

THE HEIRS OF B. A. CRUMB, NAMELY: HENRY, WILLIAM, ARTHUR, MARY, EVA AND JAMES, THE LATTER BEING REPRESENTED BY HIS WIFE, CORA-ZON JAVELONA, AND CHILDREN; EVELYN, STELLA, JAMES,...

G.R. No. L-26167. January 30, 1970

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

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

Civil Case No. 344 of the Court of First Instance of Davao, entitled "The Heirs of B. A. Crumb, etc. vs. Margarito Rodriguez, et al.," has been elevated to this Supreme Court for the second time. The first was when the decision of the said court was, on direct appeal, by reason of the value of the real estate involved in the controversy, which was in excess of P50,000.00 reversed, on 31 March 1959, in Case G . R. No. L -7954, and the appellees ordered to vacate the premises they respectively occupy and restore possession thereof to the plaintiffs - appellants.[1] The reversing judgment was entered on 4 June 1959 and the records were remanded to the trial court on 15 June 1959.[2] This second time, the case comes up by way of a petition for certiorari by the prevailing parties, the heirs of Crumb, to review the decision of the Court of Appeals, promulgated on 11 February 1966, the dispositive portion of which reads, as follows:

"FURTHER CONSIDERED, petition for certiorari is hereby sustained, and the orders of 10 June, 28 August and 17 September 1965 in so far as they held unappealable the order directing the petitioners to vacate the land they respectively occupy and ordering the sheriff to demolish their houses should they disobey the order, are hereby set aside, and the respondent Judge is commanded to give due course to the appeal of the petitioners from the orders in question in the manner prescribed in the Rules of Court. With costs against the respondents the Heirs of Crumb."

The petitioners in the Court of Appeals (herein respondents), thirty-nine (39) in number, were not parties-defendants in Civil Case No. 344, but were found by the trial court to be privies of thirteen (13) of the twenty-two (22) defendants during the execution phase of the final reversing judgment.

The involvement of these privies, as the trial court found them to be, came about, as follows. After case L-7954 was remanded to the Court of First Instance, on motion of the Crumb heirs, an order of execution was issued on 25 July 1959; the writ was duly served on the defendants and they were given fifteen (15) days within which to vacate; but after the lapse of the said period, they failed to do so. An alias writ was issued on 11 July 1960, but the defendants still failed to vacate and were given another period of sixty (60) days; having again refused to vacate on 22 April 1960, an order was issued for their forcible ejectment and the demolition of their houses. Still another alias writ was issued on 14 October 1960, giving them a grace term of fifteen (15) days to vacate and ordering the sheriff, in case of failure of compliance, to demolish their houses and eject them at their expense. The defendants filed a motion to recall and invalidate said order, a motion to delimit implementation, a motion for correction, and a motion for transfer of hearing, but all were denied by the court on 23 November 1962.

On 15 January 1965, the Crumb heirs filed a motion for contempt against some original defendants and some other persons who were not parties in the original action. The present respondents are among the latter.

Apart from the motion for contempt, the Crumb heirs had filed, in August, 1962, a separate civil case, No. 3833, for the ejectment from the land of four hundred and eighty-two (482) persons. This group includes the present respondents. The case was pending trial at the time of the promulgation of the decision of the Court of Appeals.

Acting on the motion for contempt in Civil Case No. 344, the court, after an ocular inspection and a long trial, declared, in an order dated 10 June 1965, fifty-three (53) persons to have been in contempt, among them the present thirty-nine (39) private respondents, and adjudged them "to pay a fine of TWO HUNDRED PESOS (P200.00) each (and upon) failure to pay the fine let them be taken into custody and remain thereat until they comply with the order of the Court but in no case shall it exceed the period of thirty (30) days"; they were, likewise, "directed to vacate their respective occupations and the sheriff is directed to demolish their respective houses or buildings at the expense of the said respondents".

The thirty-nine (39) private respondents and thirteen (13) of the defendants filed a notice of appeal from the aforesaid order. The Crumb heirs moved to dismiss the appeal. In an order dated 28 August 1965, the court resolved that its order for contempt is appealable, but "the execution or implementation of the decision of the Supreme Court and the subsequent order . . . ordering the defendants to vacate the premises and deliver the possession thereof to the plaintiffs . . . is unappealable", and ordered the sheriff to execute the order of 10 June 1965, "with the exception of the portion of the decision which adjudged the respondents to pay a fine of P200.00 and/or imprisonment of 30 days, which, as already adverted to, is the subject covered by this perfected appeal".

