

JUAN CABUNGICAL, ET AL., PETITIONERS, VS. HON. JOSE F. FERNANDEZ, JUDGE, COURT OF FIRST INSTANCE OF NEGROS OCCIDENTAL, ET AL., RESPONDENTS.

G.R. No. L-16520. April 30, 1964

Ponente: DIZON, J.

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DIZON, J.:

This is an original action for certiorari and mandamus filed by the spouses Juan and Isabel Cabungcal against Daisy Gustilo, the Ex-Officio Provincial Sheriff of Negros Occidental, and the Hon. Jose P. Fernandez, Judge of the Court of First Instance of said province, to annul the latter's order of December 29, 1959 setting aside his previous order of December 22, 1959 approving petitioners' record on appeal and appeal bond in Civil Case No. 5283, with a petition for the issuance of a writ of preliminary injunction restraining said respondents from enforcing the judgment rendered therein.

It appears that in an action for ejectment filed by respondent Gustilo against petitioners in the Municipal Court of Bacolod City (Civil Case No. 2093), decision was rendered against said petitioners who appealed therefrom to the Court of First Instance of Negros Occidental (Civil Case No. 5283). After the corresponding trial de novo, said Court also rendered judgment against petitioners on October 27, 1959. Their motion for reconsideration having been denied on November 23 of the same year, petitioners filed four days thereafter a notice of appeal, on questions of law, and on December 7 of the same year they filed the requisite appeal bond and record on appeal.

On December 8, 1959 respondent Gustilo filed a "Motion to Dismiss Appeal" on the ground that the decision sought to be reviewed had already become executory. The Court, however, denied this motion in its order of December 22 of the same year, and approved the appeal bond and record on appeal mentioned heretofore.

Before the transmittal of the record on appeal to Us, respondent Gustillo filed an urgent motion for reconsideration of the order approving the record on appeal, on the ground that it contained numerous errors enumerated therein. Resolving this motion, the respondent Court issued on December 29, 1959 the order setting aside its previous order on solving this motion, the respondent Court issued on December 29, 1959 the order setting aside its previous order on December 22 approving the record on appeal, "until the defendant has met the opposition which is contained in the motion for reconsideration."

Petitioners' contention is that the order appealed from, is void because at the time it was issued the respondent Judge had already lost control and jurisdiction over the case in view of the perfection of the appeal interposed by them. We find this to be without merit.

True, after the perfection of an appeal in a civil case, the trial court loses jurisdiction over its judgment and cannot vacate the same (*Ayllon vs. Siojo*, 26 Phil., 195; *Government vs. Mendoza*, 51 Phil., 403; *Valdez vs. Court of First Instance*, etc., 88 Phil., 585), but this ruling does not apply to the case before Us where the order complained of does not vacate the judgment of the lower court nor affect the issues involved in the appeal. What is determinative of the issue before Us are the provisions of Sections 13 and 14 of Rule 41 of the Rules of Court to

the effect that, after the perfection of an appeal but before the transmittal of the record on appeal to the appellate court, the trial court may dismiss the appeal on the grounds therein enumerated. If this is so, the trial court may, a fortiori, also set aside its order approving the record on appeal and the appeal bond with a view to further inquiring into the matter of whether said record on appeal is complete or contains errors or not. It goes without saying that the dismissal of an appeal is a more serious matter than that of reconsidering an order approving the record on appeal and the appeal bond in order to give appellants an opportunity to answer the allegation of their opponents to the effect that their record on appeal contained numerous errors.

Wherefore, the petition for certiorari and mandamus under consideration is dismissed, without costs.

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

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