

JOSE FUENTEBELLA, PETITIONERS, VS. BUENAVENTURA OCAMPO, JUDGE OF THE FIRST INSTANCE OF MANILA, BRANCH V, AND ANTONIO T. CARRASCOSO, JR. RESPONDENTS

G.R. No. L-1762. April 01, 1948

Ponente: HILADO, J.

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HILADO, J.:

Respondent Antonio T. Carrascoso, Jr., plaintiff in civil case N0. 55592 of the Court of First Instance of Manila, wherein the defendant was the instant petitioner Jose Fuentebella, by a writing dated June 30, 1947, asked said court to order the reconstitution of the record of said case, which had been destroyed during the battle for the liberation of Manila in February, 1945. submitting for the purpose copies of the pleadings enumerated in paragraph 3 of his petition therein. The defendant in that case, now petitioner here, answered said writing and prayed that the same be dismissed, filing for the purpose the pleading transcribed in paragraph 4 of the instant complaint.

Under date of July 26, 1947, his Honor, Judge Buenaventura Ocampo of the Court of First Instance aforesaid, entered an order reconstituting the record of the case. From that order of reconstitution the therein defendant, now petitioner, decided to appeal and for the purpose, under date of August 27, 1947, filed a notice of appeal therefrom, which was dated August 26, 1947, Naga, Camarines Sur, for Manila. (Complaint, paragraph 7.)

Thereafter, the said defendant filed a record on appeal in pursuance of his notice.

On September 20, 1947, the respondent Judge, Honorable Buenaventura Ocampo, entered an order providing as follows:

"For lack of merit, defendant's record on appeal of August 27, 1947 is hereby disapproved."

The present complaint is aimed at securing a writ of mandamus compelling the respondent judge to admit the said appeal and to certify the said record on appeal.

Under date of November 6, 1947, respondent Antonio T. Carrascoso, Jr. in the present case has filed a motion to dismiss this case, to which petitioner has filed an answer, and to which answer said respondent has filed a reply.

After due consideration of the arguments of both parties and of the facts and the law pertinent hereto, we are of opinion that an order for the reconstitution of a destroyed record is interlocutory in character and not appealable (Rule 41, section 2; Olsen & Co. vs. Olsen, 48 Phil. 238, 340). Any party considering himself prejudiced by the order of reconstitution may raise the point on an appeal which he may interpose from the final decision of the lower court in the case.

Complaint for mandamus dismissed, with costs to petitioner. So ordered

Páras, Perfecto, Briones, and Tuason JJ., concur

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