

ADRIANO D. DASALLA, ET AL., PETITIONERS, VS. THE HON. JUDGE HERMOGENES CALUAG, ET AL., RESPONDENTS.*G.R. No. L-18765. July 31, 1963*

Ponente: BAUTISTA ANGELO, J.

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Adriano D. Dasalla, et al. filed on May 11, 1959 before the Court of First Instance of Rizal a complaint for the annulment of a deed of mortgage, its extrajudicial foreclosure and the certificate of title issued as a consequence thereof, plus damages and attorney's fees. Defendants filed an answer to the complaint setting up certain special defenses and a counterclaim. On June 6, 1961, after trial on the merits, the court a quo rendered judgment the dispositive portion of which reads:

"Wherefore, the complaint is hereby dismissed, with costs against the plaintiffs and the latter are ordered, jointly and severally, (1) to pay to the defendant Francisco T. Koh the amounts of P3,000.00 for moral damages and P2,000.00 for corrective damages, or the sum of P5,000.00; (2) to pay to the defendant Republic Surety & Insurance Co., Inc. the amounts of P10,000.00 for actual damages consisting of reasonable rental for the use and occupation of the premises including the value of the bakery building and stove which was removed by the plaintiffs, P3,000.00 for compensatory damages, and P2,000.00 for corrective damages, or the sum of P15,000.00; and (3) to pay to the defendants Francisco T. Koh and Republic Surety & Insurance Co., Inc. the amount of P1,000.00 as and for attorney's fees."

In due time, the plaintiffs filed their notice of appeal, record on appeal and appeal bond, and when hearing for the approval of the last two pleadings was held defendants filed a motion to dismiss the appeal based on the grounds that the same was merely dilatory, that it was prejudicial to the substantial rights of the defendants and that defendants have instituted certain criminal charges which may eventually prescribe by reason of the pendency of the action. In view of the motion to dismiss, as well as the objections interposed to the record on appeal, hearing thereon was postponed. In the meantime, plaintiffs redrafted the record on appeal taking into account each and every objection put up by defendants. They also answered the motion to dismiss the appeal.

On August 11, 1961, the court a quo issued an order dismissing the appeal mainly on the grounds of defendants objections to the effect that the appeal was "manifestly dilatory" and that the substantial rights of the defendants would greatly be prejudiced, aside from the criminal charges instituted by the defendants against the plaintiffs which may eventually prescribe if the action is not soon put to an end. Hence the present petition for mandamus.

Under Section 3, Rule 41, of the Rules of Court, an appeal may be taken by serving upon the adverse party and filing with the trial court within 30 days from notice of order or judgment, a notice of appeal, an appeal bond and a record on appeal. The time within which a motion to set aside has been pending should be deducted. Then the record on appeal is set for hearing for its approval (Section 7, *Idem*). Once the record on appeal and the appeal bond are approved, the appeal is deemed perfected and the trial court loses its jurisdiction over the case with certain exceptions (Section 9, *Idem*).

In the instant case plaintiffs did precisely what the rule requires. After they received copy of the judgment rendered against them, they took good care in filing their notice of appeal, appeal bond and record on appeal within the reglementary period of 30 days, and when objections were interposed to some features of the latter pleading, they redrafted the same precisely to correct or conform to the deficiencies found therein. Yet, the court a quo dismissed the appeal mainly taking into account the objections set up by defendants in their motion to dismiss, to wit: that the appeal was manifestly dilatory, it would be prejudicial to the substantial rights of the defendants, and that defendants filed certain criminal charges against plaintiffs which may eventually prescribe by reasons of the pendency of the action. Considering this action of the court a quo contrary to the rules and prejudicial to their interests, plaintiffs seasonably interposed the present petition for mandamus.

We find merit in the petition. To begin with, the grounds on which the appeal was dismissed are not among those for which an appeal may be dismissed as enumerated in Rule 52 of the Rules of Court. These grounds, even if they exist, can only be entertained by an appellate court, not by the court a quo, for, as already stated, an appeal is perfected if the steps prescribed in Section 3, Rule 41 had been taken, and once taken it becomes the duty of the court a quo to give due course to the appeal. Of course, the court a quo may disapprove the appeal bond or the record on appeal if it finds good reasons for disapproval (Sections 5 and 7, Rule 41), or where the notice of appeal, appeal bond or record on appeal is filed out of time (Section 13, *Idem.*), but such is not the case here, because the dismissal was predicted on other grounds. There is, therefore, reason for the plaintiffs to complain that the court a quo acted improvidently in dismissing their appeal under the above circumstances.

It is true that, according to defendants, judging from its merit, the appeal seemingly has been interposed by the plaintiffs merely for manifest delay, but even if this were true the right to pass upon this question is not certainly the court a quo whose decision is in issue but the appellate court. The court a quo cannot prevent a party from appealing from its order or decision no matter how frivolous it may be in order that it may be reviewed by an appellate court, because such prerogative is given to the latter. As a matter of fact, this case is covered by our rules when they provide that where an appeal is found to be frivolous double or treble costs may be imposed on the appellant, which may be paid by his attorney, if so ordered by the court (Section 3, Rule 131). Indeed, this is a matter that cannot be looked into by the court a quo because it goes to the very merits of its decision. For, as this Court has aptly said: "The grounds on which an appeal may be dismissed are well settled. They do not include matters which go to the merits of the cause or to the right of the plaintiff or defendant to recover. Nor do they involve the sufficiency of pleadings or defenses, or the kind or sufficiency of pleas made in the court below. Motions to dismiss appeals are based on lack of jurisdiction of the appellate tribunal or failure to observe the law or rules relating to appeals or for causes arising subsequent to the judgment from which the appeal is taken." (*Velasco, et al. vs. Rosenberg, et al.*, 29 Phil., 212, 213-214.)

Wherefore, the petition is granted. Respondent court is ordered to give due course to the appeal. Costs against respondents other than respondent judge. :

Bengzon, C. J., Padilla, Labrador, Conception, Reyes, J.B.L., Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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