

BUENAVENTURA GUTIERREZ, JOSE GUTIERREZ, BENITO GUTIERREZ AND GRACIANO GUTIERREZ, PETITIONERS, VS. HON. ROMEO D. MAGAT, JUDGE OF THE COURT OF FIRST INSTANCE OF PANGASINAN, BRANCH...

G.R. No. L-39739. October 03, 1975

Ponente: AQUINO, J.

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AQUINO, J.:

The petitioners filed this special civil action of certiorari and prohibition in order to annul the order of respondent Judge dated October 4, 1974, declaring as final and executory his decision in Civil Case No. 14995 of the Court of First Instance of Pangasinan entitled "Ramon D. Abad et al. vs. Buenaventura Gutierrez et al.", an ejectment case originating from the municipal court of Mangatarem, Pangasinan (Civil Case No. 20).[*]

In that order respondent Judge refused to give due course to petitioners' appeal because in his opinion his decision was not appealable under section 45 of the Judiciary Law as amended by Republic Act No. 6031.

A copy of that order was served on the petitioners on October 9, 1974. On October 10, 1974 their counsel mailed to this Court a "petition for extension of time to file appeal by certiorari and mandamus". Counsel asked for thirty days from October 12, 1974 within which to file the petition.

This Court in its resolution of October 30, 1974 (served on petitioners' counsel on November 11, 1974) granted the motion but "conditioned upon the timeliness of the filing" of the motion for extension and the payment of the docket and legal research fees (UDK 1816). According to the motion for extension, the last day of the thirty-day period of extension would be November 11, 1974. The docket and legal research fees for the motion for extension were remitted on November 20, 1974. The lower court's judgment was executed on December 21, 1974 (Annex 4 of Comment). The petition herein was mailed on January 2, 1975.

It is evident that whether the thirty-day period fixed in Republic Act No. 5440 should be counted from October 12 or from November 11, 1974, the mailing of the petition on January 2, 1975 was beyond the reglementary period. Hence, the petition should be dismissed for having been filed out of time. This Court's resolution of May 28, 1975 giving due course to the petition should be, as it is hereby, set aside.

Even if the tardy petition is regarded as a certiorari and prohibition case under Rule 65 of the Rules of Court (not has a petition for review under Republic Act No. 5440), the same cannot prosper. The petitioners assailed the lower court's order (of which they did not bother to submit a certified copy) rejecting their appeal by record on appeal from its decision. They contended that it was issued with grave abuse of discretion amounting to lack of jurisdiction. They prayed that the lower court be ordered to elevate their record on appeal to this Court.

Petitioners' contention is untenable. The lower court acted correctly in not allowing the petitioners to appeal by record on appeal from its decision in the ejectment suit originating from the municipal court. Hence, said order was not reviewable by means of certiorari and prohibition.

Section 45 of the Judiciary Law as amended by Republic Act No. 6031 does not allow an appeal by record on appeal from the decision of the Court of First Instance in an appealed case falling within the exclusive original jurisdiction of the municipal or city court. (Quaere as to the propriety of the resolution of the Court of Appeals dated August 12, 1971, 67 O.G. 6715 regarding the review of decisions of the Court of First Instance in cases falling under the original exclusive jurisdiction of the municipal and city courts).

We allowed the petitioners to file a petition for review under Republic Act No. 5440 but they did not file their petition within the thirty-day period which was requested in their motion and which was granted to them.

Petitioners' contention in their petition that the lower court's decision was contrary to law because it assumed that in an ejectment case only the issue of de facto possession is involved is not well-taken. That assumption is correct. "The only issue in forcible entry and detainer cases is the physical possession of real property — possession de facto and not possession de jure" (3 Moran's Comments on the Rule of Court, 1970 Ed., pp. 303-304).

Their other contention that the issues as to the area occupied by the defendants in the ejectment suit and as to the amount of damages are legal questions is manifestly wrong.

The petition was not only filed out of time but it appears to be not sufficient in form and substance. (Petitioner Benito Gutierrez was not a party at all in the lower court and in the municipal court).

WHEREFORE, the petition is dismissed with costs against the petitioners. So ordered.

Fernando, (Chairman), Barredo, Antonio, and Martin[**], JJ., concur.

Concepcion, Jr., J., on leave.

[**] Designated to sit in the Second Division.

[*] The antecedents of this incident are as follows:

Respondents Abad, together with Feliciano Velasquez and two others, Mariano T. Abad and Norma Abad (not impleaded herein) filed a forcible entry case in the municipal court of Mangatarem, Pangasinan against Buenaventura, Gutierrez, Jose Gutierrez, Graciano Gutierrez, Emiliano Sadsad, Juan Carbonel, Anacleto Brazal and Andres Balaoing (herein petitioner Benito Gutierrez was not a defendant in the said case). The subject matter of the action was a portion, with an area of thirty-seven hectares, of a big tract of land utilized as riceland and fishponds.

Eight judges heard the case. The eight judge, who assumed office in 1972, in a twelve-page decision dated February 10, 1973, dismissed the ejectment action on the ground that the defendants (now petitioners) Gutierrez had always been in possession of the disputed land and did not commit any acts of forcible entry therein (Civil Case No. 20).

Plaintiffs (now respondents) Abad appealed to the Court of First Instance of Pangasinan. That Court, after a trial de novo, rendered a decision dated August 26, 1974, reversing the municipal court's decision and holding that plaintiffs Abad were the lawful possessors of the land and ordering defendants Buenaventura, Jose and Graciano, all surnamed Gutierrez, to vacate the land and pay damages to the plaintiffs.

The lower court found that respondents Abad were the prior possessors of the land and that petitioners Gutierrez had forcibly occupied it in December, 1953 (Civil Case No. 14995). (Note that the same court had ordered the registration of the land in the names of respondents Abad over the opposition of petitioners Gutierrez. The decision in the land registration case was appealed to the Court of Appeals.)

A copy of the lower court's decision was served on petitioners' counsel on August 31, 1974. They filed a notice

of appeal on September 19, 1974 and an appeal bond and record on appeal on September 28, 1974. The lower court set the record on appeal for hearing on October 4, 1974. On that date the petitioners' counsel did not appear.

As stated in the body of the opinion, the lower court in its order of October 4, 1974 declared its decision final and executory. Its opinion was that under Republic Act No. 6031 its decision was not appealable by record on appeal.

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