

APOLINARIO DACANAY, ET AL., PETITIONERS, VS. HON. JAVIER PABALAN, ETC. ET. AL., RESPONDENTS*G. R. No. L-18263. April 23, 1963*

Ponente: CONCEPCION, J.

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This is an original action for "certiorari and/or prohibition with preliminary injunction," to restrain—first preliminarily; and, thereafter, perpetually—respondent, Hon. Javier Pabalan, as Judge of the Court of First Instance of Pangasinan, from further proceedings in Civil case No. 708 of said Court and to declare that the decision of the Justice of the Peace Court of Umingan, Pangasinan, dated December 6, 1960, in Civil Case No. 278 of said Court, entitled "Apolinario Dacanay and Pacencia Lopez vs. Alfredo Flora, Ernesto Flora, Fausto Flora and Eduardo Ancheta," is already final and executory.

It appears that on March 3, 1960, petitioners Apolinario Dacanay and Paciencia Lopez, who are husband and wife, instituted said Civil Case No. 278 of the Justice, of the Peace Court of Umingan, Pangasinan, for forcible entry and detainer, against the main respondents herein, Alfredo Flora, Ernesto Flora, Fausto Flora and Eduardo Ancheta. On March 14, 1960, those respondents herein filed their answer as defendants in laid case. On May 9, 1960, petitioners amended their complaint therein. When said case, was called for trial on the merits, on October 15, 1960, petitioners presented their evidence. Thereupon respondents' counsel moved orally to dismiss the case, upon the ground that petitioners had failed to establish their cause of action, Said motion for dismissal was formally filed on October 17, 1960. On motion of petitioners herein, dated November 9, 1960, and after due hearing, said court denied the motion for dismissal and declared the case submitted for decision. On December 6, 1960, the court rendered a decision sentencing the respondents to vacate the property in question and to pay to petitioners P150.00 a month, from February to April, 1960, inclusive, and P120.00 a month thereafter, until the property is finally restored to petitioners, with costs against said respondents.

Copy of this decision having been served upon the latter on December 9, 1960, they filed a motion for reconsideration the next day. This motion was denied on December 24, 1960. On the same date, petitioners moved for the execution of said decision, upon the ground that the same was already final and executory, because respondents' aforementioned motion for reconsideration was allegedly pro forma, and, as such, did not stay the running of the period to interpose an appeal, which, in the meanwhile, had elapsed. On December 27, 1960, said motion of petitioners herein was granted and the corresponding writ of execution issued. It would seem that on December 29, 1960 petitioners were placed in possession of the property in dispute, although there is an allegation to the effect that, subsequently respondent's herein recovered said possession.

Meanwhile, or on January 3, 1961, respondents had filed with the Court of First Instance of Pangasinan a petition "for certiorari/mandamus with preliminary injunction," docketed as Civil Case No. T-708 of said Court, which was assigned to its Tayug Branch, presided over by respondent Judge, Hon. Javier Pabalan. The defendants in that case were the Justice of the Peace of Umingan, the Deputy Sheriff, who executed the aforementioned writ of execution, a PC Corporal, who allegedly assisted said deputy sheriff in the enforcement of said writ of execution,

and petitioners herein. After setting forth, substantially, the facts abovementioned, respondents alleged in their abovementioned petition that the aforesaid decision, orders or processes issued by the Justice of the Peace of Umingan in said civil case No. 278 were illegally rendered or issued "with grave abuse of his power, in excess or without jurisdiction to do so," and that respondents herein, as petitioners therein, did not "have any other More adeqtsife remedy in the ordinary course of law," and prayed, inter alia, that a writ of preliminary injunction be immediately issued; that the decision, dated December 6, 1960, as well as the orders dated December 24, and 27, 1960, be declared null and void, the same having been "issued" with grave abuse of discretion, in excess of or without jurisdiction and being unjust, in violation of the Rules of Court and the law, null, void, and without any effect whatsoever;" that the record of said Civil Case No. 278 be forwarded to the aforementioned court of first instance "for review on appeal," and that the defendants in said case be sentenced, to pay the costs, plus damages in the aggregate sum of P2,500.00.

