

EDUARDO GOSIENGFIAO, PETITIONER, VS. HONORABLE NICASIO YATCO, ETC., ET AL., RESPONDENTS.*G.R. No. 16676. January 28, 1961*

Ponente: LABRADOR, J.

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This is a petition filed in this Court by Eduardo Gosiengfiao, seeking the review and reversal of an order of the Court of First Instance of Rizal, Quezon City Branch, Hon. Nicasio Yatco, presiding, dated November 2, 1959, requiring petitioner herein to amend his record on appeal by eliminating certain pleadings which the court considers to have no pertinence to the appeal, and to enjoin the enforcement of a writ of execution, issued also by said court on February 23, 1960. The orders in question were issued in Civil Case No. 2552 of the Court of First Instance of Rizal, Quezon City branch, entitled "Jesus V. Merritt, plaintiff, vs. Eduardo Gosiengfiao, defendant."

The record discloses that judgment having been rendered by the court in the said case in favor of Merritt and against Gosiengfiao, and after a denial of defendant's motion for reconsideration, Gosiengfiao, filed a notice of appeal, the corresponding bond and a record on appeal. This record includes all the pleadings in the case. In an order dated October 19, 1959, the court approved the record on appeal and directed the transmission thereof to the Supreme Court, as prayed for in the notice of appeal. But on November 2, 1959, without any petition to that effect from any party, the court entered the disputed order, which reads as follows:

"Considering that thru oversight the Court approved the Record on Appeal filed by the defendant which included) pleadings that are not pertinent in his appeal, the defendant is hereby given ten (10) days from receipt hereof within which to amend the Record on Appeal accordingly." (Annex "C")

Counsel for Gosiengfiao moved for the reconsideration of the order requiring amendment, on the ground that he had raised the question of jurisdiction in his motion for reconsideration and the consideration of such issue required that all pleadings be presented before the appellate court. On November 28, 1959, the judge denied the motion for reconsideration filed, and on February 23, 1960, he issued a writ of execution of the judgment.

The record discloses that the order requiring the amendment of the record on appeal was issued on November 2, 1959, or on the 13th day after the order approving the record on appeal. While it is true that the court has the general power to make its orders conform to law and justice, there is a limit of the period of time within which the record on appeal may be amended. The limit is to be inferred from Section 11 of Rule 41 of the Rules of Court, which requires "the clerk of the trial court shall transmit to the appellate court the record on appeal within ten days after its approval, together with a certified copy of the minutes of the proceedings, the order of approval, the certificate of correctness, and the original documentary evidence referred to therein." Section 9 of the same Rule 41 also provides that upon approval of the record on appeal the court loses jurisdiction over the case. In view of the above provisions, we hold that after the tenth day had expired from the approval of the record of appeal, the court below no longer had power to order amendment of said record especially against the opposition of the appellant.

We also hold that the order for the execution of the judgment was issued unlawfully. As the appeal had been perfected, the record on appeal having been approved, the court had no more power to issue any order in relation to the matter in dispute, or the property involved, except for the preservation of the latter, in accordance with Section 9, Rule 41. It is true that a judge may punish a party for refusing to follow the orders of the court, and the petitioner herein did refuse to follow the court's order requiring him to amend his record on appeal. However, this order was clearly beyond the court's power and is, therefore, null and void. Consequently, the petitioner herein may not be punished for refusing to follow it.

For the foregoing considerations, the writ prayed for is hereby granted, the orders subject matter of the present action for certiorari are hereby set aside, and the writ of preliminary injunction is hereby made permanent. With costs against respondent Jesus V. Merritt.

Paredes, C. J., Bengzon, Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

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