

TAN CHING, PETITIONER AND APPELLEE, VS. THE HON. A. GERALDEZ, JUDGE OF THE MUNICIPAL COURT OF THE CITY OF MANILA, MACARIO OFILADA, SHERIFF OF MANILA AND LAO KONG HING, RESPONDEN...

G.R. No. L-17954. April 30, 1964

Ponente: PAREDES, J.

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PAREDES, J.:

On February 5, 1955, Lao Kong Hing filed an ejectment complaint against petitioner Tan Ching, docketed as Civil Case No. 35882, Municipal Court of Manila, which ordered, on March 22, 1955, said Tan Ching, to vacate the subject premises, and to pay rentals of P450.00 per month, from January, 1955, until the same is vacated. The decision became final and executory, in spite of which complainant therein Lao Kong Hing did not have it executed. Instead, defendant therein was allowed to remain in the premises, and continued paying the rentals. On the same day (March 22, 1955), Lao Kong Hing subleased the same premises to one Li Seng Lip (Exhs. K & K-1), who in turn executed another sublease contract (Exhs. J & J-1) the following day (March 23, 1955), in favor of Tan Ching. Nothing transpired between the parties, in spite of the execution of these contracts.

On December 20, 1958, however, almost four (4) years after the rendition of the ejectment judgment, appellant Lao Kong Hing presented in the same case an Ex-Parte Petition for Execution of the judgment, asking for the ejectment of Tan Ching from the premises, without making any mention whatsoever regarding the collection of accrued rentals. Two (2) days thereafter (December 22), respondent Judge Ambrosio Geraldez, issued a Writ of Execution (Exh. E), ordering the respondent Sheriff of Manila to eject appellee Tan Ching from the premises. Under date of December 26, 1958, Tan Ching presented a Motion to Quash Writ of Execution (Exh. F), wherein he alleged that the same was improvidently issued, since it was obtained without benefit of hearing and prior notice and the further fact that subsequent and contemporaneous acts of the parties, had impliedly novated the lease agreements. The denial of the Motion to Quash on January 10, 1959, prompted appellee herein to move for a reconsideration, reiterating his previous contention of novation, as far as the decision of March 22, 1955 is concerned and further arguing that the lease contract between Lao Kong Hing and the owner of the building had already expired and had not been renewed; and that appellee having entered into a contract with the owner of the building, for the lease of the same premises (Exh. L), Lao Kong Hing had no longer any right to eject petitioner-appellee. Respondent Judge Geraldez denied the motion for Reconsideration and ordered the immediate ejectment of Tan Ching from the premises.

A Special Civil Action of Certiorari with Preliminary Injunction was instituted by Tan Ching with the CFI of Manila, questioning the Orders of respondent judge (Writ of Execution [Exh. E]; Denial of Motion to Quash (Exh. G); and Denial of Motion for Reconsideration (Exh. 1), Upon appellee's posting of a P1,000.00 bond, a writ of preliminary injunction was issued; and respondents-appellants were ordered to refrain from enforcing the writ of execution issued on December 22, 1958, in Civil Case No. 35882. The CFI, on February 27, 1960, rendered judgment, the pertinent portions of which are quoted below—

"The only question presented before the Court is whether or not the judgment to vacate the premises in question rendered by the Municipal Court on March 22, 1955 could still be enforced as late as December, 1958. * *. The Court believes with the petitioner. Many things have happened between March 22, 1955 when the judgment was rendered and December 1958, when the judgment was executed.

Tan Ching had continued to stay in the premises for more than three years paying the corresponding rentals, a fact which, in the mind of the Court, is sufficient to re-establish the relationship of lessor and lessee between Tan Ching; and Lao Kong Hing, so that the former could not be ejected from the premises unless and until a new complaint should have been filed.

It has also proved to the satisfaction of the Court that the contract between Lao Kong Hing, the plaintiff in the ejectment case and one of the respondents herein on one hand, and the owner of the premises on the other, already expired sometime in October, 1958; so that in December, 1958 Lao Kong Hing already lost his standing in Court as sub-lessor, for which reason, he likewise would not have any right to ask for the execution of the judgment rendered way back in March 22, 1955.

Furthermore, it has likewise been proved to the satisfaction of the Court that an independent contract had been entered into between Tan Ching and the owner of the premises, whereby Tan Ching was recognized as a lessee of the latter, another circumstance as basis to hold that the judgment of March 22, 1955 could no longer be enforced as to him for there has occurred a change substantial enough to render that judgment unenforceable.

