

**ROGELIO MANIA, PETITIONER, VS. JOSEFINA VDA. DE SEGARRA
AND COURT OF FIRST INSTANCE OF CAMARINES SUR, BRANCH IV,
PRESIDED BY HON. ALFREDO REBUENO, RESPONDENTS.**

G.R. No. L-48257. August 24, 1984

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is a petition for certiorari and/or mandamus which seeks either an order requiring the respondent Court of First Instance of Camarines Sur, Branch IV, to approve the appeal perfected by petitioner to the Court of Appeals, said appeal having been denied pursuant to Act 6031; or alternatively, a judgment reversing the decision dated November 21, 1977 of said respondent Court of First Instance declaring, in effect, that the decision of the City Court of Naga can still be executed as the substantial payments made by the defendant and accepted by the plaintiff after the period stipulated in the amicable settlement and/or decision had expired, did not bring about an implied novation.

The primordial question to be resolved in this petition, therefore, relates to the jurisdiction of the Court of Appeals under section 45 of the Judiciary Law, as amended by Republic Act No. 6031, to review the decision of the Court of First Instance in cases exclusively cognizable by an inferior court.

The facts of the case are as follows:

On April 10, 1975, plaintiff, respondent Josefina Vda. de Segarra, instituted in the City Court of Naga an action for ejectment against defendant, petitioner Rogelio Mania, from a commercial apartment for failure to pay rents from September, 1974 up to the filing of the complaint on April 10, 1975, despite repeated demands.

On June 27, 1975, the City Court of Naga rendered a decision upon a compromise agreement, the pertinent provisions of which are:

"4. That the defendant agrees to pay the total amount of P2,150.00 to the plain-tiff within a period of twenty (20) days from today, June 27, 1975, provided, however, that if the defendant fails to pay within the said period, the ownership and possession of the said personal properties be trans-ferred to the plaintiff and the defendant will immediately vacate the premises described in par. 2 of the complaint;

"5. That the plaintiff agrees that if the defendant pays the obligation of P2,150.00, the latter will be allowed to continue occupying the premises, provided, that he should be paying rentals regularly every 5th day of the month beginning August, 1975 except for the month of July, 1975. In case of default in the payment of rentals beginning August 5, 1975, the defendant agrees to vacate the premises;"

On April 2, 1976, the City Court of Naga, upon motion of respondent Segarra, issued a writ of execution of its decision. Petitioner Mania, through counsel, filed a motion to quash execution, alleging among others that execution on the decision based on the amicable settle-ment is improper because as of January 10, 1976, he has already paid P3,250.00 and that he is in arrears of P1,150.00 up to April, 1976; and that he cannot be forced to

vacate the premises because he has never been in default as there was no demand, judicial or extrajudicial. He prayed that respondent Segarra be ordered to accept from him the sum of P650.00 representing balance as of April, 1976; that he be allowed to continue to occupy the premises and that the writ of execution be quashed.

On May 3, 1976, the City Court upon motion of petitioner Mania issued an order to the Deputy Sheriff to desist from enforcing the writ of execution pending the resolution of the motion to quash.

On May 17, 1976, respondent Segarra filed a motion to dissolve the restraining order on the ground that the decision being already final and executory, she is entitled to the writ as a matter of right. She also argued that the decision based on the amicable settlement has not been complied with and that it has never been novated as claimed by petitioner Mania.

On June 18, 1976, the lower court denied respondent Segarra's motion to dissolve the restraining order; ordered the recall of the writ of execution dated April 12, 1976 and the issuance of another writ of execution for the sum of P650.00 representing balance of alleged rents in arrears, and held that there is no legal basis to order the defendant to vacate the premises. The dispositive part of the decision states:

"The Court, therefore, finds that there has been a substantial compliance with the terms of the amicable settlement and that as of April 1976, the defendant was in arrears only in the amount of P1,150.00 but from which amount P500.00 should be deducted because plaintiff in open court admitted that actual payment of P500.00 was received by her thru the City Sheriff which was duly receipted for. Justice and equity demand that since the judgment has been substantially complied with and leaving only a balance of P650.00 as of April, 1976, the writ of execution issued by this Court on April 2, 1976 is hereby recalled and in its place another one is hereby ordered issued for the balance of P650.00 without prejudice to the plaintiff's right to demand immediate payment, of the rentals of May and June. The Sheriff can proceed with the execution in accordance with the writ which this Court will issue in substitution for the one granted on April 2, 1976. The Court finds no legal basis to order the defendant to vacate the premises."

