

**JOSE MARIA ANDUIZA AND NENITA DEZALISA ANDUIZA,
PETITIONERS, VS. SANTOS DY-KIA AND HON. VALERIANO A. DEL
VALLE, AS JUDGE OF THE COURT OF AGRARIAN RELATIONS,
ALBAY, NINTH REGIONA...**

G.R. No. L-23757. August 29, 1969

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Upon the averment that the Court of Agrarian Relations acted without or in excess of jurisdiction or with grave abuse of discretion in issuing its orders of August 22, 1964 and September 12, 1964 granting private respondent's motion to reconsider the allegedly final order of May 4, 1963 dismissing private respondent's suit against herein petitioners and its order of October 26, 1964 denying petitioners' motion for the issuance of a writ of the execution of the said dismissal order, said petitioners now come to this Court on certiorari with prayer for a writ of preliminary injunction. We issued a cease-and-desist order.

This case began when private respondent Santos Dy-Kia filed in the Court of Agrarian Relations his amended petition^[1] impleading herein petitioners, the spouses Jose Maria Anduiza and Nenita Dezalisa, the vendees of three parcels of land situated in Barrio Humapon, Legazpi City, and therein original respondent Filomena Cajarito Vda. de Dy-Kia. That amended petition below alleged that Santos Dy-Kia was a tenant who had planted and intro-duced improvements on the three parcels from 1943 up to 1959; that in 1948 he left Humapon to work in Legazpi City but hired a caretaker to work on the lands even as he continued to super-vise and manage the landholding and introduce improvements therein; that Filomena Cajarito Vda. de Dy-Kia refused to reimburse him for the expenses he incurred in the maintenance and introduction of said improvements; that on December 6, 1961, while this case was pending, Filomena sold the lands to the spouses who knew about the tenancy litigation; and that in accord-ance with Section 9 of Republic Act 1199^[2] the spouses are liable in solidum with their vendor.

In their answer below, the spouses Anduiza (petitioners herein) admitted the purchase, denied the other substantial aver-ments of the amended petition and set up as defense, inter alia that there existed no tenancy relationship between Santos Dy-Kia and respondents below, the former being merely a protege of Filomena and dependent upon her for support.

After Santos Dy-Kia had presented his evidence, respondents below filed a joint motion to dismiss dated October 15, 1962 on the grounds that the agrarian court lacked jurisdiction because there was no landlord-tenant relationship between the parties; and that even granting that such a relationship existed, Santos Dy-Kia had no right to demand payment for the improvements because he was not ejected but he voluntarily abandoned the landholding when he employed himself in Legazpi City.

On April 24, 1963, on opposition of Santos Dy-Kia, the agrarian court denied the motion to dismiss.

On May 2, 1963, the Anduizas (petitioners herein) filed a motion for reconsideration on the ground that Santos Dy-Kia had admitted in his testimony in open court that he was merely an "encargado" of his step-mother Filomena Cajarito Vda. de Dy-Kia and that indemnity for improvements is not recoverable.

On May 4, 1963, the agrarian court, upon being clarified that the motion to dismiss was only for the Anduizas, resolved "to amend the order dated April 24, 1963, ordering the dismissal of the petition as regards respondents (herein petitioners) Jose Anduiza and Nenita Dezalisa Anduiza only", leaving the rest of the order to stand. In absolving the spouses Anduiza, the court pointed out that the purchase of the property did not include any lien or encumbrance thereon; that at the time they bought the lands, "there was no tenant on the property"; and that Santos Dy-Kia was not connected therewith "in any manner whatsoever".

On May 6, 1963, Santos Dy-Kia, thru counsel, received a copy of the foregoing resolution.

On May 14, 1963, Santos Dy-Kia in turn filed a motion (amended on June 20) to reconsider the May 4, 1963 order, claim being made by him that said order was null and void because he was not afforded opportunity to be heard and to oppose the spouses' motion.

