

## COMMISSIONER OF IMMIGRATION, PETITIONER, VS. HON. HONORIO ROMERO, JUDGE OF THE COURT OF FIRST INSTANCE OF DAVAO AND TE SUAT ENG AND TAY SHUET YING, RESPONDENTS.

*G.R. No. 19782. January 31, 1964*

Ponente: REGALA, J.

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### REGALA, J.:

This is a petition for mandamus to compel respondent Judge Honorio Romero, of the Court of First Instance of Davao, to give due course to herein petitioner's appeal in Civil Case No. 3584 of that court.

The above-mentioned civil case was instituted on April 25, 1961 by respondent Te Suat Eng and Tai Shuet Ying against the herein petitioner Commissioner of Immigration in the nature of a petition for prohibition and mandamus with preliminary injunction, praying, among other things, that the latter be enjoined from arresting and detaining petitioner, and from charging her with violation of the immigration laws; that she be declared a citizen of the Philippines; and that the said Commissioner be ordered to cancel her Alien Certificate of Registration and to issue to her the corresponding identification certificate as citizen of the Philippines.

On the same day, April 25, 1961, the lower court granted the writ of preliminary<sup>1</sup> injunction prayed for and ordered the Commissioner of Immigration, as respondent therein, to answer the petition.

Somehow, the Commissioner of Immigration failed to answer the petition filed in the lower court so that on June 30, 1961, he was declared in default.

On August 21, 1961, the lower court finally rendered a decision declaring Te Suat Eng and Tai Shuet Ying a citizen of the Philippines, following the citizenship of her husband, under section 15 of Commonwealth Act 473 and ordering the Commissioner of Immigration to cancel her Alien Certificate of Registration and to issue instead an identification certificate as Philippine citizen.

In due time, the Immigration Commissioner moved for reconsideration of the aforementioned decision, dated August 21, 1961, for the reasons: (1) that it has not received the summons to answer the petition of Te Suat Eng; (2) that the petition was improperly filed with the Court of First Instance of Davao; (3) that said court has no authority to declare Te Suat Eng and Tai Shuet Ying a Philippine citizen under her petition. But the lower court, upon opposition interposed by the herein respondent, denied the Commissioner's motion for reconsideration.

Not satisfied, the said Commissioner, on February 1, 1962, filed a notice of appeal from the decision of the lower court and its order denying his motion for reconsideration.

On February 10, 1962, the lower court allowed the appeal in an order reading as follows:

"An appeal having been perfected in due time by the Solicitor General from the decision of this Court dated August 21, 1961 and from the Order denying the motion for reconsideration, this Court hereby orders the Clerk of Court to elevate the records of this case to the Supreme Court together with the evidence presented, both

oral and documentary." (*Italics supplied*)

Appeal was thus perfected; but on February 14, 1962, the herein respondent filed a motion for reconsideration of the above-quoted order, alleging that since the Commissioner of Immigration was declared in default he has no right to appeal. Acting favorably on respondent's motion, the lower court on March 19, 1962 issued an order thereby setting aside its order of February 10, 1962 and entering a new one striking out from the records the notice of appeal filed by the Solicitor General in representation of the Commissioner of Immigration.

It is this order of March 19, 1962, that is now the subject of this review.

The Solicitor-General contends that after the filing of the notice of appeal and its approval of the lower court, the appeal was deemed perfected so much so that the lower court lost its jurisdiction over the case and should not have vacated its order of February 10, 1962 giving due course to petitioner's appeal.

Petitioner's contention is tenable, considering the principle laid down by this Court in previous cases that once a case has been appealed and the appeal has been perfected, the court a quo loses its jurisdiction over the subject thereof.

Section 9 of Rule 41 provides:

"When the appeal deemed perfected; effect thereof.—If the notice of appeal, the appeal bond and the record of appeal have been filed in due time, the appeal is deemed perfected upon the approval of the record on appeal and of the appeal bond other than the cash bond and thereafter the trial court loses its jurisdiction over the case, except to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, to approve compromises offered by the parties prior to the transmittal of the record on appeal to the appellate court, and to permit the prosecution of pauper's appeals." (Rules of Court)

Since the case which would be appealed by herein petitioner is a special civil action, being one for prohibition and mandamus, the latter did not have to file a record on appeal (Sec. 17, Rule 41, Rules of Court), and since the appellant would be the Solicitor-General, representing the Commissioner of Immigration, there was no need for an appeal bond. (Rule 131, sec. 1, Rules of Court). Only the notice of appeal, therefore, was necessary for the perfection of the appeal, and as stated by no less the lower court in its order of March 19, 1962, the appeal was perfected.

In the case of *Director of Prisons, et al. vs. Jose Teodoro Sr., et al.*, 97 Phil., 391, this Court had occasion to state that "a necessary regard for orderly procedure demands that once a case, whether civil or criminal has been appealed from a trial court to an appellate court and the appeal therefrom perfected the court a quo loses jurisdiction over the case both over the record and over the subject of the case. Thus, in civil cases, the rule is that after the appeal has been perfected from a judgment of the Court of First Instance the trial court loses jurisdiction over the case except to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal." And again in *Reyes-Calingo vs. Judge Tan*, G. R. No. L-10366, May 31, 1957, this Court also said:

"\* \* \* Upon the issuance of the order of January 14, 1956, approving the record on appeal and the appeal bond of petitioners herein, after the filing of their notice of appeal, said appeal by the petitioners became perfected, and the lower court lost jurisdiction over the case: that respondent Judge had no authority to reconsider said order of January 14, 1956, and disapproved the record on appeal and the appeal bond: and that, consequently, the orders of January 21 and February 11, 1956 are null and void."

The above pronouncements support the stand of the Solicitor General in this petition.

The issue of whether the herein petitioner, as a party declared in default in the court below, could appeal seems to

be beside the point for the present since the object of the instant petition for mandamus is to test the lower court's authority or jurisdiction to recall a case after appeal thereof had been perfected.

Wherefore, finding the order of March 19, 1962 as having been issued without jurisdiction, the same is hereby set aside, and the respondent Judge, is ordered to give due course to petitioner's appeal. No costs.

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

Dizon, J., concur in the result.

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