

LUIS MENESES, PETITIONER, VS. M. L. DE LA ROSA, JUDGE OF FIRST INSTANCE OF MANILA, ET AL., RESPONDENT.

G.R. No. L-700. August 16, 1946

Ponente: HILADO, J.

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HILADO, J.:

This is a petition for the writs of certiorari and mandamus wherein petitioner seeks the annulment of the decision of November 6, 1945, rendered by the respondent judge in Civil Case No. 71369 of the Court of First Instance of Manila, and of certain subsequent proceedings in the same case, petitioner further praying for an order to the respondent judge to proceed with the trial of the aforesaid case in his court. The material facts are:

In Civil Case No. 1098 of the Municipal Court of Manila, respondent Angel Reyes was the plaintiff and petitioner Luis Meneses the defendant, the complaint therein being concerned with the possession of the premises or accessoria No. 855 Piy Margal, Sta. Cruz, Manila, which the therein plaintiff was seeking to recover together with certain rentals therein also specified, legal interest, and costs. Judgment was rendered by the Municipal Court in favor of the plaintiff and against the defendant, whereupon the latter appealed the case to the Court of First Instance of Manila wherein it was docketed as Civil Case No. 71369.

On November 6, 1945? said case was called for hearing with the presence of ooth parties. Upon the case being thus called, both parties appeared and made of record the compromise agreement which is now found incorporated in said court's decision of that same date (Exhibit "E" of petition) which says:

"DECISION

"Al llamarse a vista este asunto, awbas partes comparecieron e hicieron constar en el record el siguiente convenio:

"Que el demandante Angel Reyes extiende el plaso del arrendaraiento de la casa 855 Pi y Margal de esta ciudad de Manila, que ocupa actualmente el demandado Luis Lemeses, hasta el 15 de mayo de 1946;

"Que el demandado Luis Meneses se obliga a evacuar la referida casa en 0 antes del 15 de mayo, 1946, sin prorroga, y renunciando a los plazos que otorga la Ley 689 y asimismo se obliga a pagar los alquileres fijados por el Juzgado Municipal, que conocio originarianiente de esta causa, a razon de P25 al mes desde el primero de septiembre proximo pasado hasta cue lo desaloje;

"Que los referidos alquiiere de P25 al mes, el deraandacio los pagara. dentro de los prinieros diez (10) dias de cada mes, y en caso de no hacerlo asi, se expedira la ejecucion correspondiente por dichos alquileres;

"Que el demandado autoriza al demandante a retirar de la Escribania de este Juzgado los depositos hechos por el demandado en concepto de alquileres correspondientes a los meses septiembre y octubre, proximo pasado, y su fianza de supersedeas por la cantidad de P50, como alquileres de este mes de noviembre y diciembre entrante; y

"Que ambas partes suplican se dicte, hoy, decision de acuerdo con este convenio, dandose por notificados de la misma desde esta ischa, y renunciando a toda apelacion, sin costas.

"EN SU VIRTUD, se dicta sentencia a tenor del concvenio arriba transcrito. Asi se ordena.

Manila, noviembre 6, 1945.

(Fdo.)" M. L. DE LA ROSA

"Juez"

Article 1816 of the Civil Code provides:

"Art. 1816. A compromise shall have, with respect to the parties, the same authority as res adjudicata; but only a compromise made in court may be enforced by execution."

Petitioner has not succeeded, in our opinion, in establishing any legal or equitable ground for voiding the compromise entered into by him with respondent Reyes in open court and submitted by both parties to the said court in order that it might serve as the basis for the latter's decision. Hence, it must be complied with by both parties.

The lease under which petitioner Luis Meneses was occupying respondent Angel Reyes' aforesaid premises was from month to month, the rentals being payable monthly and there being no showing that it was for any other period (Art. 1518 Civil Code). It appears that when the action was lodged in the Municipal Court said tenant was in arrears for the rental corresponding to the month of September, 1945—the very compromise agreement incorporated in the decision of the Court of First Instance, in its second paragraph; makes the rentals to be paid date from the 1st of September, 1945.