From the aforesaid order of the City Court, respondent Segarra appealed to the Court of First Instance of Camarines Sur, raising the following issues: (a) whether or not the restraining order of the lower court dated May 3, 1976 is proper and valid; and (b) whether or not the order of the lower court dated June 18, 1976 denying the plaintiff's motion to dissolve the restraining order, recalling the writ of execution dated April 2, 1976 and ordering the issuance of another writ for the sum of P650.00 and holding that there is no legal basis to order the defendant to vacate the premises, is legally justified.

The Court of First Instance, in a decision dated November 21, 1977, ruled that both orders have no legal justification. With respect to the restraining order, it reiterated the rule that where the judgment has become final, the court cannot neglect performance of its ministerial duty of issuing a writ of execution. The fact that the defendant was not present when the motion for execution was heard is of no moment inasmuch as the motion for execution did not carry a bill of costs, and therefore, may be heard even ex-parte, said the court. If execution in ejectment cases cannot be enjoined, a fortiori it cannot be suspended by a restraining order. With respect to the order dated June 18, 1976, the Court of First Instance said that after the amicable settlement has been adopted by the lower court in toto and decision was rendered in accordance thereto, the amicable settlement ceased to be a private agreement between the parties and became a final decision of the court, which became immediately final and executory, and therefore, cannot be altered, modified or changed. The partial payments made by the defendant to the plaintiff, though substantial, did not change the situation of the parties, since the amount paid, as found by the lower court, was still short of the amount due to the plaintiff. The Court of First Instance also held that demand under Article 1169 of the Civil Code is not necessary for the period to pay was already fixed in the amicable settlement and decision. Accordingly, the court ordered the issuance of a new writ of execution in

accordance with the final judgment of the lower court dated June 27, 1975, plus the accrued rentals from June 28, 1975 until the premises are vacated.

The aforesaid decision was served upon petitioner Mania on November 24, 1977 and on December 23, 1977 or 29 days after service of the decision, petitioner perfected his appeal to the Court of Appeals by filing with the lower court a Record on Appeal, a Notice of Appeal and Cash Appeal Bond. Respondent Segarra orally raised in open court during the hearing for the approval of the appeal that the procedure for appeal taken by petitioner Mania was improper as the proper procedure was not an ordinary appeal but appeal by certiorari filed directly with the Supreme Court; and that the decision dated November 21, 1977 has become final 15 days after service thereof upon petitioner Mania.

The lower court ordered the parties "to submit their simultaneous memorandum in support of their respective contentions within a period of five days" from February 2, 1978. In compliance with the order, petitioner Mania filed on February 3, 1978 his memorandum but respondent Segarra filed his "Motion for Execution with Memorandum of Authorities" 22 days after the lapse of the 7-day extended period she prayed for. Petitioner Mania filed an "Opposition to Motion for Execution".

In an order dated March 31, 1978, the Court of First Instance resolved to grant the Motion for Execution for being "meritorious". This order was served upon petitioner Mania on April 14, 1978 and three days thereafter or on April 17, 1978, he filed a motion for reconsideration, which was denied in an order dated May 11, 1978 for the following reason:

"Considering that the decision or order sought to be appealed is the decision of this Court from an order of the City Court of Naga, which must be governed by the provisions of Act 6031, by certiorari within fifteen (15) days after receipt of the decision, it is evident that the appeal interposed by defen-dant is out of time."

Hence, the instant petition for certiorari and/or mandamus.