The herein respondents and the 13 defendants moved to reconsider, but their motion was denied in an order on 17 September 1965. Wherefore, the herein respondents filed a petition for certiorari with injunction with the Court of Appeals, contesting the validity of the trial court's orders of 10 June, 28 August and 17 September 1965, but the 13 original defendants did not join in the petition.

The Court of Appeals treated the petition as also one for mandamus and, after hearing, rendered the decision sought to be reviewed in the petition for certiorari filed by the Crumb heirs in this Supreme Court.

The Court of Appeals' judgment directing the Court of First Instance to give due course to respondents' appeal is principally predicated on the proposition -

"that the petitioners have in due time perfected the appeal from the orders of 10 June, 28 August and 17 September 1965, in which appeal the main issue to be raised is, as stated in paragraph 21 of the petition, whether the respondents are privies or successors in interest to the defendants in Civil Case No. 344",

from which premise it concluded that the court of origin -

"committed grave abuse of discretion in declaring unappealable its order directing the petitioners to vacate the land which they respectively occupy and ordering the sheriff to demolish their houses should they refuse to obey the order."

The petitioners (Heirs of B. A. Crumb) assail the judgment of the Court of Appeals as erroneous. They agree that respondents did perfect their appeal from the order in so far as it adjudges them in contempt and sentences them to pay a fine, by simply filing a notice of appeal as in criminal cases, conformably to the last proviso of section 10 of Revised Rule of Court 71 ("the appeal may be taken as in criminal cases"); nevertheless, they claim that this simplified form of appeal was not sufficient with respect to the part of the order commanding the eviction and the demolition of the houses. The Crumb heirs argue that as to this part of the order, it was necessary that respondents should have filed, in due time, the corresponding record of appeal and appeal bond, as in ordinary civil appeals.

We find the position of herein petitioners to be untenable. The contempt was made out to consist precisely in the respondents' refusal to vacate the land, so that the appeal from their being declared in contempt necessarily involved or carried with it the appeal from the order to compel them to vacate. Otherwise, their appeal from the contempt would be entirely nugatory, for even if they should be absolved therefrom by the higher court, they would have been ejected just the same, as if contempt had really been committed. Furthermore, the two portions of the questioned order (fine and eviction) are related to each other, the first being coercive upon the privies to obey the second portion and, therefore, the order should not be separated into portions. The order was issued upon a motion for contempt, not upon a motion for execution, and if the order not only held the privies in contempt but also ordered them to vacate and their houses removed, it was to make effective and give substance to the finding for contempt.

Finally, to split the order into criminal and civil portions will open the door to multiplicity of appeals from a single order: one, in accordance with criminal procedure (requiring notice of appeal only); and the other, in accordance with civil procedure (requiring notice of appeal, record on appeal and appeal bond). Such a situation is not warranted by public policy.

In view of the preceding considerations it becomes unnecessary to pass upon the finding of the Court of Appeals that the writ of execution was issued beyond five years from the finality of the decision of the original case. In truth, this finding presupposes that the appellants, respondents herein, were actually not privies of the original defendants in the decided case. Otherwise, the first writ of execution carried out against the latter would be effective also against these respondents.

The appeal should be limited to those who were not parties defendants in the original case, as the latter are concluded by the judgment therein rendered.

It does not necessarily follow, however, that the perfection of respondents' appeal from the order of contempt will prevent or bar the execution of the order of eviction appealed from, if the respondents herein did not seasonably file the bond required by section 10 of Revised Rule 71, which provides as follows:

"SEC. 10. Review of judgment or order by Court of Appeals or Supreme Court; bond for stay. --The judgment or order of a Court of First Instance made in a case of contempt punished after written charge and hearing may be reviewed by the Court of Appeals or the Supreme Court, but execution of the judgment or order shall not be suspended until a bond is filed by the person in contempt, in an amount fixed by the Court of First Instance, conditioned that if the appeal be decided against him he will abide by and perform the judgment or order. The appeal may be taken as in criminal cases."

As the record before Us is not explicit on the point, this aspect of the case is better left for determination by the Court of First Instance.

WHEREFORE, the writ of certiorari prayed for is hereby denied, and decision of the Court of Appeals is affirmed, without the prejudice to petitioners' seeking execution of the order of eviction and demolition pending appeal if the circumstances so warrant.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, and Teehankee, JJ., concur.
Barredo and Villamor, JJ., did not take part.

[1] Heirs of B. A. Crumb v. Rodriguez, et al., 105 Phil. 391, 399.

[2] Supreme Court Docket Book.

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