

LUIS B. UVERO, GREGORIA U. ORIAS, HENRICO M. UVERO, TITA U. DINERO, VIRGINIA U. PORNILLOS, JUVENAL B. UVERO, AND ELEUTERIO B. UVERO, PETITIONERS, VS. COURT OF APPEALS, ROSALIO A...

G.R. No. L-6522. May 24, 1954

Ponente: REYES, J.

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REYES, J.:

On September 7, 1951, the Court of First Instance of Camarines Sur rendered judgment in civil case No. 1424, entitled Emiliana Beltrano de Uvero et al., vs. Rosalio Azada et al., for recovery of real property, declaring plaintiffs owners of the land described in the reamended complaint and ordering defendants to deliver the possession thereof to the plaintiffs and to pay damages and costs.

Defendants gave notice of appeal on October 3 and filed their record on appeal seven days later. Pending approval of said record, plaintiffs filed a motion for immediate execution, which the court granted in its order of October 15, copy of which was received by defendants on October 18. The order says:

"It appearing that the defendants in this case have no property, and according to the plaintiffs, are insolvent, upon motion of the plaintiffs, and upon filing of a bond in the sum of P2,000, let a writ of execution be issued against the defendants, which, however, may be suspended upon the filing of a supersedeas bond in the same amount."

Implementing the order, the clerk of court issued the corresponding writ of execution on October 30 after plaintiffs had filed the required bond, and the writ was served by the sheriff on defendants on November 6.

On the following day (November 7) defendants filed an urgent motion, stating that they had filed a supersedeas bond of P2,000 on the day before and praying "that the writ of execution be dissolved and the premises be given back to the defendants." At that time the court had already lost its jurisdiction over the case, the appeal having been perfected 4 days before with the approval of the record on appeal and the appeal bond on November 3. (Section 9, Rule 41.) The court denied the motion, however, on the ground that section 2 of Rule 39 authorizes a stay of execution upon the filing of a supersedeas bond but not "the dissolution of an execution which had already been served upon the appellant." Taken to the Court of Appeals on a petition for a writ of certiorari, this ruling was reversed and the respondent Judge was ordered to dissolve the execution which he had previously authorized. From this order plaintiffs have appealed to this Court by certiorari.

The appeal appears to be well taken.

There is no question that execution issued on the authority of section 2 of Rule 39, may, as therein also authorized, be stayed upon the approval by the court of sufficient supersedeas bond. But, as the respondent Court of Appeals itself says, the stay may be ordered "as long as the court retains its jurisdiction over the case." Such, however, is not the situation here, where the petition for the dissolution of the writ of execution was filed when

the trial court, because of the perfection of the appeal, had already lost its jurisdiction over the case and had therefore no more authority to grant the petition.

It is true that section 9 of Rule 41 also provides that the trial court, notwithstanding the appeal, retains the authority "to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal." But as was said in the case of *Vda. de Syquia vs. Judge of First Instance et al.*, 60 Phil., 186, "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. Therefore, the perfecting of an appeal taken from said judgment deprives the trial court of its jurisdiction over said judgment and said jurisdiction is transferred to the appellate court, and the trial court cannot modify or revoke any order of execution of the said judgment after the appeal taken therefrom is perfected." It appears in that case that the trial court, pending approval of the bill of exceptions, had ordered execution against the defeated party unless a bond was filed within a certain period, but, on a motion for reconsideration and after approval of the bill of exceptions, revoked the order on the ground that there was no legal justification for its issuance. On a petition for certiorari this Court annulled the order revoking the execution, holding that the trial court had acted without jurisdiction because the appeal had already been perfected.

To the same effect is the ruling laid down in the case of *Burke et al., vs. Devera*, [1] 46 Off. Gaz., No. 10, p. 4936. In that case judgment was rendered requiring defendants to surrender possession of a building to plaintiffs, but after appeal had been perfected the trial court issued an order allowing defendant to continue occupying a portion of the building. This Court held the order void. The syllabus says:

"A modifying order allowing defendant to occupy the portion of the building he is actually holding which was not for the protection and preservation of the rights of the parties is conspicuously null and void; having been entered after the records on appeal had been approved and, accordingly, after the Court of First Instance had lost jurisdiction over the case."

Our attention has been called to the case of *Naredo vs. Judge Yatco*, [2] 45 Off. Gaz., No. 8, p. 3390, where this Court upheld an order of execution issued by the trial judge after approval of the record on appeal. But as this Court has taken pains to point out in that case, the order for the issuance of the writ was merely an implementation of a previous order for the issuance of execution which was promulgated before the perfection of the appeal so that it could be stated that the approval of the record on appeal by the trial judge was subordinated to the said previous order of execution.

To refute respondent's contention that they were not given a reasonable time to file a supersedeas bond, it is sufficient to quote the following from the order of the trial judge.

"* * * It is not denied that before the issuance and service of the writ of execution, Atty. Ramon Felipe, Jr. had inquired from counsel for the defendants whether they were going to file a supersedeas bond. Between receipt of the order authorizing the issuance of the writ of execution by Atty. Perfecto Tabora for the defendants on October 18, 1951, to the service of the writ of execution upon the defendants on November 6, 1951, 19 days had elapsed. Sufficient time, therefore, had elapsed before the writ of execution was served upon the defendants to enable them to file a supersedeas bond. Not until, however, was the writ of execution served upon them did they file the supersedeas bond to stay execution."

On the assumption that the trial court had, with the perfection of the appeal, already lost its jurisdiction to dissolve the writ of execution previously issued, respondents seek to justify the order herein appealed from as an exercise by the Court of Appeals of a power incident to its supervisory and appellate jurisdiction. But it is obvious that the exercise of any such incidental power should be invoked in the main case, which has already been elevated to the Court of Appeals, and not in the separate case of certiorari, where the only issue involved was whether the trial

court exceeded its jurisdiction or gravely abused its discretion in denying the motion to dissolve the execution, an issue which has to be resolved in the negative for the reason that the trial court had no power to grant such a motion after it had already lost jurisdiction over the case.

The order of the Court of Appeals requiring the trial judge to dissolve the order of execution when the said judge had already lost jurisdiction over the case being illegal and improper, the same must be as it is hereby revoked, with costs against the respondents other than the Court of Appeals.

Paras, C. J., Pablo, Bengzon, Montemayor, Jugo, Bautista Angelo, Labrador, and Concepcion, JJ., concur.

[1] 83 Phil., 382 and 88 Phil., 762. [2] 80 Phil. 220.

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