

URDANETA RURAL BANK, PLAINTIFF-APPELLANT, VS. FELIX SAN JUAN, ET AL., DEFENDANTS-APPELLEES.*G.R. No. L-28346. June 29, 1968*

Ponente: CASTRO, J.

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The Urdaneta Rural Bank filed this action in the Court of First Instance of Pangasinan to set aside a writ of execution issued by a branch of that court and to recover damages allegedly suffered as a result of the issuance of the writ of execution. The principal ground for the action is that the writ of execution was without the authority of the court to issue because the bank had earlier taken an appeal, thereby depriving the court of jurisdiction to act in the case. Named as defendants were the spouses Felix San Juan and Manuela Nolasco in whose favor the judgment was rendered, Judge Amado S. Santiago of branch V of the court, the clerk of court in his capacity as ex-officio provincial sheriff, and the deputy provincial sheriff. On motion of the spouses San Juan, however, the court dismissed the complaint on the ground that it had no power to annul the orders and processes of a coordinate branch.

Hence this appeal.

It appears that in civil case U-902, branch V of the Court of First Instance of Pangasinan rendered judgment against the Urdaneta Rural Bank, ordering the latter to vacate a piece of land and the house built thereon, which the bank had leased from the spouses San Juan, and to pay rental for their use and occupation. On December 20, 1966 the court ordered execution of its judgment even before the time to appeal had expired, upon the filing by the spouses of a bond of P5,000.

The bank subsequently appealed to the Court of Appeals, where the case was docketed as C.A.-G.R. 39103, and asked that the lower court be ordered to hold in abeyance the execution of its judgment while the appeal was pending. The motion was denied. As the writ of execution lapsed in the meantime without being enforced, the trial court ordered on June 27, 1967 the issuance of an alias writ. This is the order which the bank assails in this action.

On April 1, 1968 the defendants-appellees filed a petition to dismiss the appeal in this case on the ground that the issue tendered had become moot. The basis of the petition is the resolution dated February 27, 1968 of the Court of Appeals in C.A.-G.R. 39103, which resolution has become final, dismissing the appeal of the bank in civil case U-902 for failure to file its brief.

The petition is well taken. With the dismissal of the appeal taken by the bank, the decision in civil case U-902 has become final and executory and, therefore, the power of the trial court to execute its judgment must now be deemed beyond question. The bank, however, contends that aside from the validity of the writ of execution its right to damages is likewise in issue in this case, but the issue of damages is merely incidental, since an award of damages may follow only after a declaration that the writ of execution is void.

At all events, this appeal should be dismissed because the brief for the bank, as appellant in this case, was filed out of time. The brief, which should have been filed on or before February 14, 1968, was actually filed on March 11, 1968, 25 days after the last day for filing it.

ACCORDINGLY, the instant appeal is dismissed.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Angeles, and Fernando, JJ., concur.

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