

AUREA AGUILAR AND LEOCADIO PRIAS, PETITIONERS, VS. HON. RAMON BLANCO AND LEOPOLDO LABYANG RESPONDENTS.*G.R. No. L-32392. August 13, 1988*

Ponente: GRÑO-AQUINO. J.

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This is a petition for review on certiorari of the decision dated May 19, 1970 of the Court of Appeals in CA-G.R. No. 43033-R entitled, "Aurea Aguilar, et al. vs. Hon. Ramon Blanco, et al.," dismissing the petition for certiorari and mandamus filed by the herein petitioners who seek to compel the Court of First Instance of Iloilo to dismiss the appeal interposed by Leopoldo Labyang against the decision in Civil Case No. 7 of the Municipal Court of San Enrique, Iloilo.

On June 26, 1963, in Civil Case No. 7, entitled "Aurea Aguilar and Leopoldo Arias vs. Leopoldo Labyang and Juanito Daquipal," judgment was rendered by the Municipal Court of San Enrique enjoining defendant Leopoldo Labyang to desist from committing acts of dispossession against plaintiffs-spouses and ordering him (Leopoldo Labyang) to pay P400 as actual damages; P200 as attorney's fees; and the costs of the action. It dismissed the case against Juanito Daquipal (see Decision, Rec. pp. 13-14). On July 23, 1963, Leopoldo Labyang, the defendant, filed with the municipal court a notice of appeal and appeal bond and paid the fees for docketing his appeal in the court of first instance (Record p. 15). Thereupon, the records of the case were transmitted by the Municipal Court of San Enrique to the Court of First Instance of Iloilo where the appealed case was docketed as Civil Case No. 6359.

On August 10, 1963, plaintiffs-appellees filed a motion to dismiss the appeal in the court of first instance and for immediate execution of the judgment on the grounds that: (1) the decision of the municipal court was already final; and (2) the defendant Leopoldo Labyang failed to file a supersedeas bond.

The defendant-appellant opposed the motion alleging that, actually, he received the decision of the municipal court on July 15, 1963, not July 2, 1963, hence the filing of the notice of appeal and appeal bond on July 23, 1963 was timely, and, second, he could not file a supersedeas bond because the municipal court did not fix any amount as the reasonable value of the use and occupation of the premises in question (Record, pp. 18-19).

On December 14, 1963, the court dismiss the appeal because the decision of the municipal court was received by the authorized agent of Labyang's counsel on July 2, 1963, hence, his appeal which was filed and received by the Municipal Court of San Enrique, Iloilo, on July 25, 1963, was late. The defendant-appellant filed on January 12, 1964 a "Motion for Reconsideration and Petition for Relief from Judgment, alleging under oath that the decision of the Municipal Court of San Enrique was actually taken from the Iloilo City Post Office by defendant-appellant's counsel on July 5, 1963 and, on July 6, 1963, said counsel notified by registered mail defendant-appellant Leopoldo Labyang, who lives in a barrio of San Enrique to prepare the necessary amounts for the appeal bond and docket fees but on account of the inefficiency of the postal service, the registered letter of July 6, was received by the defendant-appellant on July 23, only. Accordingly, defendant-appellant's counsel

maintained that his client was not to blame for the late filing of the notice of appeal and appeal bond. The plaintiffs-appellees opposed the defendant-appellant's motion for reconsideration.

On March 21, 1964, Judge Perfecto Querubin lifted the dismissal order of December 14, 1963 and gave due course to the appeal, stating that there was earnest effort on the part of defendant-appellant and his lawyer to perfect their appeal on time "but due to the deficiency of the postal service the notice to the defendant by his lawyer was very much delayed." (p. 58, Rollo.) Plaintiffs' motion for reconsideration of that order was denied by Judge Querubin.

On November 26, 1966, or two (2) years, seven (7) months and fifteen (15) days later, the plaintiff-spouses, represented by a new lawyer, filed another motion to dismiss the appeal and for immediate execution of the Judgment of the Municipal Court of San Enrique, Iloilo, on the same grounds invoked by them before.

The lower court, presided over by Judge Ramon Blanco, denied plaintiffs-appellees' motion on the ground that the issues raised therein "had already been pleaded previously by the parties and passed upon in the orders dated March 21, 1964 and April 11, 1964" (p. 73, Rollo). At the same time he set the case for hearing on February 28, 1967. Plaintiff-spouses filed a motion for reconsideration which Judge Blanco also denied on December 21, 1967.

