

EMERITA VALDEZ ET AL., PETITIONERS, VS. COURT OF FIRST INSTANCE OF BULACAN ET AL., RESPONDENTS.

G. R. No. L-3366. April 27, 1951

Ponente: BENGZON, J.

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BENGZON, J.:

The case.—This is a petition for certiorari to annul the order of the court of first instance of Bulacan in its Special Proceeding No. 253 (1) setting aside its previous orders that approved the petitioners' record on appeal, and (2) requiring them to submit an amended record to embody additional matters.

Petitioners contend that after approving their record, the court lost all jurisdiction over the case and had no authority to issue the disputed directives.

The Facts.—In the aforesaid proceeding entitled "Intestate Estate of the Deceased Juan Valdez" the following material events took place:

- On June 17, 1949, Attorney Juan S. Rustia for herein petitioners Emerita Valdez and Leodegario de la Fuente, submitted a record on appeal and prayed for its approval and transmission to the Supreme Court. It contained no notice setting a date for hearing.
- The clerk of court *motu proprio* set it for hearing on June 29, 1949 and notified the parties.
- On June 30, 1949 the court approved the record on appeal.
- On July 6, 1949, Attorney Marcelo E. Pineda, for the administratrix Magdalena Mendoza, asked that the decree of approval be revoked, alleging that he had received the clerk's notice only on June 29 at eleven o'clock in the morning at San Miguel, Bulacan, and therefore had no time to oppose the approval of the record, which approval, he argued, violated section 7, Rule 41 of the New Rules of Court providing that a record may be approved after five days from the date of submission. He also indicated that certain specified pleadings (ten in number) should have been included in the record on appeal.
- On July 15, 1949, the court cancelled its order of June 30, 1949 approving the record, and gave the administratrix ten days within which to present any pleading in opposition thereto.
- Nothing was done until August 9, 1949 when Atty. Rustia moved that his record be approved and forwarded inasmuch as the ten-day period had elapsed and the administratrix had filed no antagonistic pleading. This motion was set for discussion on August 18, 1949.
- On August 22, 1949 the court, declaring that Atty. Rustia's motion was well founded, re-affirmed and reinstated its order of June 30, 1949 approving the record and directing its remission to the Supreme Court.
- On August 30, 1949 asserting that he had received on the same day copy of the last order Attorney Pineda asked for its revocation stating that he received only on August 18 the copy of the motion of August 9, 1949. Admitting

he had filed no other pleading after the order of July 15, said counsel explained lamely that he deemed it unnecessary, because his pleading of July 6, 1949 had enumerated the grounds of his opposition

- On September 12, 1949, Atty. Rustia filed a "manifestation" stating that the court had lost jurisdiction to act on the last motion.

- On September 21, 1949 the court revoked the order of August 22, 1949, and required the herein petitioner to submit an amended record containing the pleadings specified in the objection of Atty. Pineda of July 6, 1949.

This last directive is the subject of this petition for certiorari which raises

The question.—After approving the record on appeal, may the court of first instance compel the appellant to insert other pleadings at the request of the appellee?

Discussion.—There being no denial that the appeal bond had been filed on time, the applicable regulation is sec. 9 of Rule 41, which says that "upon filing of the notice of appeal and the approval of the appeal bond and the record on appeal, the appeal is deemed perfected and the trial court loses its jurisdiction over the case, except to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, and to approve compromises offered by the parties prior to the transmittal of the record on "appeal to the appellate court."

It is clear to our minds that after promulgating its order of August 22, 1949 approving the record, the court of Bulacan was deprived of its jurisdiction over the case, except to issue certain orders to be mentioned hereinafter.

Omitting reference to the order of June 30, because there might be some doubt as to the opportunity given the appellee to object, we may state that, having declined to take advantage of the period given to her on July 15, 1949, the appellee had no legitimate cause to plead for another chance to oppose. It was not enough to allege—as she did—that she refrained from submitting an opposition after July 15. because she had already voiced her objections in her pleading of July 6. The court expressly required her to formulate her opposition, and it was necessary for her to take action, either by referring to her previous pleading or by repeating her grounds of objection. What is worse, when she received the petitioners' motion drawing attention to her fallure, she declined for more than ten days to contest the allegations of inaction, thereby practically inducing the court to grant petitioners' request that capitalized on her omission.

It is undeniable that after approving the record, the trial court retains jurisdiction (a) to issue orders for the protection and preservation of the rights of the litigants which do not involve any matter debated in the appeal (b) to approve compromises offered by the parties and (c) to permit withdrawal of the appeal (Rule 41, sections 9 and 22).

Respondents maintain that the court's order of September 21 may be upheld "in the interests of justice" because it does not involve any matter litigated in the appeal. As to the first part of the proposition, the power retained by the court is not so extensive as to permit any order in the interest of justice. As to the second, if the additional pleadings do not concern any matter discussed in the appeal, it is unnecessary to require their inclusion in the record, and the court's last order served no useful purpose.

Judgment.—Wherefore, the conclusion is unavoidable that the order of September 21, 1949 not being covered by the powers retained by the court must be deemed to fall beyond the authority of such court that forfeited its jurisdiction when it approved the record on appeal. Consequently such disputed order is declared null and void.

Petition granted, with costs against the administratrix Magdalena Mendoza.

Paras, C. J., Feria, Pablo, Padilla, Tuason, Montemayor, Jugo and Bautista Angelo, JJ., concur.

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