

**SY IT, PETITIONER AND APPELLANT, VS. ARSENIO TIANGCO, ET AL.,
RESPONDENTS AND APPELLEES.***G. R. No. L-18376. February 27, 1962*

Ponente: BAUTISTA ANGELO, J.

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On March 27, 1958, Arsenio Tiangco and Bela Singh Pabla filed a complaint against Ang Yee King before the Municipal Court of the City of Manila seeking to eject the latter from the property he is occupying on the ground that the monthly contract of lease entered into between them has already terminated. On the same date, the same plaintiffs filed a similar action before the same court against Sy It based on the same cause of action. Apparently, the two cases were joined, and instead of filing their answer, the two defendants filed a motion to dismiss based on two grounds (1) that the causes of actions on which the complaints are based are barred by a prior judgment, and (2) the complaints state no cause of action. The plaintiffs opposed the motion to dismiss, and after defendants filed their rejoinder, the court entered an order on July 11, 1958 denying the motion and setting the case for hearing on August 12, 1958.

Without filing any motion for reconsideration, the defendants in the two cases filed a single petition for certiorari thru their respective counsel Enrico I. de la Cruz and Jordan Techico before the Court of First Instance of Manila making plaintiffs respondents therein. In due time, these respondents answered the petition, and believing that the petition can be decided on the pleadings, or without the need of presenting evidence, respondents filed a petition for summary judgment. No opposition having been interposed thereto, the court on February 11, 1959 rendered decision dismissing the petition and dissolving the writ, of injunction issued against respondents.

Copy of the decision was served upon counsel Enrico I. de la Cruz on February 17, 1959, and on March 12, 1959, or after the lapse of 23 days from receipt of the decision, petitioners filed a motion for reconsideration. This motion was denied on April 24, 1959. Copy of this order was received by counsel Enrico I. de la Cruz on April 30, 1959 and another copy was received by counsel Jordan Techico on May 5, 1959. Counsel for petitioners in the two cases filed a motion for reconsideration of said order of April 24, 1959, to wit: Atty. Enrico I. de la Cruz on July 29, 1959, that is after the lapse of 90 days from the date he received copy of said order, and Atty. Jordan Techico after the lapse of 84 days from the day he received copy of the same order, and notwithstanding the objection set up by respondents to the effect that the decision of the court rendered on February 11, 1959, as well as its order of April 24, 1959, have already become final and executory, the court issued an order on August 1, 1959 setting aside the order of April 24, 1959 which denies petitioners' motion for reconsideration. Respondents filed a motion for reconsideration of the order of August 1, 1959 in the sense that the decision of February 11, 1959 as well as the order of April 24, 1959 be declared final and executory at least insofar as petitioner Ang Yee King is concerned. And the court on October 5, 1959 reconsidered its order and declared said decision and order final and executory insofar as Ang Yee is concerned. But with regard to petitioner Sy It the court held that the decision of February 11, 1959 is not yet final and executory insofar as he is concerned and decreed that copy of said decision be served upon his counsel Jordan Techico for the reason that there is no proof that he had been

served with a copy thereof. Respondents moved to reconsider this order alleging lack of jurisdiction to issue it on the part of the trial court, but the same was denied.

In the meantime, counsel for petitioner Sy It filed a motion for reconsideration of the decision of the trial court dated February 11, 1959, which was denied on March 25, 1961. On April 27, 1961, petitioner Sy It filed his notice of appeal and appeal bond and the case is now before us on purely questions of law.

This appeal must be dismissed on the simple ground that when the same was perfected the decision on the merits rendered by the trial court on February 11, 1959 has already become final and executory and, therefore, it was beyond the jurisdiction of said court to give course to the appeal.

It appears that when said decision was rendered on February 11, 1959, copy thereof was furnished to Atty. Enrico I. de la Cruz who was one of the attorneys who filed the joint petition for certiorari before the trial court, and the motion for reconsideration of the decision was only filed by petitioners on March 12, 1959, or after the lapse of 23 days from the date said decision was received by their counsel. It is true that copy of the decision was served only upon Atty. Enrico I. de la Cruz, while in the municipal court the counsel who appeared for appellant Sy It was Atty. Jordan Techico. We believe, however, that this circumstance is of no moment considering that the petition for certiorari was jointly filed by both petitioners who were represented jointly by their counsel De la Cruz and Techico. In other words, it may be said that in filing said joint petition petitioners were represented by both counsel so that service upon one may be deemed to be service upon the other.

