

MAX BLOUSE, PETITIONER, VS. AMALIA MORENO AND EULALIO GARCIA, IN HIS CAPACITY AS JUDGE OF THE FOURTEENTH JUDICIAL DISTRICT, RESPONDENTS

G. R. No. 42421. October 12, 1934

Ponente: BUTTE, J.

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BUTTE, J.:

This is an original proceeding in which the petitioner prays for a writ of mandamus directed to the presiding judge of the Court of First Instance of the Fourteenth Judicial District, commanding him to issue a writ of execution in civil case No. 679 pending in said court.

In that case the petitioner, on September 30, 1933, obtained a judgment against the respondent Amalia Moreno upon a debt in the amount of P12,477.46 and an order for the foreclosure of the mortgage securing said debt, if not paid within three months in accordance with the provisions of section 256 of the Code of Civil Procedure. On October 24, 1933, the respondent Moreno filed in said cause a "motion for reconsideration". The respondent alleges as to said motion that "its object was not to ask for a new trial but to ask the judge to reconsider his decision and dismiss the case." Among other things, the said "motion for reconsideration" states that the evidence shows that the defendant "has had no dealing with the said plaintiff at any time whatsoever." It also states that "Exhibit A could not be a renovation of Exhibit 1 because the amount mentioned in one is different from the amount mentioned in the other." It closes by praying "for the foregoing considerations * * * the case be dismissed with costs against the plaintiff."

Regardless of the fact that counsel entitled this motion as a "motion for reconsideration", it plainly falls within the third paragraph of section 145 of the Code of Civil Procedure as amended by section 27 of Act No. 2347 which reads as follows:

"SEC. 145. New trial.—Within thirty days after notice of a decision rendered by a Court of First Instance, the judge thereof may at the petition of the party aggrieved, and after due notice to the adverse party, set aside the judgment and grant a new trial, provided the petition is based on any of the following causes materially affecting the legitimate rights of the petitioner:

* * * * *

"3. Because the judge has become satisfied that excessive damages have been awarded, or that the evidence was insufficient to justify the decision, or that it is against the law." The "motion for reconsideration" states in effect that "the evidence was insufficient to justify the decision and that it is against the law." The prayer that "the case be dismissed" plainly requires the court "to set aside the judgment and grant a new trial."

We held in the case of Pascua vs. Ocampo (59 Phil., 48), that a motion for reconsideration which is not based on any of the grounds enumerated in section 145 of the Code of Civil Procedure, *supra*, does not comply with the requisites of a motion for new trial and hence does not suspend the running of the statutory period of thirty days after which the judgment becomes final. That case is the converse of the case before us. In the former, counsel

believed that his "motion for reconsideration" was a motion for new trial, when in fact it was not; in the latter, counsel believed his "motion for reconsideration" was not a motion for new trial, when in fact it was. The mistake was costly in both instances.

Thus it will be seen that a motion for reconsideration, correctly so-called, has a very limited application and involves considerable peril to the attorney and his client if they do not carefully distinguish between a motion for reconsideration and a motion for new trial. The case before us is an example. The so-called "motion for reconsideration" which the respondent filed on October 24, 1933, was overruled by the court on March 10, 1934. Instead of giving notice of intention to appeal and presenting his bill of exceptions within the prescribed time after March 10, 1934, counsel on March 16, 1934, filed a formal motion for new trial which was in reality a second motion for new trial not authorized by the Code of Civil Procedure. This latter motion was overruled by the court on August 11, 1934, and counsel assumed erroneously that the latter date and not March 10, 1934, was the correct date from which the time for giving notice of intention to appeal and presenting his bill of exceptions should be reckoned.

If we accept the theory of the respondents that the so-called "motion for reconsideration" filed on October 24, 1933, was not a motion for new trial, we are forced to the inescapable conclusion that the judgment became final on October 30, 1933. The filing of said "motion for reconsideration", if it was not a motion for new trial, did not suspend the running of the statutory period of thirty days. (*Pascua vs. Ocampo*, supra.)

On August 11, 1934, the petitioner presented to the respondent judge a petition in due form for a writ of execution upon the judgment entered in said civil case No. 679 on September 30, 1933. The said judgment having become final and being wholly unsatisfied the respondent judge of said court erred in denying said petition. Treating the petition before us as an application for writ of certiorari, the said ruling is reversed and the court is directed to issue a writ of execution as prayed for and to vacate the orders made at the instance of the respondent Moreno looking to an appeal from the judgment of September 30, 1933, with costs against the respondent Moreno.

Malcolm, Villa-Real, Imperial, and Goddard, JJ., concur.

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