

ROSARIO MATUTE, TRINIDAD MATUTE, CARLOS MATUTE, MATIAS MATUTE AND RAMON MATUTE, PETITIONERS, VS. HON. HIGINO MACADAEG AND HON. MAGNO GATMAITAN, JUDGES OF THE COURT OF FIRST INST...

G.R. No. L-5820. September 18, 1953

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for certiorari and mandamus in which petitioners seek to nullify the orders of respondent Judge dated January 4 and April 30, 1952, denying their petition to appeal as paupers from the decision rendered in Civil Case No. 14208 of the Court of First Instance of Manila and, as alternative relief, to direct respondent judge to give course to their appeal in the event their petition to appeal as paupers is denied.

Petitioners were plaintiffs in Civil Case No. 14208 filed in the Court of First Instance of Manila against respondent Amadeo Matute "For Partition and Delivery of share in conjugal property, with Petition For Receivership." Simultaneously with the filing of the complaint, petitioners filed a petition to litigate as paupers under the provisions of Rule 3, Section 22, of the Rules of Court. This petition was granted by the court, then presided over by respondent judge.

Amadeo Matute, hereinafter referred to as respondent, instead of answering the complaint, filed a motion to dismiss, and after proper hearing, the court entered an order on October 31, 1951 dismissing the complaint on the ground of res adjudicata. Copy of said order was received by petitioners on November 3, 1951.

On December 1, 1951, petitioners filed their notice of appeal, record on appeal and a motion to appeal as paupers in lieu of the appeal bond. On December 8, 1951, respondent filed a written opposition to the motion to appeal as paupers alleging that petitioners were not really paupers who could be allowed to litigate as such under the Rules of Court. In view of this opposition, the court set the motion for hearing, but at this hearing, petitioners failed to appear, and on January 4, 1952, the court entered an order denying the motion. Copy of this order was received by petitioners on January 18, 1952.

On January 24, 1952, petitioners filed a motion for reconsideration of the order entered on January 4, 1952. This motion was heard on January 26, and on April 30, 1952, the court denied the motion. Copy of the order of denial was received by petitioners on May 9, 1952, and on the same date they filed an appeal bond of P60 coupled with a manifestation that the filing of said bond should not be deemed as a waiver of their petition to prosecute their appeal as paupers in the event this question is raised by them before the Supreme Court.

On May 14, 1952, respondent filed a motion to declare the judgment on the merits final and executory, and notwithstanding the opposition of petitioners, the motion was granted on May 17, 1952. Hence, this petition for certiorari.

The only question to be determined is whether petitioners can still appeal from the decision rendered in Civil Case

No. 14208 considering that they had filed the appeal bond beyond the thirty-day period from the date copy of the decision was served on said petitioners.

It appears that when petitioners filed the complaint against respondent in Civil Case No. 14208 for partition and delivery of their share in certain conjugal property, they submitted to the court a petition to litigate as paupers and this petition was granted under Rule 3, Section 22, of the Rules of Court. Under said Section 22, the authority to litigate as pauper "shall include an exemption from payment of legal fees and from filing appeal bond, printed record and printed brief." It is perhaps for this reason that when petitioners took steps to perfect their appeal from the decision rendered in the main case, instead of filing an appeal bond, they filed a motion to appeal as paupers in lieu thereof. We take it that by virtue of the authority given by the court to petitioners to litigate as paupers in the case, they are entitled to appeal without need of filing an appeal bond, and this right can only be divested when the court rules otherwise.

The record shows that in view of the opposition interposed by respondent to the motion of petitioners to appeal as paupers, the court set the motion for hearing, and because of the failure of petitioners to appear, the court entered an order denying it, copy of which was received by petitioners on January 18, 1952. On January 24, 1952, petitioners filed a motion for reconsideration. On April 30, 1952, the court denied this motion, and copy of the order was received by petitioners on May 9, 1952. And on the same date petitioners filed an appeal bond of P60 with the reservation above adverted to. It therefore appears that, while said appeal bond was not filed within the period of thirty days counting from the date they received copy of the decision of the case (October 31, 1951), the record however shows that said appeal bond was filed only six days from receipt of the order denying their motion to appeal as paupers, excluding the period spent in considering their motion for reconsideration. In our opinion, the appeal bond has been filed on time because, as already stated, petitioners were entitled to appeal as paupers under the original authority until the court rules otherwise, and this ruling only came on January 4, 1952.

With regard to the other question touching on the alleged abuse committed by respondent judge in denying the motion of petitioners to appeal as paupers, we find that said judge did not abuse his discretion in denying it. There is enough evidence to warrant his action.

Wherefore, the petition as to the alternative relief is hereby granted, without pronouncement as to costs.

Paras, C.J., Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo and Labrador, JJ., concur.

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