One of the requisites of res adjudicata is the finality of the judgment determinative of the controversy. And, of course, a final judgment is executory. In accordance with Art. 1816 of the Civil Code, above quoted, even if the compromise between petitioner and respondent Reyes above referred to had not been submitted to the court, it still would have had the same authority as res adjudicata. A fertiori, should the judgment of the court, which was based upon and incorporated it, have the authority of res adjudicata from the moment it was rendered. The fact that about one month after the date of said compromise and judgment, November 6, 1945, respondent Reyes moved to one of his apartments at No. 853 Pi y Margal, Sampaloc, Manila, adjoining the premises herein in question (because the former occupant of said apartment No. 853 unexpectedly vacated the same), does not and cannot bring the case within the purview of Rule 38, section 1. When that compromise was entered into and the judgment based on it rendered, petitioner had, in fact, already forfeited, his right to continue occupying respondent Reyes' aforesaid premises through the former's default in the payment of the rentals corresponding to the month of September, 1945, and subsequent ones (second paragraph of Exh. A and third and fifth paragraphs of EXhibit B of petition). Article 1569, paragraph 2, of the Civil Code confers upon the lessor the right to judicially dispossess his lessee upon the non-payment of the agreed price. Without that compromise petitioner would have had no right to continue occupying the premises in question. He was given under the compromise an extension of his lease up to May 15, 1946, "sin prorroga; y renunciando a los plazos que otorga la Ley 689 y asimismo se obliga a pagar los alquileres fijados por el Juzgado Municipal, que conocio originariamente de esta causa, a razon de P25.00 al mes desde el primero de septiembre proximo pasado hasta que lo desaloje" (decision, Exhibit B of petition). As above stated, petitioner has not in our opinion shown that respondent Reyes resorted to fraud, misrepresentation, deceit, or any other illegal or immoral means when he entered into that compromise. From aught that appears in the record, we cannot but assume that the initiative for entering into that compromise

came from petitioner, respondent Reyes merely granting his lessee a further forbearance whose consideration could only be the new undertakings which the lessee offered, and by the compromise bound himself to fulfill. To grant the remedies prayed, for in the present proceeding would inevitably prevent such fulfillment to the damage and prejudice of the other contracting party.

In paragraph 5 of the petition it is alleged that on May 8, 1946, petitioner filed a petition in the Court of First Instance of Manila to set aside the above-mentioned decision of November 6, 1945, on the ground of fraud, mistake, and misrepresentation. It thus appears from the petition itself, in relation to its pertinent exhibits, that said petition to set aside was filed more than six months after said decision and more than sixty days after petitioner was notified thereof. Rule 38, section 3, limits the filing of such petition to sixty days after the petitioner learns of the judgment, order, or other proceeding to be set aside, and not more than six months after such judgment or order was entered, or such proceeding was taken. Therefore, the respondent judge correctly denied the petition. On May 14, 1946, the Court of First Instance of Manila denied the petition to set aside (petition, paragraph 6). On June 15, 1946, petitioner filed his notice of intention to appeal from said order of May 14, as well as from those of June 13 and 17, 1946, alleged in the petition (petition, paragraph 9) and on June 17, 1946, petitioner filed his record on appeal (Exhibit C of petition).

In view of the facts and circumstances above narrated, it is very clear that the motion to set aside the decision of November 6, 1945, was filed beyond the maximum period allowed by Rule 385 section 35 and, consequently, the respondent judge could not legally grant the motion for reconsideration of the order of denial filed by petitioner on May 17, 1946. It results, therefore, that any appeal from those determinations of the respondent judge would be frivolous. In paragraph (b) of the prayer of his petition, however, petitioner does not ask us to compel the respondent judge by mandamus to allow his appeal, but to proceed with the trial of said civil case No. 71369. This obviously we cannot grant either.

Wherefore, the petition is dismissed, with costs to petitioner. So ordered.

Moran, C.J., Paras, Feria, Pablo, Bengzon, Padilla, and Tuason, JJ., concur.

DISSENTING

PERFECTO, J.:

Following suggestion from respondent judge, petitioner agreed to vacate the house in Question on May 15, 1946, and to have a decision rendered accordingly by the lower court upon the house owner's representation that he lost his residential house in a fire in February, 1945, and that he needs the house in question "for him and family to live in."

