

AGRIPINO JIMENEZ AND SOFIA RESTAR, PETITIONERS, VS. EUSEBIO F. RAMOS, RESPONDENT.

G.R. No. L-2893. December 31, 1949

Ponente: MORAN, C.J.

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MORAN, C.J.:

This is a petition for certiorari filed by Agripino Jimenez and Sofia Restar to set aside a writ of execution issued by the Court of First Instance of Marinduque in civil case No. 704 of that court which has been instituted by respondents Hermogenes Palomares and Dorotea Ricafrente to recover a parcel of land from said petitioners.

Judgment was rendered in said case against petitioners who received notice thereof on December 30, 1948. On January 11, 1949, a motion was filed by them to amend some findings of facts contained in the decision. On January 28, 1949, a motion for new trial was filed upon the ground of newly-discovered evidence and that the decision was contrary to facts and to law. This motion contains no specification of the supposed new evidence discovered nor of the effect of such evidence upon the result of the case. Neither does it contain a specification of the conclusions stated in the decision that are alleged to be contrary to evidence and to law. It is, therefore, a motion pro forma.

On February 14, 1949, a writ of execution was issued by the respondent court upon the ground that the judgment had become final and executory. And on March 1, 1949, a motion for new trial was filed containing a specification of the portions of the decision that were alleged to be contrary to evidence or to law.

We believe and so hold that the writ of execution issued on February 14, 1949, was valid because petitioners were notified of the decision on December 30, 1948, and therefore, said decision had become final and executory on January 29, 1949. The motion of January 11, 1949, not being a motion to set aside the judgment rendered but merely to amend some findings of facts contained therein, could not suspend the period of appeal which expired on January 29, 1949. The motion for new trial filed on January 28, 1949, could not interrupt said period, it being a pro forma motion containing no specification of the supposed newly-discovered evidence nor of the findings or conclusions of the judgment that were alleged to be contrary to evidence or to law (*Valdez vs. Jugo*, 2 Off. Gaz., 489, May, 1943;[1] *Alvero vs. De la Rosa*, 42 Off. Gaz., p. 3161).[2]

The only motion for new trial which could have interrupted the period for appeal had it been presented within that period is the motion of March 1, 1949, which was filed in accordance with the requirements of the rules. But the judgment had already become final and executory on January 29, 1949, and was ordered executed on February 14, 1949.

The petition is denied, with costs against the petitioners.

Ozaeta, Paras, Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

[1] 74 Phil., 49.

[2] 76 Phil., 428.

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