On July 1, 1963, Filomena Cajarito Vda. de Dy-Kia filed a motion to resolve the question of jurisdiction and for this purpose adopted the spouses' May 2, 1963 motion for reconsideration.

On August 1, 1963, the agrarian court, having before it the two motions just adverted to, declared that Santos Dy-Kia had no tenancy relationship with Filomena Cajarito Vda. de Dy-Kia or with the spouses, and ruled that it had no jurisdiction over the case, and forthwith dismissed the same.

Copy of this resolution was received by counsel for Santos Dy-Kia on August 6.

On August 20, 1963, Santos Dy-Kia, by his then counsel Jaime N. Hernandez, filed a motion for the reconsideration of this order of August 1. The grounds he there advanced were that the motion of Filomena to resolve the question of jurisdiction was filed out of time and was based on grounds already existing at the time the May 2, 1963 motion of the Anduiza spouses was filed; and that there was a landlord-tenant relationship between him and the respondents below.

On August 29, 1963, the agrarian court, on objection of herein petitioners, denied for lack of merit the motion for reconsideration just referred to.

Nothing happened until February 18, 1964 when Atty. Melencio O. Orbase entered his appearance below as counsel of record for Santos Dy-Kia in lieu of Atty. Jaime N. Hernandez who allegedly ceased as attorney as of August 30, 1963. The clerk of the agrarian court sent Atty. Orbase a copy of the August 29, 1963 order. Atty. Orbase received it on March 4, 1964.[3]

On March 31, 1964, Atty. Orbase, on behalf of Santos Dy-Kia, filed a motion dated March 28, 1964 (which he called second motion for reconsideration, the first being that of August 20, 1963) alleging that the acts performed by him (Dy-Kia) with respect to the lands qualified him as tenant of Filomena Cajarito Vda. de Dy-Kia; that the sale of said property to the spouses while his claim was pending constituted fraud; that proof of the admission of the tenancy relationship by Filomena Cajarito Vda. de Dy-Kia automatically placed the case within the exclusive jurisdiction of the agrarian court; and that the resolution of August 1, 1963 was not in accordance with the evidence presented by him.

The spouses opposed, averred amongst others that the order of dismissal had become final and executory.

The first order petitioners now question before this Court was issued by the agrarian court on August 22, 1964. Santos Dy-Kia's motion for reconsideration and resetting the case for further proceedings was there granted. The

agrarian court gave no reason for this order except that it would be "[i]n the interest of justice."

The Anduizas moved to reconsider the August 22, 1964 order and upon opposition of Santos Dy-Kia the court issued its second questioned order on September 12, 1964 denying the motion of the spouses, "for being untenable."

On September 25, 1964, Santos Dy-Kia moved for reins-tatement as tenant. The Anduizas opposed.

On October 23, 1964, the spouses Anduiza moved for the issuance of a writ of execution of the order of dismissal of the case dated May 4, 1963.

On October 26, 1964, the agrarian court handed down its third disputed order denying the motion for execution "for lack of merit."

Promptly, on October 27, 1964, the Anduizas appealed to this Court.

1. The forefront question is whether the disputed orders are final and appealable. Private respondent Santos Dy-Kia seeks to strike down the appeal because the orders are inter-locutory. And citing Section 1 of Rule 43 of the Rules of Court, he puts forth the claim that only final orders of the agrarian court are appealable. He is correct.

