

SIMEONA CUMPLIDO, PETITIONER, VS. PRESENTACION MENDOZA, ET AL., RESPONDENTS.

G.R. No. L-20265. June 30, 1964

Ponente: PAREDES, J.

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PAREDES, J.:

This is a petition for Mandamus with Preliminary Injunction, instituted to compel the Presiding Judge of the CFI of Bulacan to give due course to the appeal of petitioner herein, and to restrain said respondent and the Provincial Sheriff from implementing an order of execution dated September 3, 1982.

In Civil Case No. 1959, of the Court of First Instance of Bulacan, entitled *Presentation Mendoza vs. Simeona Cumplido, Dominador de Jesus and Andres Mendoza*, which is for Quieting of Title, the following judgment was rendered—

"IN VIEW OF ALL THE FOREGOING, this Court finds and so holds that defendant Simeona Cumplido has a better right over the entire portion of the property in litigation now titled and declared in her name. There being no sufficient evidence to justify the granting of damages and attorney's fees in favor of defendant Simeona Cumplido, her counterclaim is hereby overruled but plaintiff shall pay the costs.

It is further ordered that plaintiff *Presentation Mendoza* and *Andres Mendoza* should vacate the premises in question within 80 days after this decision has become final, unless agreement to the contrary is made with defendant *Simeona Cumplido*."

Under date of April 10, 1962, respondent *Presentation Mendoza* filed a motion for new trial and/or reconsideration of the above judgment, on the sole ground that the evidence was insufficient to justify the decision or that it is against the law. *Simeona Cumplido* objected to the said motion, contending that the grounds interposed are not those for new trial and since it is more of a motion for reconsideration, the same was filed out of time.

On April 27, 1962, the lower court handed down the following Order—

"Upon consideration of the motion for new trial and/or reconsideration filed by plaintiff on April 10, 1962, as well as the opposition filed by defendants, and finding the arguments advanced in support of the motion to be meritorious, as prayed for, the dispositive part of the decision of this Court, dated March 13, 1962, is hereby amended so as to read as follows—

"IN VIEW OF ALL THE FOREGOING, this Court finds and so holds that plaintiff *Presentation Mendoza* is entitled to the one-half portion of the property in litigation under her possession and the Register of Deeds of Bulacan is, therefore, hereby ordered to cancel Transfer Certificate of Title No. 19804 in the name of defendant *Simeona Cumplido* covering the whole property in question, and in lieu thereof, to issue new ones in favor of *Presentation Mendoza* in regard to the one-half being possessed by her and in favor of *Simeona Cumplido* in regard to the other half.

There being no sufficient evidence to justify the counterclaim of defendant Simeona Cumplido, the same is hereby dismissed.

No pronouncement is made as to costs and attorney's fees."

The above Order was received by Simeona Cumplido on April 28, 1962. Under date of May 23, 1962, Cumplido presented a Notice of Appeal and deposited a cash appeal bond of P60.00. On May 26, 1962, three (3) days before the expiration of the reglementary period to perfect the appeal, counsel for Cumplido presented with the trial court a Motion for Fifteen (15) days Extension within which to file a Record on Appeal. When the above motions (Notice of Appeal, Deposit of Appeal Bond and Extension)- were presented, there was no presiding judge of the CFI of Bulacan, for which reason no action was taken in the premises. However, on June 13, 1962, allegedly the expiration of the period asked for the filing of the Record on Appeal, Cumplido filed with the Court a Record on Appeal, and furnished Presentacion Mendoza a copy thereof, which she received on June 14, 1962. The hearing of the approval, of the Record on Appeal was set by now respondent Judge Emmanuel Munoz on August 14, in an order dated August 2, 1962.

