

**ALEJANDRA ESQUIVEL-CABATIT ALIAS ALEJANDRA RALUTIN VDA.
DE CABATIT, GERINO ESQUIVEL AND ANTONINA CABATIT,
PETITIONERS, VS. COURT OF AGRARIAN RELATIONS AND BASILIO
FERNANDEZ, RES...**

G.R. No. L-19756. May 25, 1964

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Petitioners seek the review by certiorari of a decision of the Court of Agrarian Relations in CAR Case No. 46-Z '60 thereof, entitled "Basilio Fernandez vs. Alexandra Esquivel-Cabatit, alias Alejandra Ralutin Vda. de Cabatit, Gerino Esquivel and Antonina Cabatit", and the annulment of a writ, issued by said court, for the execution of said decision. Upon the posting of the requisite bond, this Court issued a writ of preliminary injunction restraining the lower court from executing the aforementioned decision.

Alejandra Esquivel-Cabatit, alias Alejandra Ralutin Vda. de Cabatit, hereinafter referred to as Mrs. Cabatit, is the mother of Antonina Cabatit, who is married to Gerino Esquivel. Said CAR Case No. 46-Z '60 was instituted by Basilio Fernandez for the purpose of securing his reinstatement as Mrs. Cabatit's alleged tenant on a land situated in Sitio Cabatuan, Simminublan, San Narciso, Zambales, from which he claimed to have been illegally ousted by Mrs. Cabatit and Mr. and Mrs. Esquivel, and to recover attorney's fees. In their answer, the Esquivels denied the main allegations of Fernandez and, asserting that he had never been their tenant, assailed the jurisdiction of the court over the subject-matter of the case, and set up a counterclaim for damages. Mrs. Cabatit did not file any answer to the complaint.

In due course, the Court of Agrarian Relations rendered judgment, on September 1, 1961, sentencing the Esquivels to reinstate Fernandez as tenant in the landholding in question and to pay him fifty (50) cavanes of palay, or its equivalent in cash, each year, beginning from the crop-year 1960-61, and dismissing the case as regards Mrs. Cabatit, as well as (the counterclaim of the Esquivels. On March 2, 1962, Fernandez moved for the execution of said decision, which was granted in an order dated March 14, 1962. Hence, this petition for review by certiorari of Mrs. Cabatit and the Esquivels, hereinafter referred to collectively as the petitioners.

The main issue for determination in this appeal is the validity of said order of execution of March 14, 1962, which was issued upon the theory that the decision of September 1, 1961, is already final and executory. The petitioners, however, maintain the contrary, upon the ground that copy of said decision was served upon them on October 9, 1961; that their counsel in the lower court having died prior thereto, they engaged the services of Atty. Alfredo Cava, who, on October 24, 1961, entered his appearance in this case as their new counsel and filed a motion for reconsideration of said decision; and that this motion has not, as yet, been acted upon by the lower court.

The record shows, however, that when said motion was called for hearing on November 3, 1961 - the date set forth in the notice of hearing at the foot of the motion - the lower court issued an order of the same date, requiring Atty. Cava to submit proof of service of copy of said motion to the adverse party, and that, in view of his failure to

submit such proof of service, the court issued, on March 14, 1962, the order appealed from, declaring that the motion for reconsideration should be deemed abandoned, that the decision in question had, accordingly, become final and executory, and that its execution was, consequently in order.

Upon the other hand, petitioners maintain that they had not abandoned said motion for reconsideration, their failure to submit the proof of service required in the order of November 3, 1961, having been due to the fact that they had not received copy or notice of that order, for said copy or notice was sent by mail addressed to Atty. Cava at "5-i Palosapis, Quezon City", which was the address of said counsel prior to October 31, 1961, although, on that date, he notified the Clerk of Court, in writing, that he had moved to 37 Hyacinth St., Roxas District, Quezon City.

Regardless, however, of Atty. Cava's correct address on November 3, 1961, we find no merit in this appeal, for petitioners' motion for reconsideration shows, "at the foot thereof, that copy of the motion had been sent by counsel to one Atty. Amado Evangelista, Olongapo, Zambales, as the supposed counsel for respondent Fernandez, although his true counsel of record is Atty. Rodrigo V. Fontelera. Inasmuch as copy of petitioners' motion for reconsideration had not been served upon the adverse party, the motion could not be entertained (Rule 26, section 6, Rules of Court). In other words, the motion is considered non-existent (Manaki vs. Revilla, 42 Phil. 81; Roman Catholic Bishop of Lipa vs. Municipality of Unisan, 44 Phil. 866; Director of Lands vs. Sanz, 45 Phil. 117; Philippine National Bank vs. Santos Donasco, L-18638, February 28, 1963) and its filing did not interrupt the running of the period to appeal from the decision adverted to above, which, accordingly, became final and executory.

WHEREFORE, the decision and the order appealed from are affirmed, and the writ of preliminary injunction issued by this Court hereby dissolved, with costs against petitioners herein.

IT IS SO ORDERED.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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