January 7, and copy of the order of denial was received by them on January 13, 1954. Thereafter, the period for appeal started to run again.

Ten days afterward, on January 23, 1954, appellants filed a second motion for reconsideration, reiterating the grounds raised in their first motion, and adding that their debt was payable in kind (in palay) and that therefore, the proceeds of the foreclosure sale should be turned over to them, out of which they would purchase 260 cavanes of palay to pay to plaintiffs. This second motion was denied on January 26, 1954, and appellants were notified thereof on February 2nd. On the same day appellants filed their notice of appeal.

Assuming, that appellants' second motion for reconsideration also suspended the running of their period for appeal, 11 days had elapsed out of their 30-day period when their notice of appeal was filed on February 2, 1954. Appellants then still had 19 days, or up to February 21, 1954, within which to perfect their appeal by filing their record on appeal and appeal bond.

It appears, however, that while appellants filed their record of appeal on February 6, 1954, within the statutory appeal period, they paid their cash appeal bond only on March 13, 1954 (V. Appellees' Brief, p. 12, not controverted by appellants; and certification of the Clerk of the Court a quo).

Considering that the appellants had only up to February 21, 1954 within which to perfect their appeal, their appeal bond was filed 20 days late. The rule is well settled that failure to file the appeal bond on time is fatal to the appeal [*Rural Progress Administration vs. Temporosa*, 46 Off. Gaz. (11) 5450], even if the notice of appeal and record on appeal were filed on time (*Salva vs. Judge Palacio, et al.*, 90 Phil., 731. Consequently, the appeal was perfected out of time.

In reality, the situation is much worse for appellants, because their second motion of reconsideration did not interrupt the 30-day period for appealing, as the new ground alleged therein (that the debt was payable in palay) already existed, was available, and could have been alleged when their first motion to reconsider was filed (Rule 37, Sec. 4). Hence the appeal period actually expired 19 days after January 23, i.e., on February 11, 1954; and the appeal bond was filed 31 days too late.

Wherefore, the appeal is dismissed and the order appealed from declared final. Costs against appellants. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, and Concepcion, JJ.,

concur.

[1] 49 Off. Gaz. (No. 5) 1807, promulgated May 18, 1953.

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