The orders of the lower court are aimed at continuing the proceedings before it. Hearing of the case on the merits is not yet finished. Final judgment is yet to be rendered. A rule long standing and frequently cited is that orders which do not finally dispose of the pending case so that nothing more can be done with it in the trial court are interlocutory. Any issue relating thereto must wait until the trial court writes its final determination. It is only then that appeal is proper.[4]

2. While interlocutory orders are not appealable, none-theless, when want or excess of jurisdiction or abuse of discretion is averred in the petition for review, an appeal may, in the discretion of the court, be converted into a special civil action for certiorari, to avert injustice and thwart delay.[5]

To be conceded is that certiorari was not specifically availed of by petitioners in their notice of appeal. They there merely signified their intention to appeal pursuant to Rule 43. They labelled their petition before this Court as a "Petition For Certiorari or Review with Injunction". But said verified petition before this Court contains all the necessary allegations to make it a petition for certiorari. Thus, under paragraph XXI of said petition, it is alleged that "the respondent, Honorable Judge Valeriano A. del Valle, of the CAR, exercising judicial functions has acted: (a) without or in excess of its jurisdiction; (b) or with grave abuse of discretion, and there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law, pursuant to Rule 65, Sec. 1, New Rules of Court." We required respondents Santos Dy-Kia and Judge del Valle to answer that petition within ten days after receipt of summons.

There is then no obstacle to viewing this petition in the concept of certiorari. The interests of justice would not countenance tying down petitioners to what their notice of appeal expressed when there was substantial compliance with the reglementary requisites for the remedy of certiorari. This is not an entirely new practice. In *Tengco vs. San Jose*,^[6] which involves a more complicated situation, this Court dispensed with the filing of an appeal and considered the petition for mandamus to compel the trial judge to give due course to the appeal, a petition for certiorari to annul or set aside the order yet to be appealed. Again, in *Gutierrez vs. Villegas*,^[7] citing the *Tengco* case, this Court declared that the appeal from an interlocutory order may not be considered as a petition for certiorari because of the absence of allegations to the effect that the court had no jurisdiction or it acted in excess thereof or with grave abuse of discretion.^[8] Conversely then, an appeal from an interlocutory order may, in the discretion of the court, be considered as a petition for certiorari under Rule 65 when the

necessary allegations are present.

3. The core of this case, the validity of the disputed orders of the lower court, depends upon whether or not the May 4, 1963 order dismissing the petition as against the spouses had already become final and executory when the agrarian court directed the proceedings to continue and denied execution of said order.

Respondents admit the following facts in their answer:

On May 4, 1963, the lower court dismissed the petition solely as against the spouses. On May 6, 1963, a copy of the order was received by private respondent. On May 14, 1963, private respondent filed a motion to reconsider. On August 1, 1963, the court dismissed the case.

Of importance is August 6, 1963. It was on this date - August 6 - that private respondent received a copy of the August 1 resolution.

On August 20, 1963, Dy-Kia moved to reconsider this resolution.

On August 29, 1963, the lower court denied the motion for reconsideration.

A copy of the August 29 order was sent to Atty. Hernandez, the counsel of record for private respondent, by registered mail and the first notice was given on September 9, 1963, a second notice on September 13, 1963, and a third notice on September 25, 1963. The mail matter was thereafter returned unclaimed.

On March 4, 1964, Atty. Melencio O. Orbase, the new counsel for private respondent, received a copy of the order.

On March 31, 1964, private respondent, thru Atty. Orbase, filed another motion for reconsideration dated March 28, 1964.

With these facts on hand, there could not be any question at all as to the finality of the May 4, 1964 order. Under Section 4, Rule 43, in relation to Section 1, Rule 39, Rules of Court, a judgment of the Court of Agrarian Relations becomes final and executory upon the expiration of 15 days from notice of the order, ruling or decision. Since the May 4 order - a final order of dismissal - was received on May 6, 1963, and the motion for reconsideration was filed on May 14, 8 days had elapsed. On August 6, notice of the denial of such motion was received. Another motion for reconsideration could have been filed anytime from August 6 to August 13.[9] Santos Dy-Kia instead filed his motion for reconsideration only on August 20, 1963. Clearly, it was filed out of time. The May 4 order had become final and executory on August 14.

