

**ANGELES RODRIGUEZ, JOSE RODRIGUEZ, MARIA RODRIGUEZ,
CARIDAD RODRIGUEZ, CORAZON RODRIGUEZ, JESUS RODRIGUEZ,
JR., CARMELITA RODRIGUEZ, (THE LAST TWO BEING REPRESENTED
BY THEIR GUA...**

G.R. No. L-12534. May 23, 1959

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

Petitioners-appellants herein seek to review by way of certiorari a decision of the Court of Appeals, dated June 18, 1957, which in effect affirmed the order of the trial court of October 18, 1956, for immediate execution of its order of January 3, 1956, ordering the defendants herein petitioners, to pay to the plaintiffs the sum of P2,238.50, which was found to be their share in the income of the property in controversy. The assignment of errors presented before us is as follows:

I

"THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE PETITIONERS-APPELLANTS HAVE CONSISTENTLY DENIED TO THE RESPONDENTS THE RIGHT TO SHARE IN THE INCOME IN THE PARCEL OF LAND SUBJECT OF LITIGATION IN THE CIVIL CASE NO. 813 IN THE COURT OF FIRST INSTANCE OF RIZAL, PASAY CITY BRANCH.

II

"THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE SAID CIVIL CASE NO. 313 HAS BEEN DRAGGING ON SINCE 1947.

III

"THE HONORABLE COURT OF APPEALS AS WELL AS THE HONORABLE COURT OF ORIGIN ERRED AND COMMITTED A SERIOUS ABUSE OF DISCRETION IN NOT COMPLETING "WITH THE REQUIREMENTS OF RULE 39, SECTION 2 OF THE RULES OF COURT.

It is apparent that the first two errors assigned involve findings of fact of the Court of Appeals, which under the law we may not change or modify. The remaining alleged error is as to whether or not both courts committed a serious abuse of discretion "in not completing [complying] with the requirements of Rule 39, Section 2, of the Rules of Court."

The facts in this case as found by the Court of Appeals are contained in its decision, the pertinent portions of which we are quoting below for purposes of reference:

"It appears that on March 13, 1954 the respondent Judge ordered the parties in the aforesaid Civil Case No. 313 to present their evidence before a Deputy Clerk of Court, who was duly authorized as commissioner to receive the evidence, in order to resolve the question of accounting of the income from the salt and fish

products of the parcel of land object of said case; that hearings were subsequently held before said commissioner; that on June 21, 1955, the commissioner submitted his report of the hearings on the account; that on, January 3, 1956 the respondent Judge issued an order approving said report and finding the plaintiffs in the aforementioned case, respondents herein, entitled to the amount of P2,238.80 as their share in the income of the land controverted therein, and ordering the defendants to pay to the plaintiffs the above-mentioned amount; that on April 17, 1956, the defendants therein—petitioners here—filed a motion for reconsideration and new trial, which motion was denied by the respondent court; that on September 3, 1956 plaintiffs filed a motion for immediate execution of the order of January 3, 1956; that on October 18, 1956 the respondent Judge issued an order granting the motion for immediate execution; that on November 14, 1956, defendants filed a motion for reconsideration of the order of October 18, 1956; that on December 14, 1956, the respondent Judge issued an order denying the motion for reconsideration and the filing of a supersedeas bond; that on January 8, 1957, defendant filed the present petition for certiorari with this Court; and that, while said petition was pending here, or on February 28, 1957, the respondent court approved the amended record on appeal filed by defendants, herein petitioners."

The position taken by the petitioners-appellants is that the order granting the order for immediate execution did not contain specific and good reasons to qualify it as "special" and that, furthermore, neither could the bond filed by the respondents be considered as special reasons considering its meager amount which is inadequate to cover the consequential damages that may be suffered by reason of the immediate execution of the order; and, lastly, that the trial court had no sufficient justification for denying the supersedeas bond offered by petitioners.

It may be that the order granting the motion for immediate execution did not exactly mention the good and special reasons required by Rule 39, Section 2 of the Rules of Court and that it could well have mentioned the same. However, we have authorities [1] to the effect that statement by reference in the order is sufficient. In this case, the order made reference to the motion for execution itself which motion stated or alleged the reasons justifying immediate execution. Furthermore, said good reasons may be found in the record of the case and were found as facts in the decision of the Court of Appeals, thus:

"The main action in said Case No. 313 has been dragging on since 1947. It has already been decided therein by final judgment that the respondents are co-owners of the land in question. As a consequence, the respondents are entitled to share in the income of the parcels of land. The petitioners have consistently denied to the respondents the right to share in the income of the said parcel of land. Petitioners took their own sweet time to perfect their appeal. Respondents have offered to file—and did file—a bond to answer for any damage which the petitioners may suffer by reason of the enforcement of the writ of execution. These are among the reasons alleged in their motion for immediate execution of the judgment (Annex "7" of respondent's Answer) which the respondent Judge granted. We believe and hold that the same are good and valid reasons for the issuances of the order of execution complained of. It has been held by the Supreme Court that where an intestate proceeding has been pending for several years, an immediate execution of the judgment is in order (*Crisanto de Borja vs. Judge Encarnacion et al*, L-4179, May 30, 1951), and that the filing of bond by the successful party is a special ground for ordering execution. (*Hacienda Navarra, Inc. vs. Labrador, et al.*, 70 Phil., 48.)

