

HON. SECRETARY OF AGRICULTURE AND NATURAL RESOURCES AND INVESTIGATOR ALFREDO ZERUDO, PETITIONERS, VS. THE HON. COURT OF APPEALS AND HEIRS OF B. A. CRUMB, NAMELY HENRY WILLIAM, A...

G.R. No. L-30054. March 31, 1971

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal by certiorari from a resolution of the Court of Appeals dated 17 August 1968, in Case CA-G.R. 39555-R, dismissing, for failure to file their brief as appellants, the appeal of petitioners herein, the Secretary of Agriculture and his investigator Alfredo Zerudo, from an order of the Court of First Instance of Davao (in its Civil Case No. 3731, for prohibition and injunction, entitled Heirs of B. A. Crumb, et al. vs. Secretary of Agriculture, et al.), dated 27 September 1966, restraining the respondents (now appellants) "Secretary of Agriculture and Natural Resources, Alfredo Zerudo and other respondents of the Lands Department from conducting further investigation in the area of land covered by lease application No. 2122 in the name of herein petitioners[1] for the purpose of re-opening the administrative case relative to said application".

After the appeal of defendants from the aforementioned order of the Court of First Instance had been perfected, and docketed as CA-G. R. No. 39555-R, appellant public officers were required by the Court of Appeals, on 5 July 1967, to file their brief as appellants within 30 days from receipt, i.e., on or before 13 August 1967. Appellants obtained four extensions of time; but the fourth extension, of five (5) days from 12 October 1967, was granted with a warning that no further motion for extension shall be entertained. This admonition notwithstanding, appellants filed on 16 October still another motion for a fifth (5th) extension of five days from 17 October 1967, and the next day, 18 October, a motion praying that the evidence submitted to the trial court be forwarded to the office of the Solicitor General (counsel for appellants) and, pending receipt of such evidence, that the period to file appellants' brief be suspended.

This motion for suspension of the period for filing appellants' brief was denied by the Court of Appeals, by minute resolution of 28 October 1967, for the given reason that "there was no trial nor minutes of the proceedings taken, so that there are no evidences". The Solicitor General, for the appellants, moved to reconsider, calling the attention of the appellate court that the very order of the trial court that was appealed from did mention several exhibits not found in the record (Petition herein, Annex "E"). The third division of the Court of Appeals then required the Clerk of Court of Davao to comment on the Solicitor General's motion to reconsider; and thereafter, on 17 August 1968, the appellate court issued the following resolution (Petition, Annex "G", Supreme Court Record, page 29) -

"Acting on the motion of the Solicitor General praying on the grounds therein stated, that the resolution of 28 October 1967 denying his motion for the suspension of the period for filing appellants' brief be reconsidered; and it appearing from the letter of the Clerk of the lower court that the exhibits referred to in the motion for reconsideration, which movant wants to be elevated to this Court for the preparation of appellants' brief, were

not presented in this case, which is an appeal from an order of dismissal of a petition for prohibition, wherein no oral and documentary evidence was adduced, but in another case (No. 344, Heirs of B. A. Crumb et al. vs. Margarito Rodriguez et al.), the Court RESOLVED to DENY the motion for re-consideration, and to DISMISS, as it hereby DISMISSES the appeal, for failure to file appellants' brief within the reglementary period as already extended."

A second motion for reconsideration having been filed and denied on 19 December 1968 (Annex "I", Petition), the Solicitor General resorted to this Court, averring that if it were true that no evidences were offered and received, then the decision of the court of origin would be a nullity, and praying, inter alia, that the contested re-resolutions of the Court of Appeals be set aside, and that said court be ordered to give due course to petitioners' appeal and all evidences ordered forwarded to the Solicitor General for the preparation of his brief for appellants.

