

ILUMINADO MOTUS AND LOURDES LASERNA MOTUS, (HUSBAND AND WIFE, PETITIONERS, VS. HON. COURT OF FIRST INSTANCE OF RIZAL (BR. V, QUEZON CITY), J. M. TUASON & CO., AND G. ARANETA, IN...

G.R. No. L-22120. April 29, 1966

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Petition for a writ of mandamus to the Court of First Instance of Rizal (Quezon City Branch) to approve and certify the notice and record of appeal submitted by petitioners in Civil Case No. 6144 of said Court.

We glean from the record that, on September 18, 1961, the petitioners, spouses Iluminado Motus and Lourdes Laserna Motus, filed a complaint in the respondent Court of First Instance of Rizal (Branch V, Quezon City) against the other respondents, J. M. Tuason & Co. and G. Araneta, Inc., which was docketed as Civil Case No. 6144 of said Court. The complaint averred that in 1949 plaintiffs had purchased a lot in Tatalon, Quezon City, from Florencio Deudor for the sum of P4,500.00; that plaintiffs took possession of the lot, upon making a down payment of P850.00; that by a compromise agreement, in Civil Case Q-135 of the Court of First Instance of Rizal, between Florencio Deudor and J. M. Tuason & Co., Inc., the latter acquired all the rights of Deudor to the Tatalon Estate, allegedly under obligation to recognize the rights of certain listed purchasers of lots from Deudor, among which was the plaintiff, Lourdes Motus; that plaintiffs, tendered payment to Tuason & Co., Inc., in compliance with the terms of their contract with Deudor, but Tuason & Co. Inc., demanded a new contract at a higher price. The action sought to compel said defendant to accept the price tendered and convey to the plaintiffs the lot occupied by them, and also to pay damages.

Defendants interposed a motion to dismiss, on the ground that the complaint stated no cause of action, and the court upheld the motion and dismissed the complaint, and subsequently denied plaintiffs' motion to reconsider. Thereupon, plaintiffs filed a notice of appeal to the Court of Appeals, deposited the appeal bond in cash, and submitted a record of appeal. Upon objection of defendants Tuason & Araneta, Inc., the lower court refused to allow the appeal on the ground that, there being only a question of law, the case could not be appealed to the Court of Appeals, which lacked jurisdiction to take cognizance of plaintiffs' appeal.

The court having refused to heed the pleas of appellants Motus, the latter instituted mandamus proceedings in the Court of Appeals (Case CA-GR No. 31549-R); but on May 3, 1963, the Court of Appeals dismissed the petition for mandamus, for want of jurisdiction, because the proposed appeal involved a pure question of law that lay within the exclusive jurisdiction of the Supreme Court. Review of this decision was denied in G. R. No. L-21611 (Motus vs. Court of Appeals, et al.).

On November 19, 1963, spouses Motus filed in the Supreme Court the present petition for mandamus to have their record certified to this Court.

Obviously, the petition for mandamus has to be dismissed. The respondent Judge was never asked, and at no time refused, to certify the plaintiffs' record of appeal to this Court; and there is no ground now to compel him to do so. What he rejected was to certify the record to the Court of Appeals (as plainly appears from his order of August 4, 1962), and his Honor's resolution has been upheld by the appellate courts, and is now final. No writ of mandamus can lie where there was no refusal. That is beyond argument.

Nor can this Court now pass upon the merits of the dismissal of the petitioners' complaint by the court below, since the matter has not been brought to it properly, and no record of appeal has been duly certified to it by the court below.

While the resolution of October 16, 1962, in G. R. L-21611, dismissing the appeal against the decision of the appellate court that denied mandamus, stated that the dismissal was "without prejudice to the filing of a petition for mandamus in this Court", this reservation was on the assumption that the court below would refuse to elevate the records to the Supreme Court, but which it never did. The resolution, therefore, was no warrant for appellants' dispensing with the requisite steps to perfect the appeal to this Court. Petitioners should have first asked the trial court to certify their record of appeal to the Supreme Court.

Wherefore, the petition for a writ of mandamus is denied, with costs against petitioners Motus.

Bengzon, C.J., Bautista Angelo, Concepcion, Barrera, Dizon, Regala, Makalintal, Zaldivar, and Sanchez, JJ., concur.

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