Moreover, when the motion for reconsideration was filed by petitioners on March 12, 1959, the motion was filed by Atty. Enrico I. de la Cruz who acted not only in his own behalf but in behalf of his co-counsel Jordan Techico. Thus, at the end of said motion the following representation appears:

"Jordan Techico

201-202 Ban Chuan Bldg.

In collaboration with:

Enrico I. de la Cruz

604 Trade & Commerce Bldg.

Juan Luna, Manila

(Sgd.)

By: Enrico I. de la Cruz

Attorneys for Petitioners"

And to dispel any doubt as regards the fact that Atty. Techico authorized his co-counsel De la Cruz to act in his behalf in connection with the petition for certiorari, we wish to quote hereunder the statements made by the attorneys of both parties during the hearing on the motion for reconsideration:

"Atty. Alvarez:

Before we proceed, may I be enlightened as to show whose motion for reconsideration this is: whether it is for Sy It or Ang Yee King's motion for reconsideration, because I noted that Atty. Techico who is here has not signed the motion.

Atty. Techico:

I have not signed it because when we submitted this motion it was with the understanding that it was joint, as a matter of fact, the two petitioners are embodied in one motion. Atty. de la Cruz is representing Ang Yee King while I am representing Sy It, and this motion for reconsideration is signed by Atty. de la Cruz.

Atty. Alvarez:

So it is clear and we can make it appear of record that both attorneys represent jointly Ang Yee King and Sy It?

Atty. Techico:

Practically.

Atty. Alvarez:

I would like to have a definite answer, not practically.

Atty. Techico:

Yes."

Since the instant case is one that involves a petition for certiorari on the ground that the court of origin has acted with grave abuse of discretion where our rule requires that the appeal be perfected within 15 days from notice of the decision and here the motion for reconsideration was filed 23 days from receipt of notice, it is clear that the decision of the trial court has already become final and executory when said motion for reconsideration was filed (Section 17, Rule 41, Rules of Court).

Another factor that makes this appeal untenable is the fact that when said motion for reconsideration was acted upon by the trial court and, notwithstanding that it was filed beyond the reglementary period it was simply denied and not declared out of time, the court made the following comment:

"* * * The motion for reconsideration filed in this case by respondents shows that Atty. Enrico I. de la Cruz signed in his own behalf and that of Atty. Jordan Techico and was intended to be a motion for reconsideration on behalf of both petitioners. It is undeniable therefore that the service of the decision upon Atty. Enrico I. de la Cruz on February 17, 1959 was a service upon the petitioners."

Copy of the above order was received by counsel for appellant on May 5, 1959 and he filed the motion for reconsideration only on July 29, 1959, or after the lapse of 84 days from receipt of said order. Said order, therefore, already become final and executory and as such, binding upon appellant.

Finally, it should not be overlooked that when the Municipal Court of the City of Manila denied the motion to dismiss the original case on the ground that the same was without merit, appellant did not file a motion for reconsideration, but immediately filed a petition for certiorari, jointly with his co-defendant Ang Yee King. This flaw cannot lightly be brushed aside, for it goes against the established rule that before an aggrieved party can file a petition for certiorari he must first give the trial court an opportunity to correct the error it may have committed thru a motion for reconsideration.[1] This ground alone is enough basis for the dismissal of the present appeal.

Wherefore, the instant appeal is dismissed, with costs against appellant.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

[1] Herrera vs. Barreto & Joaquin, 25 Phil., 245; Uy Chu vs. Imperial & Uy Du, 44 Phil., 27; Amante vs. Sison, 60 Phil., 949, 951-953; Bongon Vda. de Manzanares vs. Court of First Instance of Batangas, 61 Phil., 850; Manila Post Publishing Co. vs. Judge Sanchez, 81 Phil., 614; 46 Off. Gaz., Supp, 1, 412; Alvarez vs. Ibañez, 83 Phil., 104; Nicolas vs. Castillo, 97 Phil., 336; Collector of Internal Revenue vs. Reyes, 100 Phil., 822; Rieafort vs. Judge Fernan 101 Phil., 54 Off. Gaz., 2534; People vs. Palacio, et al., 108 Phil., 220; 575;

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