

TOMAS MEDRAN, PETITIONER, VS. COURT OF APPEALS, VALENTINA ZAMORA, AND BONIFACIO DIONES, RESPONDENTS.*G.R. No. L-1350. March 26, 1949*

Ponente: BENGZON, J.

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This is a petition for certiorari and prohibition to stop the Court of Appeals from entertaining and deciding the appeal thereto by the other respondents involving the, decision of the Mindoro court of first instance in two civil cases which, the petitioner avers, has become final and unappealable.

It appears that on November 29, 1945, the Court of First Instance of Mindoro rendered in civil cases Nos. 881 and 883 a judgment awarding the ownership and possession of, a piece of land to herein petitioner Tomas Medran as against the adverse claim of Bonifacio Diones, who was consequently ordered to vacate and pay damages. (Valentina Zamora, was pro-forma defendant). On January 10, 1946, the defendants Diones and Zamora (herein called respondents for convenience) were duly notified of that judgment and on January 11, 1946, they filed their notice of appeal, presenting subsequently on January 30, 1946, the corresponding record. On February 18, 1946, petitioner moved for dismissal of the appeal, for the reason that no bond had theretofore been submitted. Acting on the motion, on February 19, 1946, the trial court (Judge Iñigo Daza) ordered the dismissal of the appeal as prayed for, and also the execution of its judgment of November 29, 1945.

On March 18, 1946, respondents presented an appeal bond together with a motion for reconsideration of the order of dismissal, asserting that the delay was due to the absence of Diones from his home-town, the sickness of his wife and the minority of his daughters who could not therefore attend to the submission of the required bond. The motion was opposed, and Judge Alejandro Panlilio denied it on May 10, 1946.

On May 25, 1946, respondents filed a second motion for reconsideration based substantially on the same grounds alleged in the first motion. Again the petitioner objected, and the court (Judge Mariano C. Melendres) sustained his objection and denied such second motion on June 18, 1946. Of this denial the respondents were notified on June 27, 1946, as shown by the original expediente and by the admission at the oral argument of counsel for respondents. On July 29, 1946, respondents again filed a third motion for reconsideration before Judge Meynardo Farol, based upon the same grounds previously set out in the first and second motions for reconsideration. Judge Farol in an order of August 7, 1946, reinstated the appeal, holding that respondents' failure to file the bond was due to excusable neglect.

Petitioner lost no time, and filed with the appellate court a motion to dismiss the appeal, reiterating his view that the decision of the Court of First Instance of Mindoro had already become final and executory through the tardiness of the attempted appeal, and that Judge Farol's order giving it due course was palpably issued in excess of jurisdiction. This motion was considered and decided by the Court of Appeals (Third Division), in its resolution of February 14, 1947, saying in part:

"It appearing, upon due consideration of both petitions, that although plaintiffs-appellants failed to deposit the

appeal bond within the period provided in Section 3, Rule 41, and that where an appeal bond is filed but not within the period of time therein provided the appeal shall be dismissed (Sec. 13, Rule 41), considering, however, that plaintiffs-appellants' delay in depositing the appeal bond has caused no damage to appellees and that appellants' failure to timely deposit such appeal bond was due to excusable negligence for which they filed; the corresponding petition in the Court of First Instance of Mindoro praying that the order of said court dismissing the appeal and prdering the execution of the decision appealed from be set aside (section 2, Rule 38); and considering further that at the hearing of appellants' last petition for reconsideration it was shown to the satisfaction of the lower court that this was a case coming within the provisions of Section 2 of Rule 38, this COURT RESOLVED to uphold the order of the lower court of August 7, 1946 and to deny appellants' petition for dismissal of the appeal."

It is from this order that petitioner seeks a remedy. We think he is entitled to it under the circumstances.

The order of the Court of First Instance of February 19, 1946, dismissing the appeal was undoubtedly valid, because the defeated parties had failed to submit an appeal bond in due time.[1] The would-be appellants could obtain a revocation of that order, upon a motion for relief from accident, mistake or excusable negligence, pursuant to Rule 38. However, if their petition for relief is denied, they should appeal.[2] They should not submit motions for reconsideration to one judge after another, hoping to obtain from the former what was refused by the latter.

The first motion for reconsideration of the order of dismissal of the appeal, which is practically a motion for relief under Rule 38, was denied for lack of merit by Judge Alejandro Panlilio on May 10, 1946. On May 25, 1946, a "second motion for reconsideration" was filed, based on the same grounds as the first. This was overruled on June 18, 1946, by Judge Mariano Melendres. Of this denial respondents Zamora and Diones were notified on June 27, 1946. On July 18, 1946, a "third motion for reconsideration" was presented for the same reasons explained in the first and second. Upon this third motion, Judge Meynardo Farol, saw differently from his colleagues, revoked the order of dismissal, and gave due course to the appeal of Zamora and Diones.

We have heretofore said[3] that in the interests of justice, litigants should not be allowed to iterate identical motions, speculating on the possible change of opinion of the court or of the judges thereof. The stability of court directives and the appearance of complete judicial detachment, is incompatible with repeated motions to reconsider, specially if submitted months apart.

The respondents should have appealed within thirty days from notice of the order of May 10, 1946, denying relief.[4] As respondents failed to do so, the order became final, and there was no remedy available to obtain a revision of the main decision; in other words, the dismissal of the appeal became unassailable and the main decision executory.