On May 7, 1946, petitioner, seeking relief under Rule 58, filed a petition under oath and supported by several exhibits, praying that: the lower court's decision be set aside and a new trial on the merits be granted. Petitioner alleged as grounds.

(1) That subsequent to the decision, plaintiff Angel Reyes moved with his family to his house at 853 P. Margal, which had been vacated by his tenant Pedro Armenia, the latter having transferred to Baguio in view of his appointment as mayor thereof, the reason of plaintiff for filing the complaint for ejectment thus having ceased to exist, his purpose of looking for a place to reside in having been fulfilled.

(2) That Reyes is also the owner of 21 other properties, besides the one in litigation occupied by petitioner and the other one wherein Reyes and his family are residing, all of which are being rented by him to other parties.

(3) That petitioner has failed to find another place for his family to move to in spite of his utmost efforts, because of the present extreme shortage of housing facility and the prohibitive rentals being demanded by property owners; and, although he bought a house for him and his family at 641 Extremadura, he cannot move to it because the occupants refused to vacate it, so much so that the vendor had to institute ejectment proceeding which is still pending trial in the municipal court.

The petitioner has, besides, a valid defense against the complaint of Reyes, based on the fact that the latter is charging excessive rents for the house in question.

Notwithstanding the fact that the petition was filed in May 8, 1946, not more than six-months from November 9, 1945, when he was notified of the lower court's decision, Judge Dinglasan denied it upon the erroneous assumption that it was filed outside of the time fixed by section 3 Rule 58.

Petitioner filed a motion for reconsideration, but respondent Judge De la Rosa denied it on June 13, 1946. We are of opinion that the lower court, not only erred in denying the motion for reconsideration, but also committed abuse and arbitrariness in unjustly denying the petition which, besides having been filed within the time prescribed by section of Rule 53, appears to be meritorious.

Induced by plaintiff's representation that he and his family needed the house in question to live in, petitioner, following the lower court's suggestion, entered into the agreement which became the basis of the lower court's decision. But about a month after the decision was rendered, plaintiff's representation was belied by the fact that he moved with his family to another house owned by him, adjoining the house occupied by petitioner. The decision rendered against petitioner was, therefore, the result at least of mistaken statement of fact made by plaintiff, if not of stark fraud based on false representation.

The petition for relief, which was filed on time, is duly supported by affidavit and documentary evidence, in compliance with the requirements of section 3 of Rule 38.

But the lower Court acted arbitrarily, not only in declaring that the petition was filed out of time and in denying it notwithstanding the fact that it is clearly meritorious, but also by depriving petitioner of his statutory right of appeal against the order of denial, notwithstanding that the appeal was filed on time and petitioner had complied with all the legal requirements so that his appeal may be given due course.

On the question whether a defeated party, in seeking relief under Rule 33, is entitled or not to appeal against the lower court's denial thereof, the majority and we are agreed that he may. Otherwise, we would be sanctifying the unacceptable paradox that lower courts are endowed with infallible wisdom in the matter of giving or not giving relief under Rule 38. Section 8 of Rule 38 recognizes expressly that right of appeal, although the order setting aside a judgment, order or proceeding is appealable only when final judgment is rendered on the merits in the principal case, which implies necessarily that when the order is for the refusal of the relief, such as when the court denies a petition to set aside a decision, the order is immediately appealable, because it disposes of finally the case.

In the present case, the lower court denied the petition of May 8, 1946, where petitioner prayed that the lower court's decision of November 6, 1945, be set aside on the ground of fraud, mistake, and misrepresentation, in accordance with Rule 38. On May 14, 1946, the lower court denied the petition; on May 17, petitioner filed a motion for reconsideration, which was denied on June 13, and on June 15 petitioner filed his notice of appeal and on June 17, his record on appeal. Under the rule above-mentioned, the appeal was and is in order, it having been filed on time, and petitioner is entitled to have his appeal given due course. But on June 25 the lower court arbitrarily dismissed the appeal.