It has been held that the dilatory nature of an appeal and the filing of a bond by the appellee may be regarded as good and special reason within the meaning of Rule 39, Section 2 of the Rules of Court:

"The above section simplifies and clarifies the old provision. It provides that prior to the expiration of the time to appeal, the court may issue execution on motion of the prevailing party and with notice to the adverse party, upon good reasons to be stated in a special order, regardless of whether such order is issued before or after the filing of the record on appeal. The good reasons are required to be stated in the special order, but it has been held that statement by reference is sufficient, as when such reasons appear in a motion for execution, and reference thereto is made in the special order as ground therefor. The element that give validity to an order of execution is the existence of the good reasons if they may be found distinctly somewhere in the record. In this

connection, it has been held that the filing of bond by the successful party is a good reason for ordering execution. That the appeal is being taken for purposes of delay, is also a good reason." (Moran, Comments on the Rules of Court, Vol. I, pp. 539-540, 1957 Edition; Italics is supplied.)

In the cases of *Presbitero, et al. vs. Rodas, et al.*, 73 Phil., 300 and *Iloilo Trading vs. Rodas*, 73 Phil., 327, this Court had already passed upon the same question and had ruled that the appeal being taken for purposes of delay, is a good and special reason for ordering execution pending appeal. The rulings in those cases are as follows:

"* * *. The court stated in its order that the appeal was being taken for the purpose of delay. Assuming, as we must, that such statement is true, it not having been assailed in the petition, we consider it good and sufficient reason upon which to issue execution of the judgment pending appeal. Dilatory tactics constitute a great drawback to the administration of justice and cannot be countenanced by the courts. We hold that the trial court neither exceeded its jurisdiction nor committed a grave abuse of discretion in ordering the execution of its judgment pending appeal, upon the reason given." (*Presbitero, et al. vs. Rodas, et al.*, supra.)

"The question raised herein has been decided by us adversely to the petitioner in the recent case of *Jacinto Presbitero, et al. vs. Judge Sotero Rodas, et al.* (October 11, 1941)', G. R. No. 48121, 40 Off. Gaz., 3673, wherein we held that section 2 of Rule 39 empowers the Court of First Instance, in its discretion, to order the execution of its judgment pending appeal provided it states good reasons for so doing; and that the statement of the court in its order that the appeal was being taken for the purpose of delay is good and sufficient reason upon which to issue execution of the judgment pending appeal, because dilatory tactics constitute a great drawback to the administration of justice and cannot be countenanced by the courts." (*Iloilo Trading Center and Exchange vs. Rodas*, supra.)

And in the cases of *Hacienda Navarra, Inc. vs. Labrador, et al.*, 65 Phil., 536, and *Peoples Bank vs. San Jose*, 96 Phil., 895, this Court held that the filing of bond by the prevailing party is a good and special reason for ordering execution pending appeal. Said this Court in those cases:

"* * * The filing of the bond required by the respondent judge in the order sought to be annulled constitutes a special ground authorizing the court to issue a writ of execution pending appeal, in conformity with the provisions of section 144 of the Code of Civil Procedure." (*Hacienda Navarra, Inc. vs. Labrador*, supra.)

"Furthermore—and this is conclusive—there is the bond promising return of all such allowances (not exceeding P33,250.00) 'should it be decreed later that' Sophie M. Seffert 'was not entitled thereto'. It should be observed in this connection that the order of December 29 expressly provides 'that the payments of the said monthly allowances shall not exceed the aforesaid amount of P33,250.00'." (*Peoples Bank vs. San Jose*, supra.)

As to the offer of petitioners-appellants in the lower court to file the supersedeas bond to stay execution, it is a well-settled doctrine that the approval and acceptance of a supersedeas bond to stay execution lies within the sound discretion of the trial court:

"Stay of execution; supersedeas bond; courts discretion.—The power to grant a motion for execution before the expiration of the period for appeal is discretionary before trial courts. All that the law requires is that there be good reason which must be stated in the order, Rule 39, section 2, Rules of Court. Execution of course may be stayed upon approval by the Court of a sufficient bond. But the court is not obliged to approve any kind of supersedeas bond filed by the parties. It has the right to determine in its discretion whether the supersedeas bond would sufficiently protect the rights of the winning party and accomplish the ends of justice. And in the determination of this matter the court may avail of reasons found in the record. *Alliance Insurance & Surety Co. vs. Hon. Tan, et al.*, 52 Off. Gaz., 7634., December 31, 1956." (*Velayo*' Digest, 1956 Supplement [A], pp. 429-430).

and that even after the supersedeas bond is filed, the lower court may still disregard it and order immediate

execution. In the case of *De Leon vs. Soriano*, 95 Phil, 806, we said:

"Even after the filing of supersedeas bond by an appellant, intended to stay execution, the trial court may in its discretion still disregard said supersedeas bond and order immediate execution provided that there are special and compelling reasons justifying immediate execution."

In view of the foregoing", we find that the trial court committed no error in granting the motion for immediate execution and that the Court of Appeals correctly dismissed the petition seeking to review and annul said writ of immediate execution. Consequently, the appealed decision of the Court of Appeal is hereby affirmed, with costs against petitioners.

Paras, C. J., Bengzon, Padilla, Reyes, A., Bautista Angelo, Labrador, and Endencia, JJ., concur.
Concepcion, J., concurs in the result.

[1]*Joven vs. Boncan*, 67 Phil., 252; *Lusk vs. Stevens*, 64 Phil., 154; *Guevara, et al. vs. Court of First Instance of Laguna*, 70 Phil., 48; *The Peoples Bank and Trust Co. vs. San Jose, et al.* 96 Phil., 895; 51 Off. Gaz., (6) 2918

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