On January 16, 1961, petitioners herein filed an answer with a motion to dismiss said case the propriety of the writ of certiorari prayed for by the petitioners therein and respondents herein. After hearing both parties, respondent Judge issued, on January 24, 1961, an order from which we quote:

"It is to be noted that this certiorari proceedings was filed before the judgment of the Justice of the Peace Court became final, and that among the reliefs prayed for is:

(b) Declaring that the decision dated December 6, 1960 issued by respondent JP designated in said Civil Case No. 278S the order denying the motion for reconsideration dated December 24, 1960 as well as the order therein dated December 27, 1960 declaring his illegal decision final and executory all null and void being issued with grave abuse of discretion, in excess of or without jurisdiction, and being unjust, in violation of the Rules of Court and the law, null, void* and without any effect whatsoever; and/or ordering thereafter that the expediente of the said civil case No. 278 in the interest of justice be remanded to this Court for review on appeal by the petitioners.'

Considering these circumstances, and although the Court believes that the proper remedy for petitioners should have been an ordinary appeal, and not thru certiorari proceedings; considering that petitioners had now lost their right to file an appeal, and in consonance with the avowed policy to allow review; the Court hereby allows and admits this certiorari proceedings which shall be treated, for all purposes, as an appeal against the decision rendered by the Justice of the Peace Court of Umingan, Pangasinan, in Civil Case No. 278. The Justice of the Peace of Umingan, Pangasinan, shall remand the records of Civil Case No. 278 to this Court for trial de novo and review. The parties may file any other pleading that they may, wish in order to give effect to this order." (Record, p. 19.)

On January 27, 1961, petitioners herein moved for a reconsideration of this order, which was denied on February 27, 1961. Hence, the present petition, filed on March 29, 1961, with the prayer:

- That a writ of preliminary injunction be issued ordering the Respondent Judge to desist from further proceedings in Civil Case No. 708 until further orders from this Honorable Court;
- That resolution issue finding the Motion of Reconsideration (Annex "A" pro forma and, therefore, did not suspend or interrupt the 15-day period within which to perfect an appeal, thereby making the decision of the Umingan JP Court of December 6, 1960 final and executory in view of the failure of the Respondents to appeal; and
- Ordering the respondents to permanently desist from further proceedings.

Petitioners pray that such other Orders issue as may be just and lawful in the premises." (Record, p. 6.)

Upon the filing of a P200.00 bond by petitioners herein, we issued on May 4, 1961, the writ of preliminary

injunction prayed for.

The main issue in this case is whether or not respondent Judge has exceeded his jurisdiction in ordering that the petition for certiorari and mandamus in said Civil Case No. 708 of the Court of First Instance of Pangasinan "be treated, for all purposes, as an appeal against the decision rendered by the Justice of the Peace of Umingan, Pangasinan, in Civil Case No. 278" thereof. The answer must be in the affirmative.

Regardless of whether or not said petition was filed before said decision of the justice of the peace court had become final, the petition in said case No. 708 of the court of first instance cannot be treated as an appeal. Pursuant to section 2 of Rule 40 of the Rules of Court, an appeal from a decision of a justice of the peace or municipal court

"* * * shall be perfected within fifteen days after notification to the party of the judgment complained of, (a) by filing with the justice of the peace or municipal judge a notice of appeal; (b) by delivering a certificate of the municipal treasurer showing that the appellant has deposited the appellate court docket fee, or, in' chartered cities, a certificate of the clerk of such court showing receipt of the said fee; and (c) by giving a bond."

Assuming that the petition in said civil case No. T-708 had been filed within 15 days from, notice of the decision of the justice of the peace court, which is contested by petitioner herein, and that payment of the docket fees for case No. T-708 is a substantial compliance with subdivision (b) of said section 2, still respondents herein have not complied with subdivisions (a) and (c) of said provision. Indeed, said respondents have not filed with the justice of the peace a notice of appeal. Neither have they ever given the requisite appeal bond. Hence, they have not perfected an appeal. In fact, respondent Judge stated' in his order of January 24, 1960, that the main respondents herein have "now lost their right to file an appeal."

Wherefore, the aforementioned orders of respondent Judge, dated December 24 and 27, 1960, are hereby &et aside and annulled and the decision of the justice of the peace court of Umingan in said Civil Case No. 278 is declared final and executory, with costs against respondents herein. Moreover, the writ of preliminary injunction issued by this Court on May 4, 1961, is hereby made permanent.

Bengzon, C. J., Padilla, Bautista Angelo, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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