

MIGUEL R. SOCCO AND PURA VARONA SOCCO, PETITIONERS, VS. SALVADORA G. GARCIA, PACIFICO GARCIA, HON. LUIS B. REYES, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, HON. W. L. CORN...

G. R. No. L-18231. October 31, 1962

Ponente: BARRERA, J.

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BARRERA, J.:

This is a petition for mandamus, with prayer for preliminary injunction, filed by the spouses Miguel R. Socco and Pura Varona, to compel the Court of First Instance of Manila to allow their appeal in Civil Case No. 43641 of said Court. The facts of the case, briefly stated, are as follows:

In the unlawful detainer case filed by Salvadora Garcia and Pacifico Garcia against Miguel R. Socco and Pura Varona (Civil Case No. 77071), the Municipal Court of Manila, after hearing the same without defendants' presence, rendered judgment on June 22, 1960 ordering the latter to restore possession of the property covered by Transfer Certificate of Title No. 16035 together with the improvements thereon, to pay back rentals at the rate of P200.00 a month from June 15, 1960 until it is finally vacated; the sum of P18.00 a month as costs; for damages in the amount of P400.00 for the period covering April 14 to June 14, 1960, with legal interest from April 29, 1960 until fully paid. Claiming that there was no actual notice to them of the hearing set for June 22, 1960 and that the conducting of such hearing on that day, in their absence, constituted a deprivation of their day in court, defendants Soccos filed on July 18, 1960, a petition for relief from judgment in the Court of First Instance of Manila (Civil Case No. 43641). Upon their filing a bond for P1,000.00, the court issued the writ of preliminary injunction prayed for, to restrain execution of the judgment of the Municipal Court pending termination of the proceeding.

After due hearing, the court issued an order dated September 8, 1960 dismissing the petition, on the ground that while petitioners' failure to appear at the trial (in the Municipal Court) may be considered excusable for them to be entitled to the relief afforded in Rule 38, petitioners must also show that they have a meritorious defense. The defense which petitioners propose to set up, i. e., pendency of another action in the Court of First Instance (for rescission of contract), however, was held inadequate to satisfy the requirement of the Rules, as a judgment in the unlawful detainer case would not bar an action involving title to and ownership of the property. Their motion for reconsideration of the order having been denied, petitioners filed a notice of appeal. In view of respondents' opposition to the approval of the record on appeal, the court issued an order dated October 24, 1960, which reads:

"Before the Court for consideration are the notice of appeal, appeal bond, and the record on appeal filed by the plaintiffs, and the opposition thereto of the defendants.

"It appears that the last day for the plaintiffs to perfect their appeal fell on October 13, 1960, and that the plaintiffs perfected their appeal on October 14, 1960 or one day past the reglementary period.

"When the aforesaid incidents were called for hearing, plaintiff Miguel R. Socco explained that plaintiffs

failure to perfect their appeal on time was excusable because he went to the Court to file his notice of appeal, appeal bond and record on appeal, he found the office closed due to the recent typhoon, so that he had to file them the next day, October 14. After considering the explanation of the plaintiff Miguel R. Socco, the Court, in the interest of justice, resolves to give due course to the plaintiffs' appeal, conditioned, however, that the plaintiffs amend their record on appeal within five days from, the receipt of a copy of this order conformably to the defendant's opposition, (*Italics supplied*)

"SO ORDERED."

After considerable delay occasioned by petitioners' failure to file a complete record on appeal as directed by the court, in its order above-quoted and as required in Section 7, Rule 41[1], Rules of Court, the respondent judge on December 27, 1960, entered his questioned order as follows:

"ORDER

"Considering the grounds in defendants' opposition to the approval of plaintiffs' amended record on appeal to be well taken, the urgent supplementary motion to approve record on appeal of Dec. 9, 1960, and the motion to approve amended record on appeal and for leave to admit additional pleadings filed by the plaintiffs are hereby denied, and the appeal interposed by them is dismissed.