The majority, however, would deny petitioner that right of appeal on the assumption, founded or unfounded, that the appeal "would be frivolous." The pronouncement appears to us to be premature, as the question whether the appeal is meritorious or frivolous can not be properly passed upon by this Court until it has taken proper cognizance of the case on appeal. Besides, we deem it a dangerous doctrine to deprive a party of his right of appeal which, in some cases, is guaranteed by law and in others by express provisions of the Constitution itself, simply because we believe that the appeal would be frivolous.

The right of appeal, whether statutory or constitutional, may be waived, expressly or inpliedly, but this Court can not deny that right without amending the law, in case of statutory appeals, or without setting aside the Constitution, in constitutional appeals, either one of which the Supreme Court can not do.

To show how precarious the majority's position is, we need not discuss statutory appeals. We will restrict our discussion to constitutional appeals.

Section 2 of Article VIII of the Constitution provides:

"SEC. 2. The Congress shall have the power to define, prescribe, and apportion the jurisdiction of the various courts, but may not deprive the Supreme Court of its original jurisdiction over cases effecting ambassadors, other public ministers, and consuls, nor of its jurisdiction to review, revise, reverse, modify, or affirm on appeal, certiorari, or writ of error, as the law or the rules of court may provide, final judgments and decrees of inferior courts in—

"(1) All cases in which the constitutionality or validity of any treaty, law, ordinance, or executive order or regulations is in question.

"(2) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.

" (3) All cases in which, the jurisdiction of any trial court is in issue.

"(4) All criminal cases in which, the penalty imposed is death or life imprisonment.

" (5) All cases in which an error or question of law is involved."

The above constitutional provision guarantees not only that the Supreme Court may not be deprived of said powers nor may such powers be diminished, but the right of appeal to the Supreme Court in the cases specified by the Constitution shall be inviolable.

If the majority's theory that because we believe an appeal would be frivolous we would deny the right to it is to be entertained as correct, then the aggrieved parties, in constitutional cases, in tax cases, in jurisdiction controversies, in errors of law cases, in cases where the accused is sentenced to death or life imprisonment, can be deprived of their constitutional right to appeal against the respective lower courts' decision, only because we believe, correctly or wrongly, that their appeal would be frivolous.

Certainly there are appeals which, in our opinion, are absolutely groundless and frivolous, but the interested parties may honestly think and believe otherwise. In a democracy, everybody is entitled to his honest opinion. Although this Court is the one which has the final word, that word, must not be said until and unless the appeal is properly brought to us, in which case our decision will then be then be unappealable. That privilege, however, does not authorize us to deny a litigant of his legal or constitutional right of appeal. To deny him that right of appeal is to deny him his day in court, is to deny him one of his essential rights, is to deny him the due process of law and the guarantee of equal protection.

The petition must be granted in the sense that should be issued directing the lower court to give due course to the

appeal and record on appeal respectively filed by petitioner on June 15 and 17, 1946, although petitioner failed to specifically pray for said mandamus, his general' prayer being enough, in view of the facts alleged in the petition.

DISIDENTE

BRIONES, M.:

Creo que, por lo menos, el tribunal, inferior cometió abuso de discreción al no relevarle al recurrente de los efectos de la sentencia y permitirle probar que cuando aceptó la transacción, base de esta, fue inducido a error, bajo la creencia de que el recurrido Angel Reyes no encontraría casa donde alojarse-lo que, sin embargo, quedó desmentido por hechos posteriores, pues consta sin discusión que un mes después de dictada la decisión dicho recurrido y su familia pudieron trasladarse a una casa de su propiedad, contigua a la que se halla en cuestión. También debió de habersele permitido probar su alegación de que había logrado comprar casa, pero que el ocupante no se avenía a desalojarla, así que necesitaba de algún tiempo para obtener remedio por la vía judicial. Teniendo en cuenta la tremenda escasez de viviendas en Manila resultante de la devastación causada por la guerra, los tribunales deben proceder con las exigencias humanas de la vasta población que carece de albergue. La ley No. 689 sobre alquileres se ha aprobado para este efecto. Nuestro deber es ayudar a que los objetivos sociales de dicha ley se realicen plenamente, por encima de las rigideces del tecnicismo.

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