

CASIMIRO GARGANTA, ET AL., PETITIONERS, VS. THE COURT OF APPEALS, ET AL., RESPONDENT.

G. R. No. 12104. March 31, 1959

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for writs of prohibition and preliminary injunction.

In civil case No. 12083 of the Court of , First Instance of Pangasinan where the petitioners Casimiro Garganta and Catalina Donato are plaintiffs and the respondents, except the Court of Appeals and the Sheriff of the Province of Pangasinan, are defendants, judgment was rendered on 10 April 1956 for the former and against the latter (Annex A). On 18 April notice thereof was received by counsel for the defendants (Annex B). On 16 May the defendants filed a motion for reconsideration (Annex B). On 1 June the defendants filed a pleading where "arguments to support the motion for reconsideration of the decision filed by defendants on May 16, 1956" were advanced (Annex C). On 4 June the Court denied the motion for reconsideration (Annex D). On 18 June the defendants filed their notice of appeal and record on appeal (Annex H). On 23 June Rufino E. Gonzales, in his own behalf as cross-defendant and as counsel for the other cross-defendants, filed an "objection to the record on appeal and counter petition for writ of execution"" on the ground that the appeal was filed out of time (Annex E). On 27 June the defendants replied to the objection (Annex F). On 24 July the plaintiffs objected to the allowance of the defendants' record on appeal on the same ground invoked by the cross-defendants (Annex G). On 26 July the Court allowed the defendants' record on appeal (Annex H). Motions for reconsiderations (Annexes I & J) were denied on 6 September (Annex J-I). In the Court of Appeals, the appellees reiterated their motion to dismiss the appeal for the same reasons advanced by them in the court below (CA-G.R. No. 18884-R). On 29 December the Court of Appeals denied their motion for the reason that the trial court already had passed upon the same grounds advanced before it. Hence this petition to restrain the Court of Appeals from proceeding with the appeal for want of jurisdiction to entertain it. On 25 March 1957 this Court issued a writ of "preliminary injunction after the petitioner had filed a surety bond in the sum of P200, enjoining the Court of Appeals from proceeding to consider the appeal in CA-G.R. No. 18884-R.

On 18 April 1956 notice of judgment of the Court of First Instance was received by counsel for the respondents. The latter had thirty days from notice of judgment to take an appeal, or up to 18 May, pursuant to section 3, Rule 41. On 16 May, two days before the end of the thirty-day period, the respondents moved for reconsideration of the judgment and on 1 June filed a pleading where arguments in support of the motion were advanced. On 6 June the postmaster of Lingayen sent to respondents counsel at his address of record the notice to claim within five days from the post office the registered letter containing the notice denying the respondents' motion for reconsideration. However, it was not until 18 June that counsel actually received notice of the denial of the respondents motion for reconsideration. On the same day, 18 June, the respondents filed their notice of appeal, appeal bond and record on appeal.

Petitioners contend that being merely pro forma the motion for reconsideration did not interrupt the running" of

the period within which the appeal may be taken. Respondents claim otherwise. Respondents' motion for reconsideration filed in the trial court is as follows:

Come now the defendants in the above entitled case, thru their undersigned attorney and to this Honorable Court, respectfully pray the reconsideration of the decision of this Honorable Court dated April 10, 1956, a copy of which was received by the undersigned counsel for the defendants on April 18, 1956, on the ground that said decision is completely against the evidence presented during the trial of this case and the same decision is against the law.

WHEREFORE, it is respectfully prayed that the decision of this Honorable Court dated April 10, 1956, be reconsidered and set aside and another decision be rendered in accordance with the evidence presented during the trial of this case and in accordance with law. (Annex B.)

