

**BENJAMIN, RAUL AND MIGUEL, ALL SURNAMED TECSON,
PETITIONERS VS. HON. MARIANO C. MELENDRES, ETC., AND
TOMASA BULOS VDA. DE TECSON, AS ADMINISTRATRIX OF THE
TESTATE ESTATE OF THE ...**

G. R. No. L-3824. May 16, 1951

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for a writ of certiorari.

The following facts are not disputed. On 11 June 1941, the respondent Tomasa Bulos Vda. de Tecson, in her capacity as administratrix of the estate of the late Pablo Tecson Ocampo, brought an action against the petitioners for forcible entry in the justice of the peace court of the municipality of San Antonio, province of Nueva Ecija (Case No. 733). Judgment was rendered therein dismissing the complaint. She appealed to the Court of First Instance of Nueva Ecija (case No. 8889). On 8 October 1941, judgment by default was rendered against the petitioners, a copy of which was received by their counsel on 10 October. On 16 October, the petitioners moved for the setting aside of the judgment by default, on the ground of accident, mistake or excusable neglect. On 24 November, the respondent moved for execution of the judgment by default. The respondent court did not act on the urgent motion filed on 16 October by the petitioners, as well as on the motion for execution filed on 24 November by the respondent, until 13 April 1950, when the respondent court denied the motion to set aside the judgment by default and granted the motion for execution in an order entered on that date and received by the petitioners on 24 April 1950. On 27 April, the petitioners filed two motions, the first asking the respondent court for information as to whether they had to file a supersedeas bond to stay execution of the judgment by default during the pendency of the appeal they intended to take and, in the affirmative, to fix the amount thereof; and the second praying that no writ for the execution of the judgment by default be issued and that, as they intended to take an appeal from the judgment rendered against them, they be granted sufficient and reasonable time within which to file a supersedeas bond to stay execution of the judgment by default. On 3 May, the petitioners filed their notice of appeal. On 4 May, the respondent court denied the two motions of the petitioners filed on 27 April, on the ground that no appeal could be taken from a judgment by default and that there was no need of fixing the amount for a supersedeas bond and of the filing thereof for the purpose of the appeal announced by the petitioners. On 6 May, the petitioners moved for the reconsideration of the preceding order. On 12 May, the respondent court fixed the sum of P1,000 for a super-sedeas bond for the appeal from the order of 13 April and not from the judgment by default; held that the filing of a supersedeas bond for the appeal from the order of 13 April did not preclude or prevent the issuance of a writ for the execution of the judgement by default; and directed that such writ be issued. On 13 May, the petitioners filed their amended notice of appeal from the order of 13 April. On 19 May, the hearing for the approval of the record on appeal was held, and on 6 July, the record on appeal was allowed. There is also no dispute that the petitioners filed not only the reglementary appeal bond of P60 but also a supersedeas bond in the sum of P1,000, as fixed by the respondent court in its order of 12 May.

Acting upon the petitioners' prayer that a writ of preliminary injunction be issued, on 18 May this Court directed that, upon the filing of a bond in the sum of P1,000, the writ be issued, and required the respondents to answer the petition within ten days from receipt of a copy thereof. On 23 May, in an urgent ex parte motion filed the following day by the respondent's counsel in which it was alleged that by virtue of a writ of execution issued on 15 May 1950 by the respondent court in case No. 8889, she had been placed in possession of the parcel of land so that, when the writ of preliminary injunction issued by this Court was served upon her, she was already in possession of the parcel of land, the subject matter of litigation in case No. 8889; but that, in spite of the fact that she was already in possession of the parcel of land by virtue of the aforesaid writ of execution, she offered to indemnify the petitioners for all damages they might suffer if her petition for the suspension of the writ of preliminary injunction issued by this Court be granted, and to that end she attached to her motion an indemnity bond for P2,000. The preceding motion was supplemented by another filed by the respondents (the respondent court included), wherein their counsel argued that in view of the qualified and limited notice of appeal filed by the petitioners, to wit: that they announced their intention to appeal to the Supreme Court from that part of the order of the respondent court of 13 April denying their petition to set aside the judgment by default and not from that part of the order granting and directing the execution of the judgment by default, both respondents pray that the writ of preliminary injunction issued by this Court on 18 May be discharged. On 13 June, answering the urgent ex parte motion dated 23 May and the supplemental motion dated 2 June filed by the respondents, the petitioners denied that the respondent Tomasa Bulos had been placed and was in possession of the parcel of land by virtue of the writ of execution issued by the respondent court on 15 May in Case No. 8889, and alleged, among other things, that they are in possession of the said parcel of land comprising more than 174 hectares, they being the true, absolute and registered owners thereof, as evidenced by Torrens certificate of title No. 9367 on file and kept in the land records of the Registrar of Deeds in and for the province of Nueva Ecija. On 20 June, the urgent ex parte motion dated 23 May and the supplemental motion dated 2 June filed by the respondents, wherein they prayed for the discharge of the writ of preliminary injunction heretofore issued by this Court, were denied.

The petitioners contend that that part of the order of 13 April, granting the motion filed by the respondent for execution of the judgment by default, and the order of 12 May, fixing the sum of P1,000 for a supersedeas bond for the appeal from the order of 13 April and directing that a writ be issued for the execution of the judgment by default, notwithstanding the filing of a supersedeas bond in the sum of P1,000 and the perfection of an appeal from such order, by the filing in due time of a notice of intent to appeal, of an appeal bond and of the record on appeal, constitute or amount to an excess of the respondent court's jurisdiction.