"The Sheriff of Manila is hereby directed to execute and carry out the writ of execution issued by the Municipal Court of Manila dated July 13, 1960.

"So ordered.

"Manila, Dec. 27, 1960."

Thereupon, petitioners sought to compel approval by the lower court of their record on appeal by filing a petition for mandamus in the Court of Appeals. The appellate court, however, dismissed the same without prejudice, in its resolution of March 6, 1961, on the ground that there being no question of fact involved therein, the action was not in aid of its appellate jurisdiction and, therefore, can not be passed upon by said court. Hence, the filing with us of the instant petition for the purpose already mentioned at the beginning of this opinion.

What is here being questioned is the validity and legality of the order of the lower court of December 27, 1960, disapproving petitioners' record on appeal and dismissing the appeal itself, petitioners contending (1) that the appeal has been duly perfected in due time and the amended record on appeal submitted on December 9, 1960 is sufficient in form and substance; and (2) that the dismissal of the appeal, after it has been given due course is arbitrary and an abuse of discretion.

It appears from the records that after the issuance of the order of October 24, 1960 directing the petitioners to amend their record on appeal, conformably to the defendants' opposition, within 5 days from their receipt of the copy of said order, the petitioners submitted on November 2, 1960 a pleading entitled "Compliance to Submit Amended Record on Appeal" containing copies of several pleadings mentioned in defendants' opposition. Petitioners expressly stated therein

"that the herein petitioners-appellants are submitting these amendments and annexes not in its final form but in compliance only with the opposition presented by the respondents. There may be further corrections to be interposed by the respondents and after final determination and corrections, permission is herewith requested to have the petitioner-appellants to submit in its chronological order the final record on appeal in due form."

In this same pleading, petitioners-appellants requested for an extension of 7 days within which to submit the complete record on appeal in final form. It is, therefore, clear as is inferentially admitted by petitioners, that no redrafted record on appeal containing the desired amendments in the form required in Section 7 of Rule 41, has

been presented within the 5-day period granted by the court, which admittedly expired on November 3. Moreover, no action was taken by the court on petitioners' request for extension; neither did petitioners file the redrafted record within the 7 days requested by them. Instead, on November 10, petitioners again asked for another period of 7 days "within which to re-arrange his (petitioner) record on appeal to conform with the chronological order of their occurrences". Again petitioners did nothing to have this second request for extension acted upon by the court, nor did they file the promised "re-arranged" record on appeal within the period requested. Finally, on December 1, petitioners asked the court permission to withdraw the annexes which they filed on November 2 and on December 9, a redrafted record on appeal was, for the first time, submitted to the court. In the meantime, respondent Garcia has been repeatedly asking for the execution of the judgment of ejectment of the Municipal Court the relief from which was denied by the Court of First Instance, which denial is the subject of the projected appeal. All these incidents were acted upon by the court in its order of December 27, 1960 (*supra*).

It is elementary that petitions for extension are directed to the discretion of the court and favorable action thereon can not be taken for granted by the parties. A party who relies on or anticipates such action, does so at his own risk. Under the circumstances of the present case, the denial of petitioners' motions for extension, specially in the face of their failure to file the redrafted record within the extension asked for, even if granted, can not be considered an abuse of discretion to warrant the issuance of a writ of mandamus to compel approval and certification of the record on appeal.

Wherefore, the petition is hereby dismissed and the writ of preliminary injunction heretofore issued dissolved, with costs against the petitioners. So ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Paredes, Dizon, Regala and Makalintal, JJ. concur.

[1] Sec. 7. * * *. If the trial judge orders the amendment of the record, the appellant, within the time limited in the order, or such extension thereof as may be granted, shall redraft the record by including therein, in their proper chronological sequence, such additional matters as the court may have directed him to incorporate, and shall thereupon submit the redrafted record for approval, upon notice to the appellee, in like manner as the original draft.

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