

EMILIO ALANO, ET AL., PLAINTIFFS AND APPELLEES, VS. DANIEL PAGLINAWAN, DECEASED AND SUBSTITUTED BY BENEDICTA ARROYO, ET AL., DEFENDANTS. RIZAL SURETY & INSURANCE CO., SURETY AND...

G. R. No. 12962. February 26, 1959

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

This appeal originally taken if the Court of Appeals was forwarded to this Tribunal for the reasons that the briefs filed by the parties raised questions of law only. It must, however, be dismissed, because upon examination of the record, we find it to be either tardy or useless. In Civil Case No. 5245 of the Quezon court of first instance, plaintiffs in August 1951, asked for recovery of a parcel of land, plus damages. The following month, they petitioned for the appointment of a receiver to take charge of the property and its products. To prevent such receivership, defendant Daniel Paglinawan, submitted a bond subscribed by Rizal Surety & Insurance Co., for the amount of P2,000 "under the condition that the defendant * * * will, on demand, pay to the plaintiff the damages adjudged by the Court which plaintiff may suffer * * *."

After hearing the parties and their evidence, said Quezon Court rendered judgment for plaintiffs, requiring defendant to vacate the land and to pay P1,064.00 per year until he leaves the premises "and should not he not be able to pay it, the bond filed by him would have to answer therefor." Whereupon, plaintiffs asked that the surety be directed to deposit with the Court the amount of the bond for the satisfaction of such judgment. The court deferred action on the request "until after the appellate court shall have decided the appeal in this case." (Defendant had appealed to the Court of Appeals.) On November 3, 1955, the last-mentioned court dismissed defendant's appeal. Consequently, upon reiteration of plaintiffs' request, the Quezon court, by its order dated January 11, 1956, required

"* * * Rizal Surety & Insurance Company to deposit with the Clerk of Court the amount of P2,000 which is the amount of the bond posted in behalf of Daniel Paglinawan, subject to the disposition thereof by the said plaintiffs, for the execution of the judgment in this case."

Of this order the surety company received notice on January 20, 1956, [Record on Appeal p. 81] [1]; and on February 20, 1956, it filed a motion for reconsideration asserting the illegality of the order "because it does not make a finding of facts." On March 14, 1956, this motion was denied, and the surety knew of such denial on April 24, 1956. Then on May 24, 1956, it registered "its intention to appeal from the order of this Court dated March 14, 1956."

It appears, however, that the appellant's brief actually questions the order of January 11, 1956, herein above quoted. In fact, the second assignment ascribes error to the lower court "in issuing its orders of January 11, 1956 and March 14, 1956." Obviously it realizes the futility of this appeal unless the order of January 11, 1956, is set aside. But said order had become final long before this appeal was perfected on May 24, 1956. (January 20 to

February 20-31 days; April 24 to May 24-30 days; total 61 days.)

Of course, the surety was aware of the number of days (61) that had elapsed; wherefore, its notice of appeal only mentioned the order of March 14, 1956.[2] Nonetheless, it urges here the revocation of the order of January 11, 1956.

Needless to say, the appellant may not circumvent the finality of the questioned order (January 11) by the subterfuge of merely appealing from the denial of its motion to reconsider (March 14).

Appeal dismissed. Costs against appellant.

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

[1] Allegation of plaintiffs in their "Oposicion a la mocion de reconsideracion" of February 23, 1956, which was never denied by the surety in its pleadings,

[2] The appeal would be within 30 days from April 24, 1956. But, as explained, it is useless.

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