* * * * *

In view of the foregoing, judgment is hereby rendered in favor of the plaintiff and against the defendants whereby the writ of execution issued by the respondent Judge A. Geraldez of the Municipal Court is hereby set aside, and the writ of preliminary injunction herein before issued made permanent."

On March 28, 1960, Lao Kong Hing presented a "Motion for Reconsideration and New Trial, claiming that the decision is not supported by the evidence of record, and not in accordance with law. On May 24, 1960, the CFI of Manila denied the Motion for Reconsideration and New Trial, for lack of merit.

On June 6, 1960, respondent Lao Kong Hing filed a Notice of Appeal, attaching an Appeal Bond of P60.00. The appeal was directed against the Decision of February 11, 1960, the Order of March 16, 1960 and the Order of May 24, 1960.

Appellee objected to the approval of the Record on Appeal on two grounds: (1) a Record on Appeal is not necessary in Certiorari proceedings, since it is the original record that is transmitted to the Court; and (2) the appeal was perfected out of time (6 days late).

On June 11, 1960, respondent-appellant Lao Kong Hing, thru counsel, presented a Reply to the objection, claiming that the failure to perfect the appeal within the reglementary period, was due to excusable negligence, mistake or accident. On June 13, 1960, the CFI denied the appeal for not having been perfected within the reglementary period. On August 12, 1960, the motion for reconsideration against the order, was likewise denied.

A petition for Relief from Judgment was supposedly presented, although it does not appear in the Record on Appeal, We rather from the reply of appellee, however, that the petition was based upon fraud, accident, mistake and excusable negligence (sec. 2, Rule 38). On October 15, 1960, the CFI, denied the Petition for Relief, for lack of merit. The motion to reconsider this Order, having been denied, Lao Kong Hing appealed directly to this Court on a single issue, to wit: the propriety of the order of denial of said motion for relief.

Appellant admits that he was six (6) days late in perfecting his appeal from the judgment in the certiorari case. The petition for relief is anchored on an alleged excusable negligence, which consisted in the failure of

respondent-appellant to see his lawyer, before the expiration of the period to appeal, notwithstanding the fact, according to said lawyer, that shortly after May 25, 1960, he sent a letter to said respondent-appellant Lao Kong Hing, asking the latter to bring to his office money with which to pay the expenses incident to the appeal. Respondent Lao Kong Hing reasoning out his failure, stated that about the last week of May, 1960, his wife was confined in the San Juan de Dios Hospital on a case of laborious parturition; that inasmuch as the delivery was long overdue, she was subjected to an operation. Because of this, he (plaintiff) was preoccupied and his funds exhausted, that he failed to see his lawyer and give him the necessary amount for the appeal.

The lower court did not consider the explanation offered by respondent satisfactory, so as to bring the failure to perfect the appeal on time, within the pale of excusable negligence. There was no plausible reason why he could not have gotten in touch with counsel, or vice versa. Client and attorney fully knew each other's address. When respondent failed to come to counsel's office for the payment of the expenses, counsel could have made proper representations in the lower court and asked that an extension be given to him. While, as alleged by counsel, advancing appeal fees or any fee for that matter, to save the right of his client to appeal is, normally, not a good husbandry, all efforts should have been mustered to save such right, knowing the right predicament in which his client was found, if such did really exist. The fact, however, is that when lawyer and client had finally woken up from their lethargy, the right to perfect the appeal was already lost.

"Perfection of an appeal in the manner and within the period laid down by law is not only mandatory but jurisdictional, and failure to perfect an appeal as legally required has the effect of rendering final and executory the judgment of the court below and deprives the appellate court of jurisdiction to entertain the appeal." (Caisip, et al. vs. Cabangon, 109 Phil., 150, and cases cited therein).

* * * * *

In fine, strict, not substantial, compliance therewith is required." (Alvaro vs. De la Rosa, 76 Phil. 428)

Respondent, in trying to strengthen his position, discussed the merits of the case. This is not necessary for the proper determination of the issues raised in the present proceeding. Withal, a panoramic view of the decision of the respondent court, on the merits of the case, shows that the decision is not altogether without any legal basis.

WHEREFORE, the order appealed from is hereby affirmed. Costs taxed against respondent-appellant Lao Kong Hing, in both instances.

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

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