

CONCEPCION J. VIUDA DE SYQUIA, AS JUDICIAL ADMINATRIX OF THE INTERSTATE ESTATE OF THE DECEASED GREGORIO SYQUIA, PETITIONER, VS. PEDRO CONCEPCION, JUDGE OF FIRST INSTANCE OF MANI...

G. R. No. 41641. May 26, 1934

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an original petition for a writ of certiorari instituted by Concepcion J. Vidua de SyQuia, as judicial administratrix of the intestate estate of the deceased Gregorio SyQuia, wherein, for the reasons alleged therein, it is prayed that judgment be entered declaring the order of the respondent judge dated February 21, 1934, having been issued beyond his jurisdiction, as well as the order entered by him on March 10, 1934, declaring as improperly approved and reapproving the bill of exceptions of the respondent Refael Palma, null and void and of no effect.

The following pertinent facts are necessary for the solution of the question raised in this petition:

On September 25, 1930, judgment was rendered in civil case No. 42600 of the Court of First Instance of Manila wherein the herein petitioner Concepcion J. Vidua de SyQuia, as judicial adminatrix of the deceased Gregorio Syquia, was plaintiff, and the respondent Rafael Palma and Perfecto and Felipe Jacinto were defendants, ordering the said defendants Perfecto and Felipe Jacinto, as principals, and the said respondent Rafael Palma, as surety, to pay to the said plaintiff the sum of P 13, 596.24, plus interest thereon at 9 per cent per annum from April 18, 1925, until fully paid, with the costs of the suit.

After the parties had been notified of said judgment, the respondent Rafael Palma, within the reglementary period, excepted to the same and filed a motion for a new trial. Said motion having been denied, the respondent, within the reglementary period, presented for approval his corresponding bill of exceptions, the court setting the date of the hearing for its approval on December 12, 1933.

On January 22, 1933, the respondent judge issued an order transferring to December 16, 1933 at 8.30 o'clock a. m., the hearing of the motion of the therein plaintiff and herein petitioner, dated December 6, 1933, as well as that the approval of the bill of exceptions filed by the therein defendants. On the day of the hearing for the approval of the motion for the execution of the judgment or, in lieu thereof, the filling of a bond, the respondent judge entered an order directing the issuance of a writ of execution of said judgment against the defendant Rafael Palma, unless within ten days from December 16, 1933, he should file a bond for P14,000.

On January 4, 1934, counsel for the respondent Rafael Palma filed a motion for reconsideration supported by an affidavit which was made an integral part thereof. On January 10, 1934, while the motion for reconsideration filed on January 4, 1934, by the respondent Rafael Palma was pending decision, the respondent judge issued an order approving the bill of exceptions presented by the said respondent Rafael Palma. Pursuant to said order, the deputy

clerk of the second branch of the Court of First Instance of Manila, on February 16, 1934, certified the approval of said bill of exceptions.

On February 16, 1934, the clerk of the Court of First Instance of Manila notified the parties that the bill of exceptions of the respondent Rafael Palma had been transmitted to this court, and on February 19th of the same year the clerk of court, in turn, notified the said parties of the receipt of the said bill of exceptions and of the amount to be paid for docketing fees and for printing said bill of exceptions.

After the said bill of exceptions of the respondent Rafael Palma had been transmitted, and while the same, together with all its exhibits, was before this court, the respondent judge, On February 21, 1934, entered an order as follows:

"Upon consideration of the motion for reconsideration filed on February 4th last together with the affidavit of the defendant surety Rafael Palma, and the court being of the opinion that, in view of the facts stated under oath in the said affidavit, there exist sufficient grounds for reconsideration filed on February 4th last together with the affidavit, there exist sufficient grounds for reconsidering the order issued on December 16th last; said order is hereby set aside and it is declared that there is no legal justification for issuing a writ of execution of the judgment against said defendant Mr. Palma. So ordered.

"Manila, P. I., February 21, 1934.

(Sgd.)

"PEDRO CONCEPCION

"Judge"

On February 26, 1934, the clerk of this court sent to the parties the required number of copies of the printed bill of exceptions, the case having been docketed in this court as G. R. No. 41320.[1]

On March 6, 1934, the petitioner filed with the respondent judge a motion for reconsideration seeking to set aside his order dated February 21, 1934, the same having been issued beyond his jurisdiction, and the case being on appeal being on appeal before this court and the bill of exceptions already printed. After the hearing of said motion, the respondent judge, on March 10, 1934, issued an order as follows:

"Upon consideration of the motion filed on the 6th instant by counsel for the plaintiff, praying this court to set aside its order of February 21st last, whereby the order dated December 16, 1933, was reconsidered and the defendant Rafael Palma relieved from complying with the terms of said order of December 16th; considering that the bill of exceptions presented by said defendant Rafael Palma was improperly approved on January 10th, inasmuch as on that date the motion filed by the said defendant on January 4th, praying that this court set aside the order issued on December 16th last, wherein he was required to file a bond for P14,000 in order that execution of the judgment might be suspended, was still pending resolution, of which motion, to be heard on the 13th of the same month, counsel for the plaintiff was notified on January 4th; considering that, when the bill of exceptions was approved on January 10th, said motion of the defendant Rafael Palma had not

yet been acted upon and therefore the bill of exceptions should not have been approved until after said motion had been decided; the motion for reconsideration filed on January 17th by counsel for the plaintiff is hereby denied and the bill of exceptions presented by the defendant Rafael Palma is hereby approved. So ordered.