One day before the scheduled hearing on the approval of the Record on Appeal (August 13), counsel for Mendoza filed with the Court an Opposition to the approval of said Record on Appeal, furnishing a copy thereof the counsel of Cumplido by registered mail on the same date. The opposition was based on the ground that the defendant (Cumplido) failed to comply with the provisions of Section 3, Rule 41 of the Rules pertaining to the perfection of appeals; for although a cash appeal bond of P60.00 was deposited, the same was not served upon the adverse party (Mendoza), and the mere filing of notice of appeal and a cash appeal bond has been held insufficient for perfecting an appeal (*Prisco vs. Castelo*, 87 Phil., 714; 48 Off. Gaz., 2193, June, 1952).

Respondent Judge, taking cognizance of the opposition, in spite of the objection that it was in violation of the legal requirement of service of notice (3 days), entered an Order the same day, to wit—

"This is a motion to approve the Record on Appeal and the opposition thereto, finding the opposition to be well taken and that the Record on Appeal filed by the defendants was beyond the reglementary period, the approval of said Record on Appeal is hereby Denied and the appeal of the defendants is hereby Dismissed."

Cumplido moved to reconsider the above Order, but on September 3, 1962, the trial court not only denied the motion, but also ordered the issuance of a writ of execution to enforce the judgment sought to be appealed.

Claiming that respondent Judge, in denying the acceptance and approval of the Record on Appeal and issuing the writ of execution of the decision, had unlawfully neglected the performance of a duty and/or gravely abused his discretion for which there is no plain, speedy and adequate remedy in the ordinary course of law, presented the instant petition for mandamus with preliminary injunction.

This Court gave due course to the petition, and issued a writ of preliminary injunction.

The main issue in the case at bar, therefore, is whether or not the appeal was perfected on time, in accordance with the rules. Respondents maintain that it was not, because :(1) the cash appeal bond was not served on the appellee Mendoza; and (2) the record on appeal was not filed within the thirty (30) day period, provided for.

It is now settled that the circumstance of non-service of a cash appeal bond upon the adverse party does not affect the perfection of an appeal, provided such appeal bond is presented within the prescribed period (*Espartero vs. Ladaw*, 92 Phil., 704; 49 Off. Gaz., 1439, April 29, 1953, See also *Gammad, et al., vs. Arranz, et al.*, 92 Phil., 1048.

It would seem, however, that the record on appeal in the case at bar, was not filed within the prescribe period. The

rules require that the record on appeal should also be presented within thirty (30) days after receipt of the order or the decision. The last day for filing of the record on appeal in question was May 28, 1962. Three days prior to the expiration of the period, counsel for petitioner presented a Motion for Extension of Time to File Record on Appeal. The said motion was not acted upon because there was no judge of the local CFI to preside. Inasmuch as there were only three (3) days left of the original period within which to perfect the appeal, counsel and/or petitioner should have ascertained from the Clerk of Court the status of the motion for extension. Had he followed this elementary precaution, petitioner could have known that there was no judge to act on his motion and could have availed of the remedies indicated by the rules and/or the Judiciary Act, that is, to present the same motion with the Justice of the Peace of the capital who is authorized to act on such interlocutory matters (Sec. 88, Judiciary Act of 1948, as amended). Counsel and/or petitioner had no right to assume that the motion for extension would be conceded. A litigant should not take for granted that his motions would be approved by the Court; he should always take into account the right of the adverse party to object. It is argued, however, that the record on appeal was presented within the period of extension, prayed for in the motion, although said motion was not at all acted upon. Even if we assume, for the benefit of the petitioner, that the extension was granted, still the record on appeal was filed (1) day late. As heretofore stated, the original period expired on May 28, 1962. Fifteen (15) days from May 29 (period asked for in the motion) expired on June 12, 1962. By the very admission of counsel in his pleadings, the record on appeal was filed on June 13, which is one day late. It is evident that petitioner has not established a clear right to the approval of the record on appeal and is not, therefore, entitled to a writ of mandamus (Sec. 3, Rule 65).

In view of the foregoing, the petition should be, as it is hereby denied, for being without merits. Costs against the petitioner, in both instances.

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

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