

**ASUNCION FRANCISCO AND ADRIANO VILLANUEVA, PETITIONERS,
VS. THE HON. HERMOGENES CALUAG, JUDGE OF THE COURT OF
FIRST INSTANCE OF RIZAL, QUEZON CITY BRANCH, AND EMILIANO
ADRIANO, ...***G.R. No. L-15365. December 26, 1961*

Ponente: BENGZON, C.J.

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In February 1957, Emiliano Adriano filed a suit against herein petitioners (who are husband and wife) and one Eusebio Francisco, to recover his share of the commission on the sale of a piece of real property, and for moral and exemplary damages, as well as attorney's fees and costs. The action was filed with the Court of First Instance of Rizal. The spouses answered the complaint denying its allegations and setting up other defenses; but at the hearing neither they nor their counsel appeared. Upon petition, respondent court issued an order commissioning its Clerk of Court to receive plaintiff's evidence and that of the defendant Eusebio Francisco. On June 24, 1958, or four (4) days thereafter, the spouses filed a motion for the reconsideration of the order authorizing presentation of evidence ex parte, and asked to be given their day in court. However, on the same day respondent judge rendered a decision based on the ex parte evidence of the plaintiff presented to the commissioner. On September 15, 1958, he denied the motion for reconsideration, copy of the denial having been received by the spouses on September 22, 1958. On October 6, 1958, a second motion for reconsideration was filed. On November 20, 1958, the motion was denied (notice of denial was received on November 25, 1958). On November 21, 1958, execution was issued in regular course, copy of which order was served on the spouses on December 11, 1958. On December 26, 1958, the spouses submitted what in effect was a third motion for reconsideration. The court denied it, saying that since the second motion for reconsideration was merely pro forma because it simply repeated the allegations in the first motion, the period within which to appeal had not been suspended, and the decision had become executory. The judge, however, stayed the execution until further orders upon presentation by counsel of his intention to file certiorari proceedings. On February 10, 1959, the spouses filed what amounted to a fourth motion for reconsideration, which was denied on March 30, 1959. Respondent Adriano contends here that respondent judge made good use of his discretion; and that, anyway, the remedy of certiorari can not be used as a substitute for appeal. The defense is meritorious. The subsequent motions for reconsideration filed by the spouses did not suspend the period within which to appeal. Certiorari is not the remedy to obtain the review of a decision which has become final.

DECISION

In February 1957, in the Rizal court of first instance, Emiliano Adriano filed a suit against the spouses Asuncion Francisco and Adriano Villanueva and one Eusebio Francisco, to recover P1,587.50 as his share in the commission on the sale of a piece of real property, and P1,000.00 for moral and exemplary damages, P500.00 for attorney's fees plus costs.

Answering the complaint, the spouses denied its allegations and set up other defenses. When the case was called for hearing on June 20, 1958, the said spouses and their counsel failed to appear, despite notice regularly served. Only the plaintiff Adriano and his lawyer and the other defendant, Eusebio Francisco and his lawyer were present. Upon petition, the respondent court issued, on the same day, an order commissioning its Clerk of Court to receive the plaintiff's evidence and that of the defendant Eusebio Francisco.

On June 24, 1958, Asuncion Francisco and Adriano Villanueva filed a motion for reconsideration of the order of June 20, 1958, authorizing presentation of evidence ex parte, and asked to be given their day in court. However, on the same day, June 24, 1958, respondent judge rendered a decision based on the ex parte evidence of the plaintiff Emiliano Adriano presented to the commissioner. And on September 15, 1958, the same judge denied the motion for reconsideration; copy of such denial having been received by the spouses on September 22, 1958. Wherefore, on October 6, 1958, a second motion for reconsideration of the order of June 20 was filed. Therein, the spouses repeated their allegations in the first motion, to wit: that the notice of hearing was duly received, but their lawyer accidentally lost his pocket calendar, wherein he had entered the date of such hearing; and that his clerk, who had been charged to notify the spouses, had unfortunately failed to contact them. Affidavits to sustain the motion were duly filed. However, on November 20, 1958, the motion was denied (notice of denial was received on November 25, 1958). And on November 21, 1958, execution was issued in regular course. Copy thereof was served on the spouses December 11, 1958.

Then on December 26, 1958 (sale at public auction set for December 27, 1958) the spouses submitted an "Urgent Motion to Set Aside Judgment and for Stay of Execution" which was in effect, a third motion for reconsideration. Naturally, the court denied it, saying that inasmuch as the second motion for reconsideration was merely pro forma because it repeated the allegations in the first motion - loss of pocket calendar, etc. - the period within which to appeal had not been suspended, and the decision had become executory. Several days later, however, upon representation by counsel of his intention to file certiorari proceedings, the judge, on January 10, 1959, stayed the execution until further orders.[1] In the meantime, on February 10, 1959, the spouses filed a "motion for reconsideration" which amounted practically to a fourth motion for reconsideration, pleading for a chance to be heard, and invoking the right of every litigant to be afforded his day in court. Again the court declined to reconsider, noting that the decision had become final. Such denial was contained in its order of March 30, 1959.

So, on May 6, 1959, this petition for certiorari was submitted here.

Answering the petition, respondent Adriano contends that the respondent judge made good use of his discretion; and that anyway, the remedy of certiorari can not be used as a substitute for appeal. He calls attention to the fact that the decision dated June 24, 1958, was notified to petitioners on June 27, 1958, and that this petition was filed only in May 1959, almost a year thereafter.

The respondent's defense is meritorious. The subsequent motions for reconsideration filed by the spouses did not suspend the period within which to appeal. And we have held in various decisions that certiorari is not the remedy to obtain the review of a decision which has already become final.

Petition dismissed, with costs. So ordered.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, Barrera, Paredes, Dizon, and De Leon, JJ., concur.

[1] It was only on May 6 - about four months-that this proceeding was instituted here.

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