As the motion sought reconsideration of the judgment rendered by the trial court "on the ground that said decision is completely against the evidence presented during the trial of this case and the same decision is against the law," without pointing out the findings and pronouncements made in the judgment that were allegedly contrary to the evidence and the law, the motion was pro forma and did not stop the running of the period within which to appeal.[1] The fact that on 1 June, before entry of the order denying the motion for reconsideration, the respondents filed a pleading where they pointed out fraud on the part of the defendant Rufino E. Gonzales who on 26 July sold % of the land to the plaintiffs reserving the right to repurchase it, notwithstanding the fact that in civil case No. 16, Marcela Espinosa, et al. vs. Rufino E. Gonzales, et al., a writ of execution was issued against Rufino E. Gonzales, did not cure the defect of the motion for reconsideration. Fraud committed by Rufino E. Gonzales was not committed by the spouses Casimiro Garganta and Catalina Donato, unless the evidence showed that the latter had knowledge of the fraud being perpetrated by one of the vendors. The judgment in favor of the plaintiffs, the herein petitioners, was predicated on the registration of the sale on 26 July 1948 or before the registration of the levy upon execution which was on 4 August 1948. The trial court found that the sale in favor of the plaintiffs was valid as against the levy on execution which brought about the sale of the land in litigation by the sheriff to the defendants.

Granting, however, that the filing of the respondents' motion for reconsideration on 16 May tolled the period within which an appeal may be taken, still the appeal filed on 18 June was not on time. On 4 June the Court denied the respondents' motion for reconsideration. On 6 June the postmaster of Lingayen sent to respondents' counsel at his address of record the notice to claim within five days from the post office the registered letter containing the notice denying the respondents' motion for reconsideration. Section 8, Rule 27, partly provides that:

* * * Service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five days from the date of first notice of the postmaster, the service shall take effect at the expiration of such time.

As counsel for the respondents failed to claim the registered letter from the post office within five days from receipt of the notice, service thereof was deemed to have taken effect five days after its receipt, [(1)] or on 11 June. From this date the two days remaining out of the thirty-day period resumed to run. The two remaining days ended on 13 June. The notice of appeal, appeal bond and record on appeal filed on 18 June were, therefore, beyond the reglementary period, when judgment already had become final and executory.

The failure of attorney Jose Rivera, respondents' counsel in the court below, to receive the notice sent by the postmaster at his address of record and to claim from the post office the registered letter containing the notice denying the motion for reconsideration, because he was in Alaminos, where he lived with his family, and because he was busy attending to his other cases in court, does not relieve the respondents from the adverse effect of their

counsel's negligence. It is incumbent upon an attorney to take such precaution as to receive promptly all judicial notices during his absence from his address of record.[1]

Respondents contend further "that the order of the lower court giving due course to the appeal of the appellants in Civil Case No. 12038 had become final and executory as plaintiffs-appellants did not appeal from the said Order and hence the Honorable Court of Appeals have no more authority to revoke said Order," and that it cannot be annulled by a writ of prohibition. Section 14, Rule 41, provides:

A motion to dismiss an appeal on any of the grounds mentioned in the preceding section (failure to file notice, bond, or record on appeal) may be filed in the Court of First Instance prior to the transmittal of the record to the appellate court.

Section 1, paragraph (a), Rule 52, provides:

An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds: (a) Failure to file, within the period prescribed by these rules, the notice of appeal, appeal bond or record on appeal;

The denial by the trial court of the plaintiffs' motion to dismiss the defendants appeal did not preclude the former from renewing or reiterating in the Court of Appeals their motion to dismiss the appeal under Rule 52. An allowance by a Court of First Instance of an appeal which was not taken within the reglementary period; a denial by the same Court of a motion to dismiss an appeal taken beyond such period; and a denial by the Court of Appeals to dismiss such appeal, do not render the appeal valid, effective and legal. If an appeal be not taken within the reglementary period, the judgment becomes final, and the legality of the allowance of the appeal and of the denial of the motion to dismiss the appeal by the trial court and the appellate court, to which the appeal had been forwarded, may always be raised because it concerns the jurisdiction of the appellate court, a point which may be raised at any stage of the proceedings in the appellate court.

The writ prayed for is granted and the writ of preliminary injunction heretofore issued is made final, with costs against the respondents, except the Court of Appeals and the Provincial Sheriff of Pangasinan.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

[1] Valdez vs. Jugo, 74 Phil., 49; Reyes vs. Court of Appeals, 74 Phil., 235; Alvero vs. de la Rosa, 76 Phil., 428; Villalon vs. Yisp, 53 Off. Gaz., 1094; section 2, Rule 37.

[(1)] Pliego vs. Generisa, 73 Phil., 654.

[1] Martinez vs. Martinez, 90 Phil., 697.

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