

IGNACIO BUENBRAZO, PETITIONER, VS. HON. GERONIMO R. MARAVE, JUDGE OF THE COURT OF FIRST INSTANCE OF MISAMIS OCCIDENTAL, BRANCH II, AND JOSE ABELARDO, RESPONDENTS.

G.R. No. L-41144. December 29, 1980

Ponente: AQUINO, J.

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AQUINO, J.:

In Civil Case No. 988, a forcible entry case, the city court of Ozamiz City rendered a decision dated July 5, 1974, dismissing the complaint of plaintiff Jose B. Abelardo and ordering him to pay defendant Ignacio Buenbrazo the sum of P1,000 as attorney's fees.

Abelardo appealed to the Court of First Instance of Misamis Occidental. After the parties had filed their memoranda, as contemplated in section 45 of the Judiciary Law (see *Gindoy vs. Tapucar*, L-43257, January 20, 1977, per Barredo, J.), the lower court in its judgment dated February 26, 1975 affirmed the city court's decision (Civil Case No. OZ-473).

Abelardo then filed a notice of appeal announcing his intention to appeal the said judgment to the Court of Appeals. He submitted a record on appeal. He contended that the factual findings of the lower court are not supported by substantial evidence and that its conclusions are contrary to law and jurisprudence (p. 64, Rollo).

Buenbrazo filed a motion to dismiss the appeal on the ground that the appeal should be made directly to this Court under section 45. Abelardo opposed the motion.

The lower court in its order of May 7, 1975 denied the motion to dismiss. It relied on the ruling of the Court of Appeals that if the decision of the inferior court is affirmed by the Court of First Instance, a petition for review may be filed in the Court of Appeals (*Pinkian vs. Marave*, CA-G.R. No. Sp-02571-R, November 28, 1973 which cited section 29 of the Judiciary Law, as amended by Republic Act No. 5433, and the resolution in *Mota vs. Court of Appeals*, L-35462, September 26, 1972).

That order is being assailed in Buenbrazo's instant petition for certiorari and prohibition.

We hold that the lower court erred in giving due course to Abelardo's appeal to the Court of Appeals by means of a record on appeal.

The applicable rule is found in section 45 and not in section 29. Under the third paragraph of section 45, as amended by Republic Act No. 6031, which took effect on August 4, 1969, the general rule is that the decision of the Court of First Instance in cases "falling under the exclusive original jurisdiction of municipal and city courts which are appealed to" it, is final or unappealable (See *Don Lino Gutierrez & Sons, Inc. vs. Court of Appeals*, L-39124, November 15, 1974, 61 SCRA 87, 92; *Gutierrez vs. Magat*, L-39739, October 3, 1975, 67 SCRA 262, 265).

However, the finality of the decision of the Court of First Instance in those cases (cases exclusively cognizable by

inferior courts) is subject to the condition "that the findings of facts contained in said decision are supported by substantial evidence as basis thereof, and the conclusions are not clearly against the law and jurisprudence".

Section 45 further provides in its third paragraph that this Court "in its discretion may, in any case involving a question of law, upon petition of the party aggrieved by the decision and under rules and conditions that it may prescribe, require by certiorari that the case be certified to it for review and determination, as if the case had been brought before it on appeal".

Note that that proviso is an exact copy of the proviso in section 29 which grants this Court jurisdiction to review decisions of the Court of Appeals on questions of law. That review is provided for in Rule 45 of the Rules of Court.

Note further that the review provided for in Rule 45 is also the mode of review prescribed for the review by this Court under Republic Act No. 5440 (effective on September 9, 1968) of the decisions of lower courts (courts inferior to the Supreme Court) in the five classes of cases enumerated in section 17 of the Judiciary Law, meaning cases other than (a) appeals in criminal cases wherein death or reclusion perpetua is imposed, (b) appeals in naturalization and denaturalization cases, and (c) appeals of a private person or entity from the decision of the Auditor General or Commission on Audit.

Now, then, if a party in a case exclusively cognizable by an inferior court, which was appealed to the Court of First Instance, complains that the factual findings of the Court of First Instance are not supported by substantial evidence and that its conclusions contravene law and jurisprudence (as contended in the instant case) what Court should review the decision of the Court of First Instance and what should be the mode of re-view?