We are not called upon to examine the merits of the appeal inter-posed against the order of the court of origin since it is not before Us. But the records reveal that the resolution of 17 August 1968 of the respondent Court of Appeals (Annex "G", Petition), refusing to reconsider its order denying suspension of the period for filing brief, and dismissing the appeal of the Secretary of Agriculture, was the result of a misapprehension of the actual facts. This is shown by the manifestation filed by the plaintiffs-appellees themselves (Heirs of B. A. Crumb, et al.) in the Court of Appeals, dated 2 December 1968, where the events that transpired at the hearing in the court of origin are narrated as follows (Petition, Annex "B");:

"1. That during the hearing of the case in the lower court, the parties, thru their respective attorneys, were asked by the court the nature of the evidence that would be presented, to which query, they both manifested that they are all documentary. And, because the documents to be presented are all certified true copies, it was agreed that appellees should present these documents in order that they would be properly marked, and thus documents for the appellees were properly marked and the purpose for which each was presented and offered was made.

"Per actual verification made by the undersigned on the records of the case in the Court of First Instance of Davao, this fact, that is, the presentation of the evidence and the purpose for which the exhibits were made are actually reflected in the stenographic notes as shown by pages 224-231 of the Records.

"Those exhibits were then particularly discussed by the undersigned counsels in their Memorandum which they filed and that these exhibits were made the basis of the decision of the lower court.

"It must have been, therefore, a mistake when the Clerk of Court of Davao certified that there were no evidence presented and when the same clerk stated that there were exhibits found in Civil Case No. 344 but not in the above entitled case. As a matter of fact, in both cases the herein appellees have presented numerous documentary evidence.

"When the undersigned asked the person in charge in the lower court why that kind of certification was made, they were told that the minutes of the proceedings did not so state, and another clerk failed to state in the minutes of the actual foregoing incident.

"And, this matter in controversy could be very well amply understood if an Order be issued directing the stenographer to transcribe the notes of the proceedings in the above entitled case in the lower court."

It is thus clear that the certifications of the Clerk of Court of Davao, to the effect that no evidence was presented in its Civil Case No. 3731, and on the basis of which the petition for suspension of the period for filing appellants' brief was denied by the Court of Appeals, was erroneous. The ignoring of plaintiffs-appellees' manifestation, which was in the nature of admissions of fact, was abuse of discretion on the part of the respondent Court of Appeals, and requires corrective action.

Appellees (plaintiffs in the court a quo) call attention to a resolution of the Court of Appeals dated 24 October 1967, stating:

"The resolution of 12 October 1967 granting the Solicitor General a fourth extension of 5 days from 12 October 1967 for filing the respondents-appellants' brief with the warning that no further motion for extension shall be entertained is hereby AMENDED To read: 'The Motion of the Solicitor General for a fourth extension of 5 days from 12 October 1967 for filing respondents-appellants' brief is DENIED, it having been filed 3 days late.'"

This resolution, however, was impliedly revoked when the respondent court subsequently acted in the motion for suspension of period, and on 2 December 1967, nearly one and a half months after the resolution of dismissal, the Court of Appeals required the Clerk of Court of the Davao Court of First Instance to comment on the Solicitor General's first motion to reconsider the denial of the motion to suspend his period to file appellants' brief. It could not be otherwise, as the records in the appellate court were not complete, so that the requirement to file appellants' brief was premature. And as the refusal to suspend the period and the dismissal of the appeal on 17 August 1968 was evidently erroneous and lacking basis, it is but right that the appellants be given opportunity to properly lay the merits of their case before the respondent court for proper adjudication.

WHEREFORE, the resolutions of the Court of Appeals in its Case CA-G.R. No. 39555-R, dated 17 August 1968 and 19 December 1968, are hereby annulled and set aside, and the Court of Appeals is directed to order the transmittal to it of the transcript of the stenographic notes taken during the hearings of Civil Case No. 3731 of the Court of First Instance of Davao, and of the Exhibits submitted by plaintiff-appellee and, upon receipt thereof, to grant appellants and appellees a period for filing their respective briefs conformably to the Rules of Court, and decide the case as justice requires. No costs.

SO ORDERED.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] The Heirs of B. A. Crumb, et al.

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