On March 28, 1969, one (1) year and three (3) months later, the plaintiffs-appellees filed a petition for certiorari and mandamus in the Court of Appeals to compel Judge Blanco to dismiss Labyang's appeal.

The Court of Appeals dismissed the petition, hence, this appeal.

While this case was pending in this Court, counsel for the petitioners Aurelia Aguilar and Leopoldo Prias filed a motion on March 11, 1972, stating that defendant Leopoldo Labyang had already vacated the land in question and that he sold his right to Senon Pama for P300; that the petitioners would not object if the Court were to consider this case moot and academic, provided they be placed in possession of the land in question by a writ of execution. The land is now in the possession of Senon Pama.

The petitioners argue that the period fixed by the rules for the perfection of an appeal is not only mandatory but jurisdictional. They are correct. And as the issue of jurisdiction may be raised at any stage of the action, it is never too late to do so.

Indeed, this Court has ruled, time and again, that compliance with the reglementary period for perfecting an appeal is not merely mandatory, but jurisdictional.

"Section 13 of Rule 41 provides that when the appeal is not perfected within the reglementary period the appeal shall be dismissed. The requirement regarding the perfection of an appeal within the reglementary period is not only mandatory but jurisdictional. Such failure has the effect of rendering final the judgment of the court, and the certification of the record on appeal thereafter cannot restore the Jurisdiction which has been lost. The dismissal of the appeal, can be effected even after the case has been elevated to the Court of Appeals (Rule 52, Section 1[a]). Appellee's failure to file a motion for dismissal of appeal in the court of origin before the transmittal of the record to the appellate court, does not constitute a waiver on his part to interpose such objection." (Miranda vs. Guanzon, et al., 92 Phil. 168.)

This rule was reiterated in Galima vs. Court of Appeals, 16 SCRA 141, and in the numerous other cases.

The Court of First Instance had no jurisdiction to entertain or act on the defendant's "Motion for Reconsideration and Petition for Relief from Judgment" which was filed by his counsel on January 12, 1964, for whether that pleading is considered a "motion for reconsideration," or a "petition for relief from judgment," the Court had no more jurisdiction to entertain it.

As a motion for reconsideration of the Court's order dated December 14, 1963, dismissing the appeal, a copy of which the defendant's counsel received on December 21, 1963 (Annex F, p. 51, Rollo), the motion was tardy because it was filed more than 15 days after notice of the order which became final on January 5, 1964.

As a petition for relief from judgment, it was also filed out of time. A petition for relief from judgment should be filed "within sixty (60) days after the petitioner learns of the judgment, order or other proceeding to be set aside, and not more than six (6) months after such judgment or order was entered, or such proceeding was taken" (Sec 3, Rule 38, Rules of Court). The judgment was rendered on June 26, 1963 and was received by defendant's counsel on July 2, 1963 (according to the postmaster) or July 5, 1963 (according to defendant's counsel). The petition for relief was filed on January 12, 1964, more than 60 days (194 days to be exact) after the defendant learned of the judgment. Although the record does not show when the judgment was entered, it does not matter, for the second period is intended merely to be a limitation to the first (*Gana vs. Abaya*, 98 Phil. 165; *Follosco vs. Tuyay*, 92 Phil. 810; *Ramon vs. Albano*, 92 Phil. 834; *Samson vs. Dinglasan*, 109 Phil. 803; *Abao vs. Virtucio*, 109 Phil. 819) the petition must be filed within sixty (60) days after notice of the judgment, provided it is not beyond six months after judgment was entered.

The inefficiency of the postal service in delivering counsel's notice to his client about the rendition of the judgment is not a satisfactory excuse for tardiness in perfecting an appeal for the reckoning of the appeal period begins upon notice of the decision to counsel, not to the party, it being the counsel's responsibility, not the client's, to take the proper steps to perfect the appeal in due time. The decision having become final and executory, the prevailing party is entitled, as a matter of right, to a writ of execution, and the issuance thereof is the court's ministerial duty (*Balintawak Construction Supply Corporation vs. Valenzuela*, 124 SCRA 331).

WHEREFORE, the petition for certiorari is granted. The decision of the Court of Appeals and the orders of the Court of First Instance are set aside. The appeal of respondent Labyang is dismissed and the decision of the Municipal Court of San Enrique, Iloilo in Civil Case No. 7 is hereby reinstated and declared final and executory against said defendant, his assigns and successors-in-interest. Costs against the defendant-appellant. This decision is immediately executory.

SO ORDERED.

Narvasa (Chairman), Cruz and Medialdea, JJ., concur.

Gancayco, J., on leave.

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