"Manila, P. I., March 10, 1934.

(Sgd.)

"PEDRO CONCEPCION

"Judge"

In view of the facts above stated, the question arises whether or not the respondent judge acted in excess of his jurisdiction in setting aside order of December 6, 1933, requiring the respondent Rafael Palma to file a bond for P14,000 for the suspension of the execution of the judgment rendered against him, and otherwise ordering its execution, after having approved the bill of exceptions presented by the said respondent, after the bill of exceptions had been certified to this court by the clerk of the Court of First Instance of Manila, and after the clerk of this court had notified the parties of the receipt of said bill of exceptions and of the amount to be paid for docketing fees and for printing said bill of exceptions.

The continuation or loss of the jurisdiction of a Court of First Instance to take cognizance of a civil action in case of appeal depends upon the perfecting of the bill of exceptions, in accordance with the statutory provisions on the subject. As soon as the appeal is perfected, the court trying in a case loses its jurisdiction over the subject matter of the appeal, and said jurisdiction is acquired by the appellate court (3 Corpus Juris, page 1252, sec. 1366), and the trial court cannot enter any further decree or order affecting the rights of the parties, for the reason that the appellate court has acquired jurisdiction over all questions trial pertaining to the subject matter on appeal. Neither can the trial court in any manner execute an act which will affect the jurisdiction acquired by the appellate court, except such as may be necessary for the protection and preservation of the subject matter of the appeal, and which do not impair or destroy the same (3 Corpus Juris, page 1255, sec. 1369).

Section 143 of Act No. 190, as amended by section 2 of Act No. 1123, prescribes the procedure to be followed in perfecting an appeal in ordinary actions, the last judicial proceeding being the allowance by the judge of the bill of exceptions and its transmission of the Supreme Court which will take cognizance of the case upon said bill of exceptions duly certified by the clerk of the Court of First Instance a quo.

In the case, the bill of exceptions had already been approved by the respondent judge, transmitted to this court by the clerk of the Court of First Instance of Manila and docketed in the office of the clerk of this court, the latter having notified the parties of the receipt thereof and of the amount to be paid for docketing fees and printing, when on February 21, 1934, the said respondent judge reconsidered and set aside his order for the execution of the judgment dated December 16, 1933. In the case of *Rustia vs. Judge of First Instance of Batangas* (44 Phil., 62), this court laid down the following doctrine:

"3. CIVIL PROCEDURE; JURISDICTION AFTER WITHDRAWAL OF BILL OF EXCEMPTIONS; DISMISSAL.—Upon the approval of the bill of exceptions, the trial court loses its jurisdiction over all contentious matters connected with the issues in the case, but the parties may by agreement, and with the consent of the trial court, withdraw the bill of exceptions before its transmission to the appellate court and resubmit the case to the jurisdiction of the trial court."

According to the American jurisprudence and the doctrine of this court above cited, the respondent judge had already lost his jurisdiction to proceed with the trial of the contentious matter, which was the subject of the appeal, when he reconsidered and revoked his order of execution of the judgment. The execution of a judgment is a proceeding affecting the rights of the parties, which are the subject of the matter thereof, and from which appeal is taken, and its purpose is not to protect and preserve the subject matter of the litigation. Therefore, the perfecting of an appeal taken from said judgment deprives the trial court cannot modify or revoke any order of execution of the said judgment after the appeal taken therefrom is perfected (3 Corpus Juris, page 1313, sec. 1442).

The respondent judge therefore acted without jurisdiction in reconsidering and setting aside by a decree of February 21, 1934, his order of execution of the judgment dated December 16, 1933, inasmuch as at that time the

appeal had already been perfected by the approval of the bill of exceptions and its transmission thereof to this court.

In view of the foregoing considerations, we are of the opinion and so hold that, as soon as an appeal is perfected by means of the approval of the bill of exceptions and the transmission thereof to the appellate court, the court a quo has no jurisdiction to reconsider an order entered by it directing the issuance of a writ of execution of its judgment, although the motion for reconsideration has been filed before the appeal was perfected.

Wherefore, the writ of certiorari applied for is hereby granted and the orders entered by the respondent judge dated February 21 and March 10, 1934, are declared null and void of no effect, with cost against the respondent Rafael Palma. So ordered.

Malcolm, Hull, Imperial, and Goddard, JJ., concur.

[1] Page 861, post.

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