

ISABELO F. FONACIER, PETITIONER, VS. HON. JOSE T. SURTIDA, ETC., ET AL., RESPONDENTS.

G.R. No. 15944. September 28, 1961

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

This is a petition for mandamus to compel the respondent judge to allow the appeal of Isabelo F. Fonacier in Civil Case No. 3431 of the court of first instance of Camarines Sur.

The sole issue is whether the appeal had been perfected in due time; and that issue depends upon whether the "Petition to Set Aside" dated March 3, 1959, suspended the running of the thirty-day period to perfect the appeal.

Civil Case No. 3431 was an ordinary civil case to recover a sum of money which therein defendant Isabelo F. Fonacier allegedly owed the therein plaintiff Juan Ong. In his answer, Fonacier denied the debt, impleaded Fernando Gaité and submitted counterclaims. Gaité and Ong denied the claim and in turn alleged several counterclaims.

Other incidents happened, which it is unnecessary to relate. But the case was heard in the absence of Fonacier on November 5, 1958, despite his motion for postponement. And on January 6, 1949, the court rendered judgment requiring Fonacier to pay Ong the sum of P4,060.00 and Gaité the sum of P7,333.33 plus interest and costs. On February 5, 1959, counsel of Fonacier received copy of the judgment. On March 4, 1959, he filed a petition to set it aside, which will presently be described. Such petition was denied and notice of such denial was received on July 24. On the next day, Fonacier filed his notice of appeal, an appeal bond and a record on appeal. However, upon objection of Ong and Gaité, the Court by its order of August 18, 1959, rejected the appeal, held that the judgment had become final, and granted a motion for execution.

Hence this petition for mandamus coupled with a prayer for preliminary injunction to prevent execution, which we granted.

The order does not specify the reasons why it declared that the judgment had become final. Evidently, the judge sustained the contention of Gaité that the 30-day period had lapsed, because the "Petition to Set Aside" did not suspend it, since the petition was a mere pro forma motion for new trial. There is no doubt that if it suspended the period, Fonacier's appeal was perfected in due time.

Was it pro forma motion? It consists of twenty-two pages; it begins with this paragraph:

"I. Said judgment is null and void because—

- It was rendered in violation of defendant and third-party plaintiff's constitutional right to be heard before being deprived of his property rights;
- The trial had on November 5, 1958 was premature and

unauthorized; because

(1) The issues between third-party plaintiff and third-party defendant were not as yet properly and completely joined; * * *

III. The evidence of record does not sustain the judgment herein assailed."

To reason out his ground number III, Fonacier's attorney devoted no less than eight pages to demonstrate that the claims against him were "absurd."

Under the circumstances, it is unnecessary to explain that the petition was not a mere pro forma motion. Granting for the sake of argument, that it was not well-founded or was not the proper remedy as contended by Gaité, the thing stands out that the petitioner asked that the decision be set aside because it was not supported by the evidence, and gave his many reasons therefor. His petition, consequently, suspended the time to appeal. It was error for the court to declare that its judgment had become final and executory.

The petition for mandamus is granted, the respondent judge is hereby required to give due course to Fonacier's appeal, and the preliminary injunction heretofore issued made permanent. Costs against respondents Juan Ong and Fernando Gaité. So ordered.

Padilla, Labrador, Concepcion, Reyes, J. B. L. Paredes, and De Leon, JJ., concur.
Barrera and Dizon, JJ., took no part.

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