

MARIANO CABILAO, LEONOR CABILAO AND BERNARDINO GRAMATICA, PETITIONERS, VS. THE HON. JUDGE OF THE COURT OF FIRST INSTANCE OF ZAMBOANGA DEL SUR, CRISANTO TUBEL AND ISABEL TUBEL, R...

G.R. No. L-18454. August 29, 1966

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

This is a special civil action for certiorari, prohibition and mandamus, assailing an order of the Court of First Instance of Zamboanga del Sur granting execution pending appeal.

On November 7, 1959 Crisanto and Isabel Tubel filed in the Court of First Instance of Zamboanga del Sur a complaint denominated for "Forcible Entry and Damages with Preliminary Injunction," against Mariano Cabilao, Leonor Cabilao and Bernardino Gramatica.[1] The plaintiffs alleged that they are the absolute owners of a 24-hectare coconut land in Gapul, Alicia, Zamboanga del Sur, and had been in lawful and peaceful possession thereof since they inherited it from their parents in 1935; that on May 9, 1957 - that is, more than a year before the filing of the action - the defendants, by means of force, intimidation, strategy and stealth, unlawfully entered the above-stated property, thereby depriving them of their lawful and peaceful possession over the whole parcel of land; and that the defendants have been gathering the coconut fruits therein and still retain possession and enjoyment of said land. It was prayed that the defendants be enjoined from further possessing the land illegally and from gathering its fruits; that they be ordered to pay P100 monthly rentals, P500 actual damages and attorney's fees, P400 moral damages and P100 exemplary damages.

The defendants moved, on February 18, 1960, to dismiss the action for lack of jurisdiction over the subject matter, alleging that it was a suit for forcible entry and detainer, falling within the exclusive original jurisdiction of the Justice of the Peace (now Municipal) Court. This motion was denied by the Court of First Instance on March 1, 1960, because, it being alleged that the unlawful deprivation or withholding of possession started more than one year prior to the filing of the action, the suit falls within the Court of First Instance's jurisdiction.[2]

On March 2, 1960 the defendants filed their answer, stating that they are the true owners of the property and have been in lawful possession thereof since many years before the war and have introduced permanent improvements therein worth P13,000.

Trial followed and, thereafter, on December 21, 1960, judgment was rendered by the Court of First Instance in favor of the plaintiffs. The dispositive portion of the decision reads:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendants: (1) Ordering the defendant, Mariano Cabilao, Leonor Arellano Cabilao, Bernardino Gramatica and all others claiming under them, to vacate the land in question, described in paragraph 2 of plaintiffs' complaint and covered by Tax Declaration No. 165 (Exhibit D), and to restore the immediate possession thereof to the plaintiffs; (2) sentencing the defendants, to jointly and severally pay to the plaintiffs the sum of P30.00 a

month from May 9, 1957, until possession of the land in question is fully restored to the plaintiffs, as the reasonable compensation for the unlawful use and withholding thereof by the defendants; (3) sentencing the defendants to jointly and severally pay the plaintiffs the sum of P300.00 as attorney's fees; and to pay the cost of suit.

"It is so ordered."

(Petition, Annex A, pp. 10-11)

After receiving copy of the decision on January 6, 1961, the defendants filed on January 18, 1961 their notice of appeal, appeal bond and record on appeal. And on February 10, 1961 the Court of First Instance approved the appeal bond and the record on appeal.

Six days later, on February 16, 1961, the plaintiffs, through counsel, moved for reconsideration of the order of February 10, 1961 afore-stated, upon the ground that "the Notice of Appeal, Appeal Bond and Record on Appeal filed by the defendants in the above entitled case have not been received by the undersigned counsel in view of the fact that he just arrived yesterday from the City of Manila"; and, that he "has not gone over the Notice of Appeal, Appeal Bond and Record on Appeal and could not for the present make any valid objection" thereto.

Said motion for reconsideration was granted by the Court of First Instance by order of February 25, 1961, and the plaintiffs were given ten days from notice of the order to examine the record on appeal.

The plaintiffs, on March 6, 1961, filed a motion for immediate execution of the judgment, pending appeal. And on March 9, 1961, they filed an opposition to the record on appeal, stating that it should be amended so as to include the proceedings in Civil Case No. 455 of the same court, which was allegedly dismissed but refiled in the form of the present Civil Case No. 518.

