

ANTONIO DEL ROSARIO, VICTORIANA DEL ROSARIO, MARCELINA DEL ROSARIO, FERNANDO BERNARDO, MARIANO BERNARDO, AND MANUEL BERNARDO, PETITIONERS, VS. HON. FROILAN BAYONA, AS JUDGE OF T...*G. R. No. L-5686. April 17, 1953*

Ponente: BAUTISTA ANGELO, J.

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This is a petition for mandamus to compel the respondent judge to give course to the appeal interposed by petitioners from an order issued by said judge on January 16, 1952 overruling their opposition to the taxation of costs made by the clerk of court in pursuance of the decision rendered by this court in G. R. No. L-867.[*]

This petition stems from a case concerning recovery of real estate instituted in the Court of First Instance of Pampanga wherein petitioners herein were plaintiffs and respondent Carlos Sandico one of the defendants (civil case No. 6178). When the case reached the Court of Appeals, in a decision rendered on July 8, 1944, the latter court, among other things, required the plaintiffs to pay the amount of P3,944 to Carlos Sandico within a period of 90 days from the date the decision becomes final, and upon such payment, to surrender to them the possession of the land. The decision having become final, and Carlos Sandico having refused to receive the sum of P3,944 tendered to him as above directed, plaintiffs deposited the money with the clerk of court, and filed a motion praying that the possession of the land be delivered to them. This motion was granted on October 5, 1945, but Carlos Sandico took the case on appeal to this court.

On December 29, 1949, this court rendered a confirmatory decision, but in its dispositive part it added "with costs against the appellees." On May 26, 1951, Carlos Sandico filed an amended bill of costs in the amount of P394, to which plaintiffs-appellees interposed a written objection. On October 25, 1951, the clerk of court issued a writ of execution for the payment of said costs, which was reiterated on November 21, 1951. On December 20, 1951, the clerk of court made the taxation of costs in accordance with the rules (section 8, Rule 131). On the following day, plaintiffs-appellees appealed from said taxation to the court, and on January 16, 1952, the court sustained the taxation. Plaintiffs-appellees filed in due time the necessary pleadings preparatory to appeal, but on March 4, 1952, their appeal was disapproved. Hence, this petition for mandamus.

The only question to be determined is whether the respondent Judge erred in disapproving the appeal from his order approving the taxation of costs made by the clerk of court notwithstanding the fact that the appellants have filed in due time the pleadings required by the Rules of Court for the perfection of the appeal.

Under section 8, Rule 131, it is provided that, in superior courts, "costs shall be taxed by the clerk on five day's written notice given by the prevailing party to the adverse party. * * * Objections to the taxation shall be made in writing, specifying the items objected to. Either party may appeal to the court from the clerk's taxation. The costs shall be inserted in the judgment if taxed before its entry, and payment thereof shall be enforced by execution."

Appellants, petitioners herein, have complied with this provision of the rule. When the clerk of court gave notice to appellants of the taxation of costs made by him, they immediately appealed from said taxation to the court but the latter sustained the taxation. And not agreeable to this approval, appellants took steps to appeal from the order, but the court disapproved the appeal.

We find no cogent reason why this order cannot be appealed from if one is not agreeable to the costs as taxed by the court. The same is final in character, not merely interlocutory, so much so that unless set aside, the payment of the costs shall be enforced by execution. The only way by which the execution, can be prevented is by appeal in due time. Moreover, the inquiry before us is not new. Appeal of this nature has already been entertained by this court (*Tanega vs. Nazareno*, 73 Phil., 354).

It is claimed that the writ of execution issued by the clerk of court to enforce the payment of the costs is premature, it having been issued two months before the costs were taxed as required by section 8 of Rule 131. It being premature, it is claimed, the same has no legal effect and should be nullified. It appears, however, that the sale at public auction of the property levied in execution for the payment of costs has already been carried out on May 28, 1952. Whether said writ of execution is valid or not for having been prematurely issued is a matter that should be looked into when the case comes up before this court for decision on the merits.

Petition is granted, with costs against respondent Carlos Sandico.

Paras, C. J., Feria, Pablo, Bengzon, Tuason, Montemayor, Reyes and Jugo, JJ., concur.

[*] 85 Phil., 170.

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