

DR. JOSE D. DACUDAO, PETITIONER AND APPELLANT, VS. JUDGE AGUSTIN D. DUEÑAS AND THE PROVINCIAL SHERIFF OF ILOILO, RESPONDENTS AND APPELLEES.

G.R. No. L-14355. May 20, 1960

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an appeal from a decision of the Court of First Instance of Iloilo, dismissing the petition in this case and dissolving a writ of preliminary injunction previously issued therein.

Petitioner Rev. Dr. Jose D. Dacudao was one of the defendants in Civil Case No. 98 of the Justice of the Peace Court of Dingle, which was instituted by Milagros J. Catalan. In due course, respondent, herein, Agustin D. Dueñas, as Justice of the Peace of said municipality, rendered a decision, on February 9, 1957, against Dacudao, who received copy of said decision on February 16, 1957. Dacudao filed a notice of appeal and the corresponding appeal bond on March 1, 1957, and, forthwith, respondent Judge forwarded the record of the case to the Court of First Instance of Iloilo. The clerk thereof, however, remanded said record to respondent Judge on March 8, 1957, owing to Dacudao's failure to deposit the docket fees of said court. So, on March 12, 1957, Catalan moved for the execution of the decision aforementioned. Three (3) days later, or on March 15, 1957, Dacudao allegedly learned of the action thus taken by said clerk of court. Hence, on March 16, 1957, he (Dacudao) asked respondent Judge to forward again the record of the case to said court of first instance, together with a certificate of deposit of said docket fees, issued by the Municipal Treasurer of Dingle. Moreover, on the same date, Dacudao objected to the motion for execution of said decision. This notwithstanding, respondent Judge granted such motion by an order dated March 19, 1957.

Accordingly, on April 2, 1957, Dacudao filed the petition for certiorari in the case at bar, with the prayer that a writ of preliminary injunction be issued directing the Provincial Sheriff of Iloilo to refrain from enforcing said order of March 19, 1957, and that, after due hearing, judgment be rendered annulling the order aforementioned, upon the ground that he had duly perfected his appeal from the decision of respondent Judge, and that, as alleged in paragraph 3(c) of said petition, the reason for his failure to deposit the docket fees of the court of first instance within the reglementary period was:

"That the records of the case were forwarded to the Court of First Instance of Iloilo by the respondent Judge Dueñas after assuring the petitioner's counsel that the papers submitted to him necessary for the appeal were complete and after refusing the payment of the petitioner's counsel for the docket fee to said respondent Judge Dueñas for the latter's alleged reason that the appeal deposit was sufficient."

Immediately after the filing of said petition, the Court of First Instance of Iloilo issued an order directing that, upon the filing of the requisite bond, a writ of preliminary injunction be issued directing the respondent Judge to "desist from continuing with his order of execution" and directing the provincial sheriff to "desist from obeying" said "order of execution". In his answer, respondent Judge specifically denied the above-quoted averment in

Dacudao's petition and alleged that Dacudao had never tendered payment of said docket fees to him and that, when he (Dacudao) presented the certificate of deposit of the corresponding sum on March 16, 1957, the reglementary period for the perfection of an appeal had already expired.

When the case was called for hearing, on July 20, 1957, none of the parties introduced any evidence. Dacudao merely asked, and was granted, ten (10) days within which to file a memorandum. However, prior to its submission, and before the expiration of said period, or on July 22, 1957, the lower court rendered its decision dismissing the petition without costs and dissolving the aforementioned writ of preliminary injunction, upon the following ground:

"The petitioner blames the Municipal Treasurer of Dingle for his refusal to accept the deposit for the docket fee in the Court of First Instance of Iloilo. It is the duty of the counsel for the appellant to see to it that the Municipal Treasurer accepts the deposit for the docketing fees because it is one of the essential elements for the perfection of the appeal from the Justice of the Peace Court to the Court of First Instance, as provided for in Sec. 2, Rule 40 of the Rules of Court. The records of the case were forwarded to the Clerk of Court of First Instance in spite of the fact that the docketing fees were not deposited. It is the duty of the counsel for the appellant to follow up the case and pay the Clerk of Court of the Court of First Instance the corresponding docket fees. But the appellant thru negligence failed to perfect his appeal. The respondent Justice of the Peace of Dingle, therefore, did not act in abuse of his discretion in issuing an order for the execution of the judgment."

A reconsideration of this decision having been denied, the case has been brought to us on appeal by petitioner Dacudao.