The decision of the Court of First Instance of Camarines Sur, Branch IV, sought to be reviewed in the case at bar, being an appealed case falling within the exclusive jurisdiction of the City Court of Naga, the mode of review of said decision should be by petition for review, not by means of a record on appeal. Therefore, the intended appeal by petitioner Mania to the Court of Appeals when he filed a notice of appeal, a cash appeal bond and a record on appeal with the Court of First Instance of Camarines Sur, is clearly erroneous. Any further review of the aforesaid decision is no longer a matter of right, but of sound judicial discretion. Hence, an appeal by record on appeal, which presupposes that the appeal is a matter of right, is improper. A petition for review which may or may not be given due course depending on whether or not the petition shows prima facie that the court has committed errors of fact, of fact and law, or of a substantial question of law alone, is the proper remedy. This is in the import of the ruling of this Court in *Gutierrez vs. Magat*, 67 SCRA 262; *Buenbrazo vs. Marave*, 101 SCRA 849; and *Estella vs. Court of Appeals*, 111 SCRA 581. In *Gutierrez vs. Magat*, an offshoot of a case of forcible entry which was dismissed by the municipal court of Mangatarem, Pangasinan but reversed after a trial de novo by the Court of First Instance of Pangasinan, this Court held, upon attempt by the party adversely affected by the decision to appeal to the Court of Appeals by record on appeal, that "Section 45 of the Judiciary Law as amended by Republic Act No. 6031 does not allow an appeal by record on appeal from the decision of the Court of First Instance in an appealed case falling within the exclusive original jurisdiction of the municipal or city court." Again in *Buenbrazo vs. Marave*, which also started as a forcible entry case in the city court of Ozamiz City and then appealed to the Court of First Instance of Misamis Occidental, this Court held, upon further appeal to the Court of Appeals by means of a record on appeal:

"We hold that the lower court erred in giving due course to Abelardo's appeal to the Court of Appeals by

means of a record on appeal.

The applicable rule is found in section 45, as amended by Republic Act No. 6031, which took effect on August 4, 1969, the general rule is that the decision of the Court of First Instance in cases 'falling under the exclusive original jurisdiction of municipal and city courts which are appealed to' it is final and unappealable (see *Don Lino Gutierrez & Sons, Inc. vs. Court of Appeals*, L-39124, November 15, 1974, 61 SCRA 87, 92; *Gutierrez vs. Magat*, L-39739, October 3, 1975, 67 SCRA 262, 265).

However, the finality of the decision of the Court of First Instance in those cases (cases exclusively cognizable by inferior courts) is subject to the condition '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.'

Section 45 further provides in its third paragraph that this 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.'

Note that that proviso is an exact copy of the proviso in section 29, which grants this Court jurisdiction to review decisions of the Court of Appeals on questions of law. That review is provided for in Rule 45 of the Rules of Court."

As to what should be the mode of review when the factual findings of the Court of First Instance are not supported by substantial evidence and its conclusions contravene law and jurisprudence, this Court held therein that:

"x x x the review of the decision of the Court of First Instance in a case exclusively cognizable by the inferior court cannot be made in an ordinary appeal or by record on appeal.

That should be known to the members of the bench and bar since the enactment of Republic Act No. 6031 in 1969 in the same way that, by this time, the bench and bar should know that appeal by record on appeal to the Supreme Court under Rule 42 of the Rules of Court was abolished by Republic Act No. 5440 which, as already stated, took effect on September 9, 1968.

An appeal by record on appeal presupposes that the appeal is a matter of right. An appeal by petition for review or certiorari means that the appellate court has discretion to reject the appeal. Under section 45, the review by the appellate court of a decision of the Court of First Instance in cases originally cognizable by the inferior court is not a matter of right."

The case of *Estella vs. Court of Appeals* began as an ejectment case filed in the City Court of Manila, Branch III and appealed to the Court of First Instance of Manila, Branch IV where an order was issued tentatively reducing the amount of monthly rental set by the city court pending decision of the appeal. This order was subject of a certiorari and mandamus proceeding before the Court of Appeals, where it was held that the Court of First Instance has no power to modify or change the amount of periodical deposits to be made by petitioner as fixed by the city court without going into the merits of the case. Said assumption of jurisdiction by the Court of Appeals was questioned before this Court, citing the ruling in *Buenbrazo vs. Marave*, but this Court ruled:

"As held in the *Buenbrazo* case, Section 45 of the Judiciary Act as amended by Republic Act No. 6031, does not allow an appeal by record on appeal from the decision of the Court of First Instance in an appealed case falling within the exclusive jurisdiction of the municipal or city court. The same section declares that the decision of the CFI in those cases is final, unless the decision is not supported by substantial evidence, or clearly against the law and jurisprudence. And under Section 29 of the Judiciary Act, as amended by Republic Act No. 5433, which section specifically deals on the 'Jurisdiction of the Court of Appeals,' 'the aggrieved

party may elevate the matter to the Court of Appeals only on petition for review, to which the Court of Appeals shall give due course only when the petition shows prima facie that the court has committed errors of fact or of fact and law that would warrant reversal or modification of the judgment or decision sought to be reviewed.'

