

NATIVIDAD T. RAMIREZ, NIÑO T. RAMIREZ, LOURDES U. RAMIREZ, EDWIN U. RAMIREZ, RODOLFO U. RAMIREZ, PAULINA U. RAMIREZ AND HON. JUDGE VICTORINO C. TELERON OF THE COURT OF FIRST INS...*G.R. No. L-33300. October 22, 1975*

Ponente: BARREDO, J.

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Petition for review of the decision of the Court of Appeals setting aside the orders of the Court of First Instance of Bohol in Civil Case No. 310, Fausta Vda. de Ramirez, et al. vs. Shell Company of the Philippines, Ltd., of June 6 and 19, 1970 which directed "the parties to submit their respective memoranda, in the form of appeal briefs . . . with the admonition that after the lapse of said period, (of five days from receipt of the order) the court would consider the case submitted for decision" on the basis of the record of the trial held in the inferior court, without the need of any trial de novo, the case being an appeal from the decision of the City Court of Tagbilaran City in a desahucio case.

It appears that on May 29, 1968 petitioner's predecessor, Mrs. Fausta Vda. de Ramirez, filed an action for unlawful detainer against respondent Shell Company of the Philippines in the City Court of Tagbilaran. After due trial, a complete record of which was stenographically taken by the official stenographer of the court, judgment was rendered against Shell Company sentencing it to vacate the premises being leased by it from Mrs. Ramirez. This decision was appealed to the Court of First Instance of Bohol, whereat, upon motion of petitioners, the complaint was amended in order to substitute them in lieu of Mrs. Ramirez who had died. Shortly thereafter and before any trial in the Court of First Instance had been held, respondent presiding judge issued the impugned order of June 6, 1970 directing the parties to file their respective memoranda and announcing that the court would not hold any trial de novo as it would decide the case on the basis of said memoranda and the transcribed stenographic record of the trial in the City Court of Tagbilaran purportedly pursuant to the following provisions of Section 1 of Republic Act 6031:

"SECTION 1. Section 45 of Republic Act Numbered Two hundred and ninety-six, as amended is hereby further amended to read as follows:

SEC. 45. Appellate Jurisdiction.— Courts of First Instance shall have appellate jurisdiction over all cases arising in city and municipal courts, in their respective provinces, except over appeals from cases tried by municipal judges of provincial capitals or city judges pursuant to the authority granted under the last paragraph of Section 87 of this Act.

Courts of First Instance shall decide such appealed cases on the basis of the evidence and records transmitted from the city or municipal courts: Provided, That the parties may submit memoranda and/or brief with oral argument if so requested: Provided, however, That if the case was tried in a city or municipal court before the latter became a court of record, then on appeal the case shall proceed by trial de novo.

In cases falling under the exclusive original jurisdiction of municipal and city courts which are appealed to the courts of first instance, the decision of the latter shall be final: Provided, That the findings of facts contained in said decision are supported by substantial evidence as basis thereof, and the conclusions are not clearly against the law and jurisprudence; in cases falling under the concurrent jurisdictions of the municipal and city courts with the courts of first instance, the appeal shall be made directly to the court of appeals whose decision shall be final: Provided, however, that the supreme court in its discretion may, in any case involving a question of law, upon petition of the party aggrieved by the decision and under rules and conditions that it may prescribe, require by certiorari that the case be certified to it for review and determination, as if the case had been brought before it on appeal."

Not agreeable to said order and insisting that since the City Court of Tagbilaran was not officially a court of record, hence its appeal should be tried de novo, respondent filed a motion for reconsideration, which the court denied in its order of June 19, 1970.

The assailed orders were brought to this Court on certiorari in G.R. No. L-32302 but the petition was dismissed on July 31, 1970. Somehow, a similar petition was subsequently filed with the Court of Appeals with the result already stated above. Not only that. Notwithstanding that the instant petition had already been filed with this Court within the reglementary period, on March 10, 1971, the intermediate court caused entry of final judgment to be made of its decision, ruling that as of said date, it had not been served with copy of the said petition, hence said decision had become final and executory. In a resolution issued on July 20, 1971, We ordered that the effects of said entry be held in abeyance to await the result of Our inquiry regarding the alleged omission of petitioners to serve the Court of Appeals with copy of their petition.

Regarding the preliminary question about the failure of petitioners to serve copy of their petition on the Court of Appeals within the reglementary period for appeal from the intermediate court to this Court, We have already held in *Salazar vs. Gutierrez*, 33 SCRA 242, 245-246, that such omission is not of jurisdictional import. Besides, all that Section 1 of Rule 45 enjoins in this connection is that "the petition (for review) shall not be acted upon without proof of service of a copy thereof to the Court of Appeals." In the case at bar, petitioners had already furnished proof of such service when We gave due course to their petition.

Another preliminary point is more important, even if the Court of Appeals had labeled it as a "minor issue." When that court's attention was called to the fact that herein respondent Shell Company had already unsuccessfully attempted to have the orders in question annulled by this Supreme Court, and, therefore the Court of Appeals had no more authority to entertain another petition with the same objective, it resolved the point thus:

"Regarding said minor issues, it appears that a similar petition had been filed by the petitioner in the Supreme Court but the same was dismissed in a resolution dated July 31, 1970, which reads as follows:

'After deliberating on the petition for prohibition and mandamus in Case G.R. No. 32302 (*Shell Company vs. Judge Teleron, et al.*), the Court resolved to dismiss the petition considering that since 1959, by Republic Act 2613, decisions of Justices of the Peace of provincial capitals and municipal courts are appealable direct to the Court of Appeals or the Supreme Court as the case may be (Judiciary Act, Section 87, last paragraph, as amended by Republic Act 2613, Section 10; Republic Act 3828, Section 6.)'