Inasmuch as the lower court rendered its decision on July 22, 1957, before Dacudao had filed his memorandum, and prior to the expiration of the period granted him therefor, he argues that the lower court was unwilling to consider his memorandum, thereby indicating its bias against him. This conclusion is, however, far fetched. In its order denying Dacudao's motion for reconsideration, the lower court candidly explained that the rendition of its decision on July 22, 1957, was due to the fact that the record of the case had been "inadvertently submitted for decision" to the Judge who presided over said court, before the expiration of said period. The court, however, added:

"The Court, nevertheless, has carefully considered all the facts and angles of the case as stated in the motion for reconsideration. While the Court sympathizes with the plight of the petitioner and it is cognizant, of the good faith displayed by counsel, in trying to comply with all the requisites of the Rules of Court, the grim fact remains that the petitioner failed to deposit the Appellate Court docket fee as required in Sec. 2, Rule 40 of the Rules of Court. Counsel may have been unwittingly misled by the unprecedented move of the Justice of the Peace for being so liberal in remitting the records of the case to the Court of First Instance even without the certificate of deposit of the docket fees, but counsel for the petitioner should have seen to it that the docket fees be properly paid with the Clerk of Court of the Court of First Instance before the records were returned to the Justice of the Peace Court. Counsel for the petitioner, being obstinate in not admitting that he was negligent in not following up the case in the Court of First Instance, knowing fully well that the docket fees were not paid or deposited, there is no valid ground whatsoever to ask for the reconsideration of the decision."

Indeed, under the circumstances, no other decision can be rendered in this case, Dacudao having failed to deposit the docket fees of the court of first instance within fifteen (15) days from notice of the decision of respondent Judge, in violation of Rule 40, section 2, of the Rules of Court, reading:

"Appeal, how perfected.—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 court docket fee,

or, in chartered cities, a certificate of the clerk of court of such court showing receipt of the said fee; and (c) by giving a bond." (*Italics supplied.*)

It is urged, however, that in several cases (*Tirangbuaya vs. Judge of Court of First Instance of Rizal*, 14 Phil., 413 and *Taroc, et al. vs. Judge of the Court of First Instance of Pampanga, et al.*, 36 Off. Gaz., 942), in which a defective appeal bond had been filed, the appeal was not thrown out of court but appellant was given a reasonable opportunity to cure the defect; that by analogy, *Dacudao* should have a similar opportunity; and that the deposit made by him on March 16, 1957—as soon as he was notified that the record had been returned by the Court of First Instance of Iloilo for lack of payment of the docket fees— should be considered as sufficient compliance with Rule 40, section 2, of the Rules of Court. There is, however, no analogy between the cases cited and the one at bar, for here there has been no deposit whatsoever within the reglementary period (*Gojiton vs. Meris*, 54 Phil., 487).

Although it is averred, in *Dacudao's* petition, that said deposit had been tendered, but was not accepted, he did not state in said pleading when and to whom the tender was allegedly made and who allegedly rejected it. Besides, respondent Judge denied positively that any such tender had been made to him. In his memorandum in the lower court and in his brief before us, *Dacudao* asserted that the Municipal Treasurer of Dingle had refused to accept payment of the requisite docket fees. However, he (*Dacudao*) did not even try to prove such claim. What is more, he agreed to submit the case for decision on the merits, without introducing any evidence in support of the allegations of fact in his petition which had been controverted by the respondents. Said allegations can not be regarded, therefore, as established facts. Worst still, the acceptance, by the Municipal Treasurer of Dingle, of the deposit made by *Dacudao* on March 16, 1957, without any explanation as to the circumstances under which *Dacudao* succeeded in making such deposit, indicates that the aforementioned officer was not averse thereto.

Lastly, there is a fatal defect in the present action. *Milagros J. Catalan*, the plaintiff in Case No. 98 of the Justice of the Peace Court of Dingle, in whose favor the decision of respondent Judge had been rendered and the order of execution was issued, has not been included as party defendant in the case at bar. Being the one to be affected directly by the appeal sought to be taken by *Dacudao* and by the annulment of the order for its execution, *Milagros J. Catalan* is a party indispensable to the determination of the issues in this case, for without her, any judgment rendered therein would be ineffective (Rule 3, section 7, and Rule 67, section 5, of the Rules of Court; *Sanidad vs. Cobotaje*, 5 Phil., 204; *Garcia vs. Reyes*, 17 Phil., 127; *Barlosa vs. Polistico*, 47 Phil., 345; *Mayol vs. Blanco*, 61 Phil., 547, 548; *Soledad P. de Luz vs. Court of First Instance*, 77 Phil., 545).

Wherefore, the decision appealed from is hereby affirmed, with costs against petitioner-appellant. It is so ordered, *Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Barrera, and Gutierrez David, JJ., concur.* *Reyes, J.B.L., J., took no part.*

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