

ANGLAO GUILAMBO, PETITIONER, VS. THE COURT OF APPEALS, COURT OF FIRST INSTANCE OF ILOCOS SUR, BALTAZAR ALUNEN AND EMMA ALUNEN, RESPONDENTS.

G. R. No. 45628. December 17, 1937

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

With leave of this court, the petitioner Anglao Guilambo has filed a second motion for reconsideration to the end that this court¹ give due course to his petition to review on certiorari the decision of the Court of Appeals in G. R. No. 44635, entitled Baltazar Alunen et al., against the herein petitioner, which reversed the decision of the Court of First Instance of Ilocos Sur in civil case No. 3164, and held that the land described in the complaint belongs to the plaintiffs, that is, the respondents, ordering the defendants, petitioners, to yield to the former the possession of said land.

By resolution of this court of July 21, 1937, we denied the writ, upon the ground that the legal questions involved therein were not of sufficient importance to justify this court's intervention in the decision rendered by the Court of Appeals. On the 26th of the same month, the petitioner filed a motion for reconsideration, with the further prayer that the lower court be ordered to abstain from executing the decision, while the present case has not been definitely terminated. The said motion was denied by resolution of the 27th of the same month.

One day in August, 1937, the Chief Justice of this court received a printed pamphlet wherein Alberto Reyes, attorney for the petitioner, discussed anew the case already decided, and the receipt of said pamphlet having been reported to this court, and considering the same as an application to file a second motion to reconsider the resolution of July 21, this court, by resolution of August 19, 1937, granted Attorney Reyes leave to file a second motion for reconsideration within five days.

This is the motion before us wherein the petitioner concretely raises, in connection with the resolutions of the Court of Appeals, the two following questions:

"First. The parties having been notified of the resolution denying the motion for reconsideration on March 31, 1937 only, may the clerk already enter final judgment on the 3rd of the following month and remand the records to the court of origin on the 5th of the same month?

"Second. Just because final judgment has already been entered and the records returned to the lower court, which steps were prematurely taken, may the petitioner be prejudiced in his right to file a second motion for reconsideration with leave of court, or a first motion for a new trial, without leave of court, and in his right to appeal by certiorari?"

As antecedents of the questions thus raised, the following proceedings appear in the motion:

On February 24, 1937, the Court of Appeals promulgated its decision.

On March 9, 1937, the petitioner filed a motion for reconsideration.

On the 30th of the same month, the motion for reconsideration was denied.

On the 31st the parties were notified of the said resolution.

On April 3, 1937, the clerk entered final judgment.

On the 5th of the same month, the records were returned to the court of origin.

On the 9th of the same month, a motion for new trial was filed based on newly discovered evidence.

On the 22d of the same month, the Court of Appeals, considering the aforesaid motion as a second motion for reconsideration, denied it on the ground that the said second motion for reconsideration was filed without previous leave of the court.

On the 27th of the same month, to correct the error—it is said—if any, the motion to reconsider the order of April 22d was filed, asking, among other things, that the court authorize the presentation of the motion for the new trial already filed; but contending above all that as the motion for new trial filed was not a second motion for reconsideration, there was no need to ask for the leave of court.

On May 14, 1937, the Court of Appeals denied said motion for new trial and the other motions pending resolution.

On May 18, 1937, motion to reconsider the resolution of May 14th was filed.

On June 28th, the Court of Appeals denied the preceding motion, upon the ground that the motion for new trial was filed out of time.

On July 1st, the petitioner was notified of the preceding resolution and he announced his intention to bring the case to this court by certiorari.

The petitioner contends in his motion that:

"Upon the promulgation of the decision of the court, if the aggrieved party files a motion for reconsideration, as in the present case, within the 15 days following, this period is interrupted, and when notice is received of the resolution denying said motion, the clerk should again count the same period from notice of said resolution, to ascertain if the court, motu proprio or at the instance of the party will permit the filing of a SECOND MOTION FOR RECONSIDERATION, or if the said party will file a, FIRST MOTION FOR NEW TRIAL. If a second motion for reconsideration or a first motion for new trial is presented, the said period is again interrupted, but if either one or the other is denied, the clerk cannot yet enter final judgment. He should wait for another 15 days, to see if the court motu proprio or at the instance of the party will grant permission to file a second motion for new trial; and if a second motion for new trial is presented, the same period is again interrupted and if, finally, this motion is denied, although no more remedy is available to the aggrieved party in the Court of Appeals, the clerk should not yet immediately enter final judgment, but should see if, within ten days, the aggrieved party will appeal by certiorari to this court."

