

MAMERTA VENTURINA, PETITIONER, VS. COURT OF FIRST INSTANCE OF NUEVA ECIJA, LEOCADIO BELTRAN AND MARIA DEL ROSARIO, RESPONDENTS.

G.R. No. L-147. January 30, 1946

Ponente: PERFECTO, J.

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PERFECTO, J.:

On January 31, 1941, the Court of First Instance of Nueva Ecija rendered a decision dismissing the complaint of plaintiffs Leocadio Beltran and Maria del Rosario, and ordered them to deliver to defendant Mamerto Venturina cadastral lots 2487, 2488 and 2439 of San Jose, Nueva Ecija, and to deliver 125 cavanes of palay or pay P250.00 a year from the crop year 1935-1936 until the lots are delivered, without costs.

Plaintiffs appealed. On June 15, 1944, the Court of Appeals during enemy occupation affirmed the appealed decision. On July 1, the clerk made an entry of judgment and remanded the case to the Court of First Instance of Nueva Ecija where it was received on August 1.

On August 6, 1945, Judge Francisco Alfonso of the Court of First Instance of Nueva Ecija ordered the issuance of a writ of execution. On October 11, Judge Vicente del Rosario, of the same court, upon plaintiffs petition, set aside the order and instructed the sheriff to suspend the execution. On November 14, Judge Del Rosario denied defendant's petition, to reconsider the order of October 11.

In issuing the orders of October 11 and November 14, Judge Del Rosario based his action on the theory that the appellate decision of June 15, 1944, had not become final because plaintiffs were not notified thereof. In the order of November 14 he added two grounds: (a) that the Court of Appeals having been disintegrated in several independent courts, the disintegration being the result of an action of an enemy Government, its acts are null, and (b) that the moratorium decreed in Executive Order No. 52 suspends the execution of the decision.

Defendant filed a petition praying that we declare, null and without effect the two above mentioned orders as having been issued -without jurisdiction or with, grave abuse of discretion.

When defendant filed before the Court of First Instance of Nueva Ecija his petition for the issuance of a writ of execution, he delivered a copy thereof on June 18, 1945, to Attorney Vireia, member of the law firm representing the plaintiffs. In said petition a notification was included, setting it for hearing on July 12, the petition bearing a reproduction of the dispositive part of the appellate decision of June 15, 1944.

On July 12, neither the plaintiffs nor their attorneys have shown up, and, Instead of acting immediately upon, the petition, Judge Alfonso issued an order granting plaintiffs' attorneys a period of ten days to answer the petition. Copy of said order was served on Attorney Leuterio on July 18. On July 17, Attorney Leuterio filed a motion to the effect that the services in the case should, be addressed to Attorney Virola, who has been handling the case personally, and because he being a member of the Commission on Appointments, was disqualified to appear before courts inferior to a court of appeals.

In issuing the order of August 6, Judge Alfonso stated, among other things, that no withdrawal of appearance having been made by Attorneys Virola & Leuterio, both should be considered individually and collectively as continuing to be representing the plaintiffs, and that, no opposition having been filed by these against the petition, notwithstanding the opportunity granted there to file it, he order a the execution of the court's decision dated January 31, 1941, as affirmed by the appellate court.

On October 5, 1945, plaintiffs, represented by a different law firm, filed a petition to set aside the order of August 6, alleging that they were not notified of the decision of the Court of Appeals, of which, they first learned only on October 5, 1945, and that not being satisfied with said decision, they "intend to petition the Supreme Court for a writ of certiorari."

The day after the hearing of this case. Attorney Leuterio filed a motion calling our attention to the record of the Court of Appeals, as reconstructed upon a petition filed by the plaintiffs and dated October 15, 1945. In the motion, plaintiffs alleged that they "have recently learned that a decision was promulgated on June 15, 1944, by the Court of Appeals," but their attorney, Mr. Mateo Virola, has not been duly notified of said decisions and that having learned that it was adverse to them, they decided to take "further action in the case".

