

**FRANCISCO ABRASALDO ET AL., PETITIONERS, VS. ENRIQUE FERNANDEZ, JUDGE COURT OF FIRST INSTANCE OF DAVAO, AND TAGUM TILLERS & CO., INC., RESPONDENTS.***G.R. No. L-7940. May 30, 1955*

Ponente: BENGZON, J.

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Subject-matter of this case: execution of judgment pending appeal.

Dated March 31, 1954, the decision of the court of first instance of Davao in its Civil Case No. 1129 ordered the defendants Francisco Abrasaldo et al. to vacate the parcel of land described in Original Certificate of Title No. 347 in barrio Lasang, Municipality of Panebo, Province of Davao. Such land had been purchased by the plaintiff Tagum Tillers' Co. Inc. from the Philippine-Government; but, as the decision reads, the aforesaid defendants illegally entered and took possession of a large portion thereof, without the owner's knowledge.

The defendants alleged that before the Pacific War they occupied the land, and cultivated and improved it during the Japanese occupation, there being, at that time no signs of plaintiff's occupancy; that thereon they built their homes, raised their children, planted abaca, banana and other fruit trees, and that for ten years or more they had been in peaceful and continuous possession when in August 1953, the complainant Tagum Tillers' Co. Inc. instituted its reivindicatory action. Defendants also claimed the certificate of misrepresentation, and other irregular means.

These defenses were considered and overruled in the decision above mentioned. The record does not show the day when defendants received copy thereof, but there is no question that on May 24, 1954 they filed a notice of appeal to the Court of Appeals, depositing at the same time with the Clerk of Court the amount of sixty pesos for the appeal bond, and on May 29, 1954 they submitted the Record on Appeal which was approved by the respondent judge's order of June 12, 1954. Timeliness and regularity of the appeal may therefore be presumed.

Now, it appears that on May 28, 1954 the Tagum Tillers' Co. Inc. presented a motion for execution of the judgment pending appeal, contending that defendants' appeal was merely a dilatory step, and that they would continue to commit acts of depredation causing further damage to the plaintiff, for which it had no remedy except such advance execution.

The defendants opposed the motion, calling attention to the improvements they had already made, and to the growing crops such as rice and corn, on which they and their families depended for subsistence.

The plaintiff replied it was willing to file a bond to answer "for whatever damages the defendants may sustain should the decision (on appeal) be finally adverse to the said plaintiff."

The Court on June 24, 1954, granted the motion, stating in part:

"The Court after hearing both the allegations of the plaintiff and the defendants and considering that the former

is more in a position to file a bond in the amount of P100,000.00 to answer for whatever damages said defendants may suffer in case the decision will be adverse to the plaintiff, hereby grants said motion.

WHEREFORE, the plaintiff is hereby ordered to file a bond to be approved by this Court in the amount of P100,000.00 to answer for whatever damages the herein defendants may suffer should the decision be finally adverse to the plaintiff."

The defendants moved for reconsideration, offering to post a supersedeas bond of P10,000.00 to indemnify plaintiff; but the motion was denied.

Wherefore, this petition for certiorari was promptly interposed by the defendants for the purpose of annulling the above order of June 24, 1954. At their request, and for a bond of P2,000.00- we issued a preliminary writ of injunction to restrain the enforcement of the challenged order during the pendency of this litigation.

The issuance of such temporary injunction upon a much reduced bond was due to our opinion that the lower court, upon approving the record on appeal on June 12, lost jurisdiction over the case and had no power to direct execution of its judgment on June 24.

Our rulings on this procedural subject are aptly, summarized in Moran, Comments on the Rules of Court as follows:

After the appeal is perfected, or, in other words, after the record on appeal is approved, the trial court loses its jurisdiction to issue execution under this section. Formerly, the rule was that, even after the perfection of an appeal, the trial court may, under certain circumstances, order the execution of the judgment. This was predicated apparently upon the theory that trial courts, notwithstanding an appeal, retain jurisdiction to issue any such orders as may be necessary for the preservation of the rights of the parties and which do not affect the issues involved in the appeal, and the execution of the judgment ordinarily does not, and cannot, change such issues. Such ruling, however, was abandoned, and now, after an appeal has been perfected, no execution may be issued by the trial court." (Op. cit. Vol. I (1952 Ed.) p. 796 citing *Sumulong v. Imperial*, 51 Phil. 251; *De Leon v. De los Santos*, 44 Off. Gaz. (No. 10) 3805; *Vela, de Sy Quia v. Concepcion and Palma*, 60 Phil. 186.) (Underscoring ours.)

Identical modern principles were applied in *Rustia v. Judge* 44 Phil. 62; *De la Fuente v. Jugo* 76 Phil. 262; *Carafe v. Caluag* 78 Phil. 836; *Burke v. Devera* 46 Off. Gaz. No. 10 p. 4936 and *Uvero v. Court of Appeals L-6522*, May 24, 1954.

To the same effect the Rules provide that "upon the 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 jurisdiction over the case, except x x x." (Rule 41 sec. 9.)

Wherefore, in view of the foregoing, the order of execution of June 24, 1954 issued by the respondent judge must be, and is hereby, declared null and void, Costs will be paid by the respondent Tagum Tillers' Co. Inc, So ordered.

Pablo, Montemayor, Reyes, Bautista Angelo, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

Padilla, J., took no part.

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