It would not avail private respondent any to say that his first counsel, Atty. Jaime N. Hernandez, did not receive the registered mail containing the order of August 29, 1963 denying his motion of August 20 to reconsider the dismissal order of August 1, 1963. First, because that motion as aforesaid was filed out of time. Second, the fact that Atty. Hernandez con-cededly was given three notices to take delivery of the registered mail containing the order of August 29 would also be a sufficient cause to declare the dismissal order final. The first of those notices was sent to him on September 9. We need but draw attention to Section 8, Rule 13, Rules of Court. Santos Dy-Kia's counsel having failed to claim the mail from the post office within five days from the first notice of the postmaster, service should take effect at the expiration of such time.[10] It should go without saying that service of the order was completed on September 15, 1963. Since his new counsel filed another motion to reconsider only on March 31, 1964, we again say that the judgment had become final in the meantime. More than six months had elapsed from the first notice.

But even conceding to respondent Dy-Kia the widest latitude, he will not escape the effects of the finality of the order of dis-missal of August 1, 1963. His new counsel received copy of that order on March 4, 1964. And yet,

counsel took his first move by way of another motion for reconsideration only on March 31, 1964, a delay of 21 days. Judgment once again is final.

All of the foregoing brings to the fore the oft-cited stern reminder in *Dy Cay vs. Crossfield & O'Brien* 38 Phil, 521, 526- 527, thus: "Public policy and sound practice demand that, at the risk of occasional errors, judgments of courts should become final at some definite date fixed by law. The very object for which courts were instituted was to put an end to controversies. To fulfill this purpose and to do so speedily, certain time limits, more or less arbitrary, have to be set up to spur on the slothful. 'If a vacillating, irresolute judge were allowed to thus keep causes ever within his power, to determine and redetermine them term after term, to bandy his judgments about from one party to the other, and to change his conclusions as freely and as capriciously as a chameleon may change its hues, then liti-gation might become more intolerable than the wrongs it is intended to redress.' (See *Arnedo vs. Llorente and Liongson* [1911], 18 Phil., 257.)."

Upon the record as it stands, the writ of certiorari is hereby granted; the disputed orders of the Court of Agrarian Relations of August 22, 1964, September 12, 1964 and October 26, 1964 are hereby set aside and declared null and void; the prelim-inary injunction issued by this Court on February 13, 1965 is hereby made permanent; and the order of the Court of Agrarian Relations of May 4, 1963 dismissing this case against petitioners is hereby declared final and executory.

Costs against private respondent Santos Dy-Kia.

SO ORDERED.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Castro, Fernando, Capistrano, Teehankee and Barredo, JJ., concur. Reyes, J., is on official leave.

[1] CAR Case No. 417-Albay '61 entitled "Santos Dy-Kia, Petitioner, versus Filomena Cajarito Vda. de Dy-Kia, Jose Anduiza and Nenita Dezalisa Anduiza, Respondents." The original petition was filed on October 11, 1961 against Filomena Cajarito Vda. de Dy-Kia alone.

[2] The Agricultural Tenancy Act. The pertinent portion of said Section 9 provides that "the purchaser or transferee shall assume the rights and obligations of the former landholder in relation to the tenant."

[3] See: Rollo, p. 108

[4] See: *Samia vs. Medina*, 56 Phil. 613, 614, holding that an order granting a motion for a new trial is interlocutory and, there-fore, unappealable. See also: *De la Cruz vs. Dollete* (1962), 5 SCRA 257, 260.

[5] *Estrada vs. Sto. Domingo*, G.R. No. L-30570, July 29, 1969, citing cases at footnote 31.

[6] 97 Phil. 491, 505. See also: *Pineda vs. Lantin* (1962), 6 SCRA 757, 762.

[7] (1962), 5 SCRA 313, 318.

[8] Cf. *Abaga vs. De Guzman* (1962), 6 SCRA 870, 873.

[9] See: *Lonaria vs. De Guzman* (1967), 21 SCRA 349, 353-354; *Jaugan vs. People* (1969), 26 SCRA 851, 852-853.

[10] See: *Grafil vs. Feliciano* (1967), 20 SCRA 616, 619-6202

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