It might be suggested that the second motion for reconsideration and the third motion for reconsideration suspended the thirty-day period Within which to appeal the order denying relief. Supposing that the second suspended it, the third did not suspend, because it was based on identical ground as the second, and this Court has held that a second motion for new trial based on the same grounds as the first does not suspend the period for perfecting the appeal,[5] because "the court's time is valuable" and "to file two separate motions on the same grounds and for the same purpose is to trifle with the courts." [6]

In a spirit of liberality we have explored the possibility to consider the third motion for reconsideration as an independent petition for relief on account of mistake or accident. But we found it would be too late, because it was submitted more than sixty days after the respondents Zamora and Diones had been informed of the order dismissing the appeal. (See Rule 38, section 3.) On March 4, 1946, counsel for respondents Zamora and Diones received copy of the order of dismissal; and from this date to, July 29 a period of more than sixty days had

elapsed.

The arguments have been advanced that, (a) We may not disturb the factual findings of the Court of Appeals; (b) said court had "jurisdiction" to decide whether it had jurisdiction or not; and (c) any error in the exercise of such jurisdiction may be corrected only on appeal—and not by a special civil action like this.

The first proposition may not be legally sustained. This is not an appeal from the Court of Appeals by certiorari, in which Rule 46, sec. 2, and the decisions of this Court^[7] regard its factual findings as conclusive. The instant litigation is a special civil action under Rule 67 wherein the theory of conclusiveness does not apply; and the facts herein stated appear from the pleadings, the record and the admissions of the parties.

It is of course correct to say that because "the motion to dismiss the appeal on the ground of lack of jurisdiction" was addressed to the Court of Appeals, that court necessarily had "jurisdiction" to decide the motion. However, that point would be decisive if the issue were merely the power of the Court of Appeals to promulgate its order allowing the case "to follow its course", and the requested remedy was merely the annulment of that order on the ground that that Court had no power to issue it. Here the petitioner wants to enjoin the Court of Appeals from entertaining the appeal, from giving it due course—for lack of, jurisdiction over the case. In keeping with our previous rulings under the circumstances, the Court of Appeals only had jurisdiction to dismiss the appeal, in the same manner that we have jurisdiction to dismiss a case which is not properly cognizable here. If, as found, the appeal was untimely and the decision of the Mindoro court had become final, the Court of Appeals ipso facto had no jurisdiction, except to dismiss the appeal.^[8] The resolution of the Court of Appeals upholding its own jurisdiction did not operate to give it jurisdiction, any more than a court's decision holding it has jurisdiction over political controversies would give it jurisdiction. Neither can a court's resolution upholding its own jurisdiction operate to preclude investigation by a higher court of that jurisdiction, by certiorari or prohibition.

We have heretofore, in special proceedings (prohibition and mandamus) impeded lower courts from entertaining tardy appeals.^[9] The Court of Appeals, specifically, was, by prohibition, restrained from acting on a case even after it had decided it had jurisdiction over it.^[10] It was also restrained from taking cognizance of an appeal in a civil case in which the appeal bond had not been filed in time.^[11] No reason why we should act differently now.

Wherefore, the writ will be issued, the order of the Court of Appeals of February 14, 1947, is set aside, and one will be entered returning the record to the Mindoro court for execution of its judgment of November 29, 1945. So ordered.

Moran, C.J., Paras, Feria, Pablo, Briones, Tuason, Montemayor, and Reyes, JJ., concur.

[1] *Alvero vs. De la Rosa*, 76 Phil., 428.

[2] *Manila Railroad vs. Arzadon*, 20 Phil., 452; *Philippine Manufacturing Co. vs. Imperial*, 47 Phil., 810; *Government or the Philippine Islands vs. Cabangis*, 49 Phil., 107.

[3] *China Insurance vs. Judge of First Instance of Manila*, G. R. No. 45128.

[4] *Manila Railroad Co. vs. Arzadon*, *supra*; *Philippine Manufacturing Co. vs. Imperial*, *supra*, etc.

[5] *Levett vs. Syquia*, 61 Phil., 847; *Aquino vs. Tongco*, 61 Phil., 840.

[6] Moran, *Comments on the Rules of Court*, 2d., Vol. I, p. 628, citing *Sawit vs. Rodas*, 73 Phil., 310.

[7] Moran, *Rules of Court*, 2d. Ed., Vol. I, p. 770.

[8] Layda vs. Legazpi, 39 Phil., 83; Pampolina vs. Suiza, 42 Phil., 99; Lim vs. Singian, 37 Phil., 817.

[9] Schultz vs. Concepcion, 32 Phil., 1; Lazaro vs. Endencia and Andres, 57 Phil., 553.

[10] Roldan vs. Villaroman, 69 Phil., 12.

[11] Reyes vs. Court of Appeals, 74 Phil., 235.

DISSENTING

PERFECTO, J.:

Considering all the circumstances in this case, we are constrained to disagree with the majority's position. There are no good reasons in law and in equity to disturb the action of the court of origin and to give due course to the appeal in controversy. The Court of Appeals has correctly upheld the original court. In this case, we are of opinion that there should exist stronger reasons than those alleged in the majority opinion to set aside the action of the two mentioned courts. The technicalities invoked to defeat the appeal may happen to be mere tools to leave without relief a decision which, after the appeal is given due course, might appear to have been rendered with injustice. Legal technicalities should never be resorted to to shield any injustice or to defeat justice.

We vote to deny the petition.

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