It is not right, therefore, to contend, as petitioner does, that in no case can the Court of Appeals exercise appellate jurisdiction over cases decided by the Court of First Instance originating from the municipal or city courts. It can do so on cases taken to it not by ordinary appeal or by record on appeal, but by petition for review, to be more in keeping with the manifest purpose of R.A. 6031, which, as a general rule and to expedite disposition of these cases, declares as final decisions of the CFI. An ordinary appeal would frustrate the main objective of the aforesaid statute of achieving quicker final disposition of cases originating from the lowest level in our courts hierarchy."

As to the question of where the petition to review the decision should be filed, We need to examine the issues raised by petitioner Mania, to wit:

- "1. Did respondent Hon. Alfredo S. Rebuena exceed his jurisdiction or commit grave abuse of discretion in rendering his decision before the expiration of the period for filing of petitioner's Memorandum of Authorities?
2. May a motion for execution of a final judgment be acted upon without proof of service thereof upon the adverse party?
3. May a final judgment of a court be novated by subsequent acts of the parties?
4. In a final judgment of a court fixing the time for payment of a sum of money, does the obligor who fails to pay within the time fixed, incur in delay even without demand, where the obligee, for several times, previously accepted payments long after the lapse of the time fixed for said pay-ments?" (Rollo, pp. 140-141).

None of the aforesaid issues questions the substantiality of the evidence upon which the decision was based. In other words, petitioner does not raise the issue of whether the findings of facts contained in said decision are supported by substantial evidence. Neither does he allege that the evidence has been evaluated by the Court in such an arbitrary manner that the act would constitute grave abuse of discretion amounting to lack or excess of jurisdiction.

Inasmuch as the issues raised do not require an examination and evaluation of the evidence but rather question whether or not the conclusions of the Court of First Instance of Camarines Sur are in consonance with law and jurisprudence, petitioner Mania's remedy is with this Court. Thus, his resort to the Court of Appeals is also erroneous.

In *Torres vs. Yu*, 119 SCRA 48, this Court en banc made an exhaustive discussion to clear once and for all the questions of whether it is this Court or the Court of Appeals that should review the decision of the Court of First Instance in cases exclusively cognizable by inferior courts, giving therein a background of all the laws passed on the matter. This *Torres* case originated in the municipal court of Lingayen, Pangasinan as an ejectment case and appealed to the Court of First Instance which affirmed the municipal court's judgment. Fourteen days from receipt of the order denying the motion for reconsideration, a petition for review was filed in the Court of Appeals, which gave due course to it in a resolution dated January 13, 1976. That resolution was assailed on the ground that the Court of Appeals has no jurisdiction under Republic Act No. 6031 to review the said decision because the issue of whether the factual findings are supported by substantial evidence is allegedly a purely legal issue which this Court has the exclusive jurisdiction to resolve. In disposing of the issue, this Court said:

"We hold that if the only issue is whether the conclusions of the Court of First Instance are in consonance with law and jurisprudence, then that issue is a purely legal question. It should be ventilated in this Court by means of a petition for review on certiorari, as expressly provided in the last proviso of section 45, as amended by

Republic Act No. 6031.

The petition for review in that case should be in the form prescribed in Rule 45 of the Rules of Court for an appeal from the Court of Appeals, a form adopted by Republic Act No. 5440 which took effect on September 9, 1968.

But if the issue is whether 'the findings of fact contained' in the decision of the Court of First Instance 'are supported by substantial evidence', which is not purely a legal issue, or if that issue is raised together with the legal issue of whether the conclusions of the Court of First Instance are in conformity with pertinent law and jurisprudence, then the petition for review should be filed in the Court of Appeals.

Those issues require an examination and evaluation of evidence. As that function is the prerogative of the Court of Appeals, the review in that case should be by means of a petition for review."