"We rule that the dismissal of the former petition by the Supreme Court does not constitute a bar in the instant petition and that this Court has jurisdiction to receive the same for the reason that it is very clear from said resolution that inasmuch as the principal case is appealable to this Court, it has jurisdiction to entertain the present petition in aid of its appellate jurisdiction as provided in Section 30 of Republic Act 296, otherwise known as The Judiciary Act of 1948." (Page 20, Record.)

It is obvious that the Court of Appeals missed the point in Our resolution of July 31, 1970 it quoted. As in the petition filed with it, Shell Company also alleged in its petition filed with Us in G.R. No. L-32302 that a trial de novo was indispensable in the court of first instance because although the trial in the City Court of Tagbilaran was actually recorded stenographically, said court was not yet a court of record within the contemplation of the provision of Republic Act 6031 aforequoted. In Our resolution dismissing the petition, the reference made to appeals from the municipal courts in provincial capitals and city courts directly to the Court of Appeals or to the Supreme Court under Section 87 of the Judiciary Act was not intended to convey the idea that the decision in question of the City Court of Tagbilaran was appealable to the Court of Appeals directly. Rather what the resolution meant was that even without the need of legally or officially declaring an inferior court to be a court of record, as long as the proceedings thereat are actually recorded as if it were a court of record in its full sense, the record thus actually taken of the evidence may legally suffice as basis for the decision of the appellate court, as may be noted in relation to appeals from inferior courts pursuant to the last two paragraphs of Section 87 of the Judiciary Act as amended by Republic Acts 2613 and 3828 reading as follows:

"Municipal judges in the capitals of provinces and sub-provinces and judges of city courts shall have like jurisdiction as the Court of First Instance to try parties charged with an offense committed within their respective jurisdictions, in which the penalty provided by law does not exceed prison correccional or imprisonment for not more than six years or fine not exceeding six thousand pesos or both, and in the absence of the district judge, shall have like jurisdiction within the province as the Court of First Instance to hear application for bail.

All cases filed under the next preceding paragraph with municipal judges of capitals and city court judges shall be tried and decided on the merits by the respective municipal judges or city judges. Proceedings had shall be recorded and decisions therein shall be appealable direct to the Court of Appeals or the Supreme Court, as the case may be."

In other words, We dismissed the petition in G.R. No. L-32302 for lack of merit and not because of want of jurisdiction on Our part. Indeed, there could be no such want of jurisdiction because as to petitions for certiorari, prohibition and mandamus in aid of the appellate jurisdiction of the Court of Appeals, the same are within the concurrent jurisdiction of this Court and the Court of Appeals.

Accordingly, the Court of Appeals should not have entertained the petition filed by Shell Company. As was held in *Philippine Products Co. vs. Court of Appeals*, 21 SCRA 870, "considering that the petition . . . had been finally dismissed by the Supreme Court, the highest court of the land, for lack of merit, the filing of the very same petition before the Court of Appeals, a court of inferior stature, was actually an appeal from the former to the latter court. Unquestionably, this procedure taken by respondent's counsel is against the orderly set-up of judicial proceedings." (at p. 875.) On this ground alone, the decision of the Court of Appeals under review should be "annulled and set aside in toto." (id.)

But in order not to leave any room for doubt regarding the validity of the orders in question of the Court of First Instance of Bohol, it is made clear that in view of the fact that at the time of the trial of the subject ejectment case in the City Court of Tagbilaran, said court had official stenographers pursuant to the requirements of Section 88 of Republic Act 4660, the charter of said city, and it being beyond dispute that complete stenographic record was taken of the whole proceedings in said case, it is immaterial whether or not the said court may be deemed a court of record in its fullest sense. The statement in Section 1 of Republic Act No. 6031 to the effect that "if the case was tried in a city or municipal court before the latter became a court of record, then on appeal the case shall proceed by trial de novo" should not be taken literally. What is decisive is the actual existence or non-existence of official records of the proceedings. Thus, even if an inferior court has already been officially declared a court of record, but if for one reason or another, no record of its proceedings has actually been taken in a given case, the

appeal in such an instance must nevertheless proceed by trial de novo. Conversely, as long as records are taken of the trial, these records may be the basis of the review and decision of the appellate court, notwithstanding that the inferior court is not a court of record. We cannot perceive any injury or prejudice to the interest of justice by Our adopting such view. Indeed, in the instant case, Shell Company does not pretend that it would in any way be placed at a disadvantage if respondent court were not to hold a trial de novo and limited itself in resolving the case to a review of the records of the inferior court and the respective memoranda-briefs of the parties.

WHEREFORE, the decision of the Court of Appeals under review is annulled and set aside and the respondent Court of First Instance of Bohol may now proceed to enforce its impugned order of June 6, 1970 and it may decide the appeal of respondent Shell Company on the basis of the memoranda of the parties, if any should be filed, and the transcript of the stenographic records of the proceedings before the City Court of Tagbilaran. The entry of final judgment made by the Court of Appeals is likewise nullified.

Costs against respondent Shell Company of the Philippines.

Antonio, Concepcion, Jr., and Martin, JJ., concur.

Aquino, J., concurs and wishes to add that the Tagbilaran City Court became a court of record on June 21, 1969 by virtue of sec. 4 of Republic Act No. 5967 which took effect on that date.

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