The petitioner's way of computing the periods for filing the motions for new trial or for reconsideration is erroneous. It is not true that the appellant can thrice have the period of 15 days to file motions for reconsideration or new trial and second motions for reconsideration or new trial. No such thing is provided by Rule 39 of the rules of this court. According to said rule, both for the motion for new trial as well as for the motion for reconsideration, only one period is granted, namely, 15 days. It reads:

"39. Applications for a rehearing or reconsideration (underscoring ours) shall be made ex parte * * * on motion * * * and filed within fifteen days after the promulgation of the decision of the court" (underscoring again ours), and, finally, the said rule provides: "More than one motion for a rehearing" or reconsideration shall not

be filed in any case without express leave of the court."

Now then: Within the time should a second motion for reconsideration or a second motion for new trial, be filed? Nothing is provided in our rules; but considering, on the one hand that, under the provisions of Rule 37 judgment should be entered fifteen days after the promulgation of the decision of the court, and, on the other hand, that the previous leave of court is necessary to file a second motion for reconsideration or a second motion for new trial, it is inferable from all this that the second motion should be filed within the time granted by the court, and as the rules are likewise silent on the period within which application for leave of court to file a second motion for new trial or a second motion for reconsideration should be made, a reasonable and logical interpretation of Rule 39 seems to authorize the opinion that the said leave should be applied for immediately after receipt of notice denying the first motion, or as soon as possible.

The petitioner in the present case filed a motion for reconsideration on March 9th, that is, 14 days after the promulgation of the decision of the Court of Appeals on February 24th. From March 9th the period of 15 days was interrupted. On March 31st he was notified of the resolution denying the motion for reconsideration, and from April 1st the period of 15 days which had been interrupted commenced to run again. On April 3d, that is, 17 days after the promulgation of the decision, without counting the time during which the motion for reconsideration was pending, the clerk of the Court of Appeals entered judgment, and on the 5th of the said month, that is, 19 days from the promulgation of the decision, he remanded the records to the lower court. It thus appears that when the petitioner filed his motion for new trial on April 9th, 23 days had already elapsed from the promulgation of the court's decision, and 8 days after the expiration of the 15 days granted by the rules.

In support of his contention, the petitioner cites the case of Cuyugan vs. Baron (37 Off. Gaz., 485), from which he quotes the portion reading: "It cannot be stated that the petition for leave to file a second motion for reconsideration must be presented within the same period of fifteen days for the filing of the first motion for reconsideration, because the rule does not so state and because, if it were so, it would be impossible to file the petition in question where, as in the present case, the first petition, for justifiable reasons, could not be presented until the last day of said period."

But the case of Cuyugan vs. Baron, supra, is different from the one at bar, because there the last day of the period of fifteen days to file a first motion for new trial or for reconsideration was on January 31, 1936. At 4 o'clock p. m., of this date, the appellant filed an alternative motion for reconsideration or new trial, and on the same date, at 7 o'clock p. m., this court denied the motion. It is not reasonable to suppose that notice of the denial could have been sent earlier than February 1st, which, being Saturday, office was only half-day, and the following day, the 2d, being Sunday, it could not have been received in the ordinary course of business except on Monday, the 3d. It thus appears clearly that the appellant, in applying for leave to file a second motion for reconsideration or for new trial, on February 4th, did so with all due diligence, said date being the first feasible day to file his motion (sec. 4, Code of Civil Procedure). This was not done in this case, for 23 days had already elapsed after the promulgation of the decision, or 8 days after the expiration of the period of 15 days, when the petitioner filed his motion for new trial on April 9th.

The order of the Court of Appeals of April 22d denying the motion for new trial as a second motion for reconsideration, being in accordance with law, the petition is denied. So ordered.

Avancena, C. J., Villa-Real, Abad Santos, Imperial, Diaz, and Laurel, JJ., concur.

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