Republic Act No. 6031 does not indicate the mode of review and the appellate court where the review should be sought. Whether the review should be by petition for review, as in section 29, as amended by Republic Act No. 5433, or as in Rules 43 and 44 of the Rules of Court, or by certiorari, as in Rule 45, is not specified in section 45. Whether it is the Court of Appeals or the Supreme Court which should review the decision of the Court of First Instance is not altogether clear.

Parenthetically, it may be noted that the Court of Appeals in its resolution of August 12, 1971, 67 O. G. 6715 directs that a review of the decision of the Court of First Instance in cases falling under the original exclusive jurisdiction of municipal and city courts should be made by means of "a verified petition for review" and not by record on appeal.

The questions posed above, together with the propriety of the Court of Appeals' resolution, need not be resolved in this case. They will be passed upon by this Court en banc in the pro-per case.

In the instant case, it is not necessary to rule on those questions because there is no controversy that the review of the decision of the Court of First Instance in a case exclusively cognizable by the inferior court (as in this case) cannot be made in an ordinary appeal or by record on appeal.

That should be known to the members of the bench and bar since the enactment of Republic Act No. 6031 in 1969 in the same way that, by this time, the bench and bar should know that appeal by record on appeal to the Supreme Court under Rule 42 of the Rules of Court was abolished by Republic Act No. 5440 which, as already stated, took effect on September 9, 1968.

An appeal by record on appeal presupposes that the appeal is a matter of right. An appeal by petition for review or certiorari means that the appellate court has discretion to reject the appeal. Under section 45, the review by the appellate court of a decision of the Court of First Instance in cases originally cognizable by the inferior court is

not a matter of right.

Therefore, respondent Jose V. Abelardo could not appeal by record on appeal. The lower court's order giving due course to Abelardo's appeal by record on appeal is erroneous.

The lower court's decision should now be considered as final and executory because, obviously, the period during which Abelardo could secure a review of the same had already expired. That is the only point decided in this case.

The lower court's order of May 7, 1975, giving due course to Abelardo's appeal by record on appeal is set aside. The petition for certiorari and prohibition is granted. No costs.

SO ORDERED.

Fernando, C.J., Barredo, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

Teehankee, J., in the result.

Makasiar, J., see attached dissent.

DISSENTING OPINION

MAKASIAR, J.:

The lower court's decision should not be considered as final and executory.

In fairness to private respondent Abelardo, the legal question as to whether the decision of the Court of First Instance (in the exercise of its appellate jurisdiction) affirming the decision of the municipal or city court in cases within the exclusive original jurisdiction of the latter, should be brought for review to the Court of Appeals by ordinary appeal or by petition for review to the Court of Appeals or to the Supreme Court remained debatable until the main opinion in the case at bar. The main opinion admits this uncertainty (see p. 4, main op.). The available remedy has not been clear to the Bench and Bar -- whether Section 45 of the Judiciary Act as amended last by R.A. 6031 or Section 29 of the same Judiciary Act, as amended by R.A. No. 5433, shall govern. Even the Members of this Court could not arrive at a consensus. The lapse of the period for the filing of the petition for review should not apply to the prejudice of the rights of private respondent; because the delay in the resolution of the instant case is due to the conflicting views entertained by the Members of this Court on the issue or issues posed by the present case.

As a matter of justice and equity, the filing by private respondent of the record on appeal within the reglementary period should interrupt the running of the period for the filing of the petition for review until the legal question is finally decided as to whether an ordinary appeal or a petition for review (and with which appellate court) is the appropriate remedy under the facts of the instant case.

Under Section 31 of the Judiciary Act "all cases which may be erroneously brought to the Supreme Court or the Court of Appeals shall be sent to the proper court, which shall hear the same, as if it has been originally brought before it," which is restated by Section 3 of Rule 50 of the Rules of Court, which provides: "Where the appealed case has been erroneously brought to the Court of Appeals, it shall not dismiss the appeal, but shall certify the case to the proper court, with the specific and clear statement of the grounds therefor." The aforesaid provisions of Section 31 of the Judiciary Act and Section 3 of Rule 50 of the Rules of Court, should apply to the case at bar by analogy.

Hence, private respondent Abelardo should be directed to file a petition for review in lieu of his record on appeal, and said petition for review should be considered filed as of the filing of his record on appeal.

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