On the other hand, the respondents claim that as the notice of intent to appeal was from that part of the order denying the motion to set aside the judgment by default and not from that part of the order granting the motion for a writ of execution, the latter became final and executory, its execution mandatory, and did not constitute an excess of the respondent court's jurisdiction.

It is asserted that there can be no appeal from a judgment by default. There can be no appeal from such judgment, if the party against whom it is rendered purposely did not appear and answer the complaint, counterclaim or cross-claim, because he had no valid defense to set up against it. An appeal from a judgment by default in a case as the one referred to would be futile and purposeless, because the party appealing would have nothing to rely upon to secure a reversal of the judgment by default rendered against him. But there might be instances in which the party, against whom a judgment by default was rendered, had been unjustly deprived of his opportunity to plead in due time. Rule 38 of the Rules of Court provides for such instances, eventualities and contingencies. A petition or motion to set aside a judgment by default may be granted, if filed within the time prescribed in sec. 3, Rule 38; predicated upon any of the grounds provided for in secs. 1 and 2 of the same Rule, to wit: fraud, accident, error or mistake, or excusable neglect; and based upon the fact that the petitioner has a meritorious and

valid defense usually shown by means of an affidavit of merit attached to the petition. If denied, the aggrieved party may appeal from the order denying it and at the same time apply for a writ of preliminary injunction, and the court "may grant such preliminary injunction as may be necessary for the preservation of the rights of the parties pending the proceeding, upon the filing by the petitioner of a bond to the adverse party conditioned that if the petition is dismissed, * * * he will pay the adverse party all damages and costs that may be awarded to him by reason of the issuance of such injunction or the other proceedings following the petition; * * * " (sec. 5, Rule 38). The appealing party not only may apply for such writ but also may move for a stay of execution of the judgment by default by filing the bond just referred to; and if the motion for a stay of execution be denied, such party may renew his motion on appeal.[1] This is precisely what the petitioners have done in this case. Three days after the receipt of a copy of the order denying their motion to set aside the judgment by default, the petitioners, announcing their intention to appeal from the last mentioned order, inquired from the respondent court whether they had to file a supersedeas bond to stay execution of the judgment by default and, in the affirmative, asked the respondent court to fix it, and prayed that no writ for the execution of the judgment by default be issued as they were willing and ready to file a bond to stay such execution; but the respondent court, instead of granting the petitioners' prayers, denied them and declared that it was not necessary to fix the amount of supersedeas bond as there was no need for it. Upon motion for reconsideration, the respondent court fixed the amount of P1,000 for the supersedeas bond for the appeal from the order denying the motion to set aside the judgment by default, and not for a stay of the execution of such judgment, and directed its execution. The supersedeas bond of P1,000 filed by the petitioners was not for the appeal taken from the order denying the motion to set aside the judgment by default, as no supersedeas bond was necessary for such an appeal, but it was for a stay of execution of the judgment by default. If this incidental remedy were not available to the party against whom a writ of execution had been issued, and if what had been done by the execution of such writ could not be undone, or even if it could be undone, but an irreparable injury or damage had already been caused to such party, what use would it be for him to apply or move for the setting aside of the judgment by default and to appeal from the order denying it? If, in spite of the appeal from the order denying the motion to set aside the judgment by default, the execution of the last mentioned judgment, which was the target of attack, could not be stayed by the filing of a supersedeas bond, what benefit would be derived from an appeal against the order denying the motion to set aside such judgment? In the instant case, where the judgment by default did not fix any amount of compensation for the use and occupation of the parcel of land involved in the forcible entry action and where not only an appeal was perfected in due time from the order denying the motion to set aside the judgment by default but also a supersedeas bond was filed in the amount fixed by the respondent court to indemnify the appellee for whatever damage she might suffer as a result of the filing of the appeal, the supersedeas bond was clearly and unquestionably for a stay of execution of the judgment by default. Finding the error committed by the respondent court in ordering the execution of the judgment by default, notwithstanding the filing of a supersedeas bond and the perfection of the appeal by the petitioners, this Court corrected it by issuing a writ of preliminary injunction upon the filing of a bond in the sum of P1,000.

It is our opinion that the order of 13 April, in so far as it directed the execution of the judgment by default, and of 12 May, in so far as it renewed the previous order of execution and held that the supersedeas bond in the sum of P1,000 filed by the petitioners was for the appeal from the order of 13 April and not for a stay of execution of the judgment by default and that the filing of such bond did not preclude the execution of the aforesaid judgment, notwithstanding the filing of a supersedeas bond and the perfection of the appeal by the petitioners, constitute an excess of the respondent court's jurisdiction.

Agreeably thereto, those parts of said orders of 13 April and 12 May referred to, are hereby set aside, vacated and annulled.

The writ prayed for is granted, with costs against the respondent Tomasa Bulos Vda. de Tecson.
Paras, C. J., Feria, Pablo, Bengzon, Tuason, Montemayor, Jugo, and Bautista Angelo, JJ., concur.

[1]Sanchez vs. Serrano et al., 46 Off. Gaz., Supp. (11) 289.

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