The period of filing the petition for review in the instant case is thirty days from notice of order or judgment following Republic Act No. 5440 and the Rules of Court, which supply the deficiencies of Republic Act No. 6031 on this matter. Section 3 of Republic Act 5440 provides that:

"Sec. 3. The Supreme Court shall provide by rule for the procedure governing petitions for writs of certiorari to review judgments mentioned in Section seventeen of Republic Act numbered Two hundred ninety-six, as amended by this Act and the effect of filing thereof on the judgment or decree sought to be reviewed. Until the Supreme Court pro-vides otherwise, said petitions shall be filed within the period fixed in the rules of court for appeals in criminal or civil cases or special civil actions or special proceedings, depending upon the nature of the case in which the judgment or decree sought to be reviewed, was rendered; the filing of said petition shall stay the execution of the judgment sought to be reviewed; and the aforesaid petitions shall be filed and served in the form required for petitions for review by certiorari of decisions of the Court of Appeals." (Italics supplied.)

Section 1 of Rule 42 of the Rules of Court provides that the procedure of appeal to the Supreme Court from Courts of First Instance shall be governed by the same rules governing appeals to the Court of Appeals. Thus, section 3 of Rule 41 on appeals from Courts of First Instance to the Court of Appeals which provides that appeal may be taken within thirty (30) days from notice of order or judgment, must likewise govern the period of filing petitions for review to the Supreme Court from decisions of Courts of First Instance rendered in the exercise of their appellate jurisdiction.

In ruling that the appeal interposed by petitioner Mania is out of time, the Court of First Instance of Camarines Sur, therefore, committed error. Inasmuch as the appropriate remedy, however, is not an ordinary appeal but a petition for review, the filing of the record on appeal within the reglementary period is inconsequential.

With the enactment of BP Blg. 129, or the Judiciary Reorganization Act of 1950, and the consequent changes in the rules of procedure embodied in the Interim Rules and Guidelines issued by this Court en banc on January 11, 1983 such as the abolition of the requirement of filing a record on appeal and appeal bond[1] and the prescription of a uniform period of appeal,[2] the above discussion should henceforth, be viewed in that light. Hence, ordinary appeals are perfected upon filing of notice of appeal within fifteen (15) days from notice of the judgment, order, resolution or award appealed from.

The procedure for taking appeal as provided for in Section 45 of R.A. No. 296, as amended by R.A. No. 6031 is, however, retained under B.P. 129. Section 22 of said B.P. 129 expressly indicates a possible appeal by petition for review in the Intermediate Appellate Court which may give due course only when there is a "prima facie showing that the regional trial court committed an error of fact or law that will warrant a reversal or modification of the decision sought to be reviewed." Said provision, however, does not affect the rule that the Supreme Court may not be deprived of its jurisdiction under the Constitution and other applicable laws.

Petitioner Mania finally argues that although he stated in his Notice of Appeal that he is appealing to the Court of Appeals but he raised only questions of law, his appeal should have been certified to the Supreme Court. However, even if the provisions of Section 31 of the Judiciary Act and Section 3 of Rule 50 of the Rules of Court on certification to the proper court of erroneous appeals should apply to the case at bar by analogy, the questions raised herein are too insubstantial to merit consideration.

WHEREFORE, the petition is DISMISSED. SO ORDERED.

Aquino, (Acting Chairman), Concepcion, Jr., Abad Santos, Escolin, and Cuevas, JJ., concur.

Makasiar, J., (Chairman), on official leave.

[1] Section 18 of the Interim Rules provides:

"18. Elimination of record on appeal and appeal bond. - The filing of a record on appeal shall be dispensed with, except in the cases referred to in sub-paragraph (b) of paragraph 19 hereof."

[2] Section 19 of the Interim Rules provides:

"19. Period of Appeal. -

(a) All appeals except in habeas corpus cases and in cases referred to in paragraph (b) hereof must be taken within fifteen (15) days from notice of the judgment, order, resolution or award appealed from.

(b) In appeals in special proceedings in accordance with Rule 109 of the Rules of Court and other cases wherein appeals are allowed, the period of appeal shall be thirty (30) days, a record on appeal being required."

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