

JULITA R. VILLAREAL, ET AL., PLAINTIFFS AND APPELLEES, VS. JUAN FRANCO, DEFENDANT AND APPELLANT.*G.R. No. L-6552. July 31, 1954*

Ponente: CONCEPCION, J.

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On June 3, 1952, the spouses Julita R. Villareal and Jose P. Villareal instituted civil case No. 20774 of the Municipal Court of Manila, against defendant Juan Franco, for the recovery of the sum of P1,225.97, with interest thereon, plus P300, as damages by way of collection expenses and attorney's fees, apart from the costs. In due course, said court rendered judgment on June 23, 1952, sentencing Franco to pay the sum of P930 and P335.70, with interest thereon and costs. Defendant appealed from this decision to the Court of First Instance of Manila, which, on motion of the plaintiffs, dismissed the appeal and remanded the record to the municipal court for execution of the aforementioned judgment. The case is now before us on appeal, taken by the defendant, from the order of dismissal of the court of first instance.

The appeal hinges on whether or not said judgment of the municipal court had become final and executory prior to the appeal interposed by defendant Juan Franco. As above stated, the aforementioned judgment was rendered on June 23, 1952. About a month later, or on July 22, the municipal court issued, on motion of the plaintiffs, the corresponding writ of execution, copy of which was served on the defendant, personally, on July 30. Four days later, the sheriff returned the writ unsatisfied. Thereupon, or on August 13, plaintiffs filed, with the Commissioner of Civil Service, an administrative complaint, against the herein defendant, he being a civil service employee. Copy of said judgment and of the sheriff's return were annexed to said administrative complaint, copy of which, together with its aforementioned annexes, were served on Franco, on or before August 14, for, in a letter bearing this date he acknowledge receipt thereof. On August 28, the clerk of the municipal court mailed a copy of said judgment to the defendant, who claims he has not received it. On September 27, defendant filed a motion to set aside said writ of execution. By an order dated October 1, this motion was granted, and nine (9) days later, or on October 10, defendant filed his notice of appeal and appeal bond, and deposited the amount of the corresponding docket fees.

When the case was already in the court of first instance, plaintiffs moved for the dismissal of the appeal upon the ground that the same had been taken long after the expiration of the statutory period therefor. This motion was, at first, denied by an order dated November 7, 1952. However, on motion for reconsideration of the plaintiffs, the court subsequently revised its view, and, by an order dated November 18, 1952, it set aside the order of November 7, and dismissed the appeal and caused the record to be remanded to the municipal court for execution of the decision thereof.

Defendant assails this order as erroneous, upon the ground that, pursuant to section 7 of Rule 27 of the Rules of Court:

"Final orders or judgments shall be served either personally or by registered mail".

and that when he appealed on October 10, 1952, copy of the judgment of the municipal court had not been served upon him, either personally or by registered mail. Said section 7 is, however, part of the Rules governing "Procedure in Court Instance," which are found in Rule 5 to 39, inclusive, of the Rules of Court. For this reason, plaintiffs maintain that said section 7 is inapplicable to the case at bar. Indeed, the "Procedure in Inferior Courts," which include justice of the peace courts and municipal courts, is covered by Rule 4 of the Rules of Court. It is interesting to note that section 19 of said Rule 4 provides that:

"Rules 10, 12, 13, 14, 18, 28, 29, 30, and 39 are applicable in inferior courts in cases falling within their jurisdictions and in so far as they are not inconsistent with the provisions of this rule."

This omission of Rule 27 from the list of rules of "Procedure in Courts of First Instance" thus specifically made applicable to "inferior courts," would seem to warrant the conclusion that said Rule 27, and, accordingly, its section 7, upon which appellant relies, was not intended to apply to justice of the peace courts and municipal courts. However, in *Manabat vs. Aquino*[*] (49 Off. Gaz. 1834), we applied section 1 of Rule 27 of the Rules of Court to an appeal from a decision of a justice of the peace court. At any rate, Rule 40 of the Rules of Court, entitled "Appeal from Inferior Courts to Courts of First Instance," provided; in section 2 thereof, that:

"An appeal shall be perfected within fifteen days after notification to the party of the judgment complained of, (a) by filing with the justice of the peace or municipal judge a notice of appeal; (b) by delivering a certificate of the municipal treasurer showing that the appellant has deposited the appellate court docket fee, or in chartered cities, a certificate of the clerk of such court showing receipt of the said fee; and (c) by giving a bond." (Italics supplied.)

Neither this section nor any other provision of the Rules of Court determines explicitly the manner in which notice of the judgment of inferior courts shall be served. In the case at bar it is not denied, however, that on July 30, 1952, copy of the writ of execution, setting forth the gists of the decision of the municipal court, was served on defendant-appellant. Moreover, copy of said decision was received by the defendant on or before August 14, 1952, as part of the administrative complaint filed against him by plaintiffs herein. What is more, another copy of said decision was mailed to him by the clerk of the municipal court on August 28, 1952. This service by mail would have become complete five (5) days later, or on or about September 3 or 4, 1952, if we applied section 8 of Rule 27, which appellant invokes in his favor. It is obvious, therefore, that, when appellant's notice of appeal was filed on October 10, 1952, more than fifteen (15) days from actual notice, or receipt of copy, of the decision of the municipal court had elapsed. In other words, even if section 7 of Rule 27 were applied, said decision was then already final and executory.

Wherefore, the order appealed from is hereby affirmed, with costs against defendant-appellant Juan Franco. So ordered.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador and Reyes, J. B. L. JJ., concur.

[*] 92 Phil., 1025.

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