Acting thereon, the trial court, on March 18, 1961, ordered the defendants to amend the record on appeal to include the proceedings in Civil Case No. 455. Furthermore, on April 12, 1961, said court issued an order for immediate execution of the judgment. A writ of execution was subsequently issued on May 9, 1961 and served upon the defendants. Pursuant thereto the defendants were ejected from the property by the sheriff, who turned it over to the plaintiffs, on May 13, 1961.

The petition herein was thereupon filed on May 29, 1961 by the defendants. Petitioners invoke Section 9 of Rule 41 of the old Rules of Court and contend that with the perfection of their appeal the trial court had lost jurisdiction over the case and could no longer reconsider its approval of the record on appeal, much less issue an order for execution pending appeal.

Said provision of the Rules states:[3]

"SEC. 9. When appeal deemed perfected, effect, thereof. - Upon the filing of the notice of appeal and the approval of the appeal bond and the record on appeal, the appeal is deemed perfected and the trial court loses its jurisdiction over the case, except to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, and to approve compromises offered by the parties prior to the transmittal of the record on appeal to the appellate court."

There is no question that the trial court, after perfection of the appeal but prior to the transmittal of the record on appeal to the appellate tribunal, still has power "to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal."

The question is whether (1) an order reconsidering the approval of the record on appeal with a view to its correction or completion and (2) an order of execution pending appeal, are among the above-stated orders still within the trial court's jurisdiction to issue.

This Court ruled in *Valdez v. Court of First Instance of Bulacan*, 88 Phil. 585, that the trial court cannot revoke its previous order approving the record on appeal to compel inclusion of other pleadings therein, because the inclusion of said other pleadings would necessarily concern matters discussed in the appeal. And in *Calingo v. Tan*, L-10336, May 31, 1957, some members of this Court's majority therein expressed the view that the trial judge has no authority to reconsider his order approving the record on appeal, in view of the trial court's loss of jurisdiction upon perfection of the appeal.

Subsequently, however, this Court, through Justice Arsenio Dizon, adopted a more liberal view. Thus it was ruled in *Cabungcal v. Fernandez*, L-16520, April 30, 1964, that prior to the transmittal of the record on appeal to the appellate court, the trial court can set aside its order approving the record on appeal with a view to further inquiring into the matter of whether or not said record on appeal is complete or contains errors. It was pointed out therein that such an order does not vacate the judgment of the lower court nor affect the issues involved in the appeal. Said latest ruling of this Court on this point is the more reasonable and should be followed herein.

It is different, however, with respect to the order of execution pending appeal granted by the trial court after perfection of the appeal. It is settled that the execution of a judgment is a proceeding affecting the rights of the parties, which are the subject matter thereof, and from which appeal is taken, and its purpose is not to protect and preserve the subject matter of the litigation (*Sumulong v. Imperial*, 51 Phil. 251; *Vda. de SyQuia v. Concepcion*, 60 Phil. 186; *De la Fuente v. Jugo*, 76 Phil. 718).

Summarizing, therefore, the above considerations, We find that the trial court had jurisdiction to reconsider the approval of the record on appeal, solely for the purpose of ordering its completion or correction; said order did not produce the effect of reviving the trial court's full jurisdiction over the case, and said court still had no power to order execution of its judgment pending appeal.

The trial court's order of execution issued on April 12, 1961, and the writ of execution issued pursuant thereto, on May 9, 1961, are, therefore, null and void. Accordingly, the execution had thereunder should be set aside and the status quo restored. The record before Us does not show that the order to amend the record on appeal has been complied with. Petitioners herein are therefore given ten days from finality of our decision in this case to comply with said order, after which the trial court shall approve the corrected or completed record on appeal and transmit the same to the appellate court.

WHEREFORE, the trial court's order of execution of April 12, 1961 and writ of execution of May 9, 1961 are hereby declared null and void and respondent Judge is ordered to approve and transmit to the appellate court the amended record on appeal which petitioners herein may file within ten (10) days from finality of this decision.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Barrera, Dizon, Makalintal, Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.
Regala, J., no part.

[1] Civil Case No. 518

[2] Citing Sec. 1, Rule 72 (now Rule 70), Rules of Court.

[3] See also Sec. 9, Rule 41, Revised Rules of Court, similarly worded.

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