For reconstitution purposes, defendant's counsel filed on November 8, 1945, several papers, including certified copies of the decision of the Court of Appeals dated June 15, 1944, and the entry of judgment dated July 1. Plaintiffs' attorneys were notified of the filing of said documents on November 7, 1945.

On said day, at the hearing for reconstitution, Attorney Pagdanganan appeared in plaintiffs' representation and, upon his petition, he has granted time until November 12 within which to file an answer or motion that he may deem proper to present in response to the pleading of counsel for defendant who represented, as we have mentioned, among others, the certified copy of the decision of the Court of Appeals. Having failed to present said answer or motion the commissioner for reconstitution filed his report on November 28, and on December 3, this Court declared the case duly reconstituted, plaintiffs' attorneys having been notified of the resolution to that effect.

From the facts above stated, and putting aside the question as to whether plaintiffs were duly notified of the decision of the Court of Appeals dated June 15, 1944, before the clerk of said court made the entry of judgment on July 1, it appears that there is no doubt that plaintiffs learned of said decision, at least, in either of the following dates:

- (1) On June 18, 1945, when Attorney Virola was served copy of defendant's petition for the issuance of the writ of execution.
- (2) On July 18, 1945, when Attorney Leuterio was served with a copy of the order of July 12, 1945, issued by Judge Alfonso.
- (3) On October 5, 1945, when plaintiffs' new attorneys stated that the plaintiffs happened to learn of said decision on said date and since then announced that they intended "to petition the Supreme Court for a writ of certiorari".
- (4) On October 15, 1945 when plaintiffs filed a Motion for the reconstitution of the record in the Court of Appeals.
- (5) On November 7, 1945, when plaintiffs' attorneys had seen the certified copy of the decision presented by defendant's counsel at the hearing for reconstitution.
- (6) On or about December 4, 1945, when plaintiffs were notified of this Court's resolution declaring the case duly reconstituted.

On any one of the above mentioned dates plaintiffs received information of the decision of June 15, 1944, such information having the effect of a formal notification. Each one of them would suffice for till legal purposes.

It appears that plaintiffs failed, so far as to file either a petition for certiorari, or a motion for reconsideration, or to take any action looking toward the annulment, reversal, or, at least, suspension of the decision. The time allowed by the Rules of Court to make any such step had already elapsed in excess. Therefore, even in the hypothesis that the period of fifteen, days, after which a decision becomes final, should be counted, not from the filing thereof with the clerk, out from notice to the parties, as plaintiffs' counsel wants section 8 of Rule 53 construed - and we are among the members of this Court; who would uphold him in that position still the decision would have become final and executory, plaintiffs having been notified in either of the above dates and allowed more than fifteen days to elapse without taking any action that could result in the annulment or, at least, suspension of the decision.

As to whether the decision of the Court of Appeals, as disintegrated and reconstituted during the Japanese regime, should be recognised as valid or not, the question is already settled by the decisions of this Court in the case of *Co Kim Cham vs. Valdez Tan Keh and Dizon* (L-5, p. 113, ante), and in the case of *Alcantara vs. Director of Prisons*, (L-6, p. 494, ante); and although the writer is among those who dissented from said decisions, the doctrine as laid down by the majority must be followed, without intimating in any way that those who dissented have changed their view point. In the Supreme Court the fundamental principles of democracy must rule. The minority's freedom to vote according to their convictions, to stick to the dictates of their own conscience, to express their opinions, cannot be curtailed; but the majority rule and their decision must be followed and obeyed, it having the full force and effect of law until or unless revoked.

From all the foregoing, it is declared that the decision rendered by the Court of Appeals on June 15, 1944, has become final and executory, and lower court's orders of October 11 and November 14, 1945, are set aside, with the costs to be taxed against respondents Leocadio Beltran and Maria del Rosario.

Moran, C.J., Ozaeta, Paras, Jaranilla, Feria, De Joya, Hilado, Bengzon, and Briones, JJ., concur.

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