ISABEL, DEOGEACIAS, GELACIO, PEDRO, AND BASILIO, ALL SURNAMED ABESAMES, PLAINTIFFS AND APPELLEES, VS. ADRIANO GARCIA, DEFENDANT AND APPELLANT.

G.R. No. L-8020. April 11, 1956

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an action of forcible entry originally instituted in the Justice of the Peace Court of Papaya, Nueva Ecija. The action was filed on January 20, 1951 and after trial the Justice of the Peace Court rendered judgment, dated April 4, 1961, ordering defendant to vacate the land subject of the action, except a portion thereof occupied by him and covered by a tax declaration. Execution was stayed upon defendant filing a supersedeas bond. Defendant appealed to the Court of First Instance. On June 7, 1951, the clerk of court notified the parties that the record of the case had been received by him. Counsel for defendant received copy of the notice on June 7, 1951.

Both parties, as well as the court, took no action in the case until a year later, on June 11, 1952, when plain¬tiffs' counsel moved that the defendant be declared in default for having failed to present an answer. On that same day the court granted the motion and declared the defendant in default and authorized the acting clerk of court to receive the evidence of the plaintiffs. On June 18, 1952, plaintiffs presented their evidence as ordered. The order declaring the defendant in default was received by the latter on June 17, 1952 and on June 27, he filed a motion praying that he be relieved from the effects of said order, alleging that he had overlooked filing his answer because he had lost copy of the notice he had received and that he had a meritorious case supported by documentary evidence. The court denied this motion of defendant in an order dated July 1, 1952. On July 8, 1952, defendant filed in court a notice of appeal against the order of the court denying1 his motion for relief from the order of default. It is this appeal that is now pending in this court for determination.

Both parties filed briefs discussing the propriety or impropriety of the order denying defendant's petition for relief. It is to be noted that the order appealed from is one dated July 1, 1952 and its dispositive part is as follows:

> "Finding the defendant's petition of June 27, 1952 to be wholly unmeritorious, the same is, therefore, denied and the case submitted for decision on the evidence already presented by the plaintiffs."

There is as yet no judgment on the merits of the case, as it is declared submitted only for decision on the evidence presented by the plaintiffs. The appeal is evidently premature as there is as yet no final judgment rendered for one party or the other in accordance with section 2 of Rule 41.

The important question now before us, however, is whether the merits of the appeal can be considered notwithstanding the provisions of section 2 of Rule 41 to the effect that an interlocutory order does not stay the progress of the action, in view of the absence of any objection on the part of the adverse party against the prosecution of the appeal.

The right to appeal is a statutory right (Layda vs. Legaspi, 39 Phil., 83) and may be availed of only in the cases

mentioned by the law and under the circumstances specified therein. The Rules have furthermore outlined the procedure by which the right may be availed of, so section 2 of Rule 41 has provided that interlocutory orders, like the,subject of the present appeal, do not stay the proceedings until after final judgment has been entered in the case. The Rules have also provided the steps to be taken in order to perfect an appeal (section 2, Rule 41), and we have time and again declared that unless the appeal has been perfected in the manner outlined in the Rules, the appellate court lacks power or jurisdiction to consider the appeal.

The regulation of the right to appeal is founded on rules of policy and convenience. Section 2 of Rule 41 has been adopted to avoid delays in litigation. Under the Spanish procedural laws in force in the Philippines prior to the enactment of the Code of Civil Procedure (Act No. 190), any order or decision of the court could always be subject to appeal, so there could be as many appeals as there were orders of a trial court which the aggrieved, party wanted to question before the higher tribunal. The result was unreasonable delay in judicial proceedings. It was partly to do away with this cumbersome practice of multiple appeals that the rule was adopted to allow only one appeal, in which all orders or judgments entered by a trial court could be brought to issue and reviewed in the appellate court. It will be seen that this rule has been adopted in the interest of speedy trials and proceedings and not for the convenience of parties alone. The State at whose expense trials and proceedings are held before the courts of justice has a direct interest in the maintenance of the rule. As the rule is not for the exclusive convenience of the parties alone, their failure to invoke its enforcement is no ground or reason for not applying it. The rule is not privilege which the parties may or may not claim as their interest demands, but a part of a system aimed at the speedy administration of justice in which the State is interested. We, therefore, hold that the failure of the adverse party to object to the appeal for the reason that the order is merely interlocutory is no reason why the appeal, which is premature in this case, should be allowed.

The appeal is hereby dismissed, without costs. So ordered.

Paras, C. J., Bengzon, Padilla, Reyes, A., Jugo, Bautista Angelo, Concepcion, Reyes, J. B. L., and Endencia, JJ,, concur.

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