

MANUEL S. CONCEPCION, PETITIONER, VS. JOSE O. VERA AND WEST COAST LIFE INSURANCE CO., RESPONDENTS.*G.R. No. 46381. March 20, 1939*

Ponente: VILLA-REAL, J.

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Manuel S. Concepcion comes to this court praying that, after proper proceedings, a decision be rendered declaring null and void the resolution of the respondent judge Jose O. Vera of October 11, 1938, in so far as it declares final and executory his decision of August 27, 1938, on the ground that the resolution was issued in excess of his jurisdiction; and that the respondent judge be ordered to admit petitioner's exception and notice of appeal, and grant him ten days within which to file his bill of exceptions.

In civil case No. 52365 of the Court of First Instance of Manila, for forcible entry, which came from the municipal court of the same city, wherein the herein petitioner was the defendant and the herein respondent, West Coast Life Insurance Co., was the plaintiff, the said defendant, after the plaintiff had adduced its evidence, asked for the dismissal of the case, which was denied by the court. In turn, the plaintiff asked that the defendant be not permitted to adduce his evidence. This prayer was likewise denied by the court and the defendant proceeded with the presentation of his evidence. After the defendant's first witness had testified, the plaintiff moved for reconsideration of the court's resolution denying its petition not to allow the defendant to adduce evidence. The court granted this motion and issued its order of July 11, 1938 prohibiting the said defendant from presenting further evidence, but granting him, however, a reasonable period within which to appeal to a superior court by means of certiorari.

The defendant-petitioner Manuel S. Concepcion having failed to make use of his privilege, the respondent judge, on August 27, 1938, rendered his decision therein the dispositive part of which reads as follows:

"Considering these facts and the law, the defendant is hereby ordered to restore the possession of the property by him illegally held, to the plaintiff, to pay the latter a reasonable compensation for the use and occupation of said property in the sum of P200 monthly beginning November 1, 1937 until the property is vacated, and to pay the costs in both instances."

The petitioner received copy of this decision on September 2, 1938.

On September 26, 1938, the petitioner Manuel S. Concepcion filed a motion, entitled motion for rehearing, in which it is alleged (1) that the motion for dismissal filed by him was not a demurrer to plaintiff's evidence but "was a motion which raised a sole legal question, namely, whether or not the action for forcible entry should be dismissed because the plaintiff, instead of producing the contract of lease mentioned in its complaint, presented documents A, B and C tending to establish its ownership of the property in question"; (2) that the legal doctrine that the party asking for dismissal or interposing a demurrer should not be permitted to adduce evidence in his defense, is not applicable in the present case, because the order barring the defendant from presenting evidence was issued only after one of the defendant's witnesses had testified; (3) that the rehearing be granted under the

provisions of section 113 of the Code of Civil Procedure considering the facts alleged in the affidavit of merits attached to the motion and (4) that in the event of a rehearing, multiplicity of suits would be avoided because the defendant could establish the nullity of the documents presented by the plaintiff tending to prove its ownership. The prayer of the motion reads: "In view of all the foregoing, we pray that, by setting aside the judgment already rendered in the case, a rehearing be ordered giving the defendant an opportunity to present all his evidence."

On October 11, 1938, the respondent judge, in a resolution, denied the above motion for rehearing and acceded to the petition for the execution of judgment, on the ground that said judgment had become final in view of the fact that the motion for rehearing was not in the nature of a motion for new trial based on any of the grounds contained in either section 145 or section 113 of the Code of Civil Procedure, and, therefore, did not have the effect of suspending the period of thirty days prescribed by law for the perfection of an appeal.

On October 17, 1938, the herein petitioner excepted and gave notice of appeal, with an ex parte motion asking for reconsideration of the resolution dated October 11, 1938, in so far as it held the judgment final and executory, and for the allowance of the appeal.

The principal question of law to decide in this appeal is whether petitioner's motion dated October 17, 1938 asking for reconsideration of the resolution issued by the respondent judge on October 11, 1938 in so far as it held final and executory the judgment rendered in civil case No. 52365 wherein the respondent West Coast Life Insurance Co. was plaintiff and the herein petitioner was defendant, and praying that he be given an opportunity to adduce all his evidence, is equivalent to a motion for new trial provided for in section 145 of the Code of Civil Procedure, the filing of which suspends the period of thirty days fixed by said section.

The ground of the motion for rehearing—consisting in that the order of the respondent judge denying the petitioner's motion that he be allowed to adduce evidence in support of his claim of ownership, filed after the dismissal of the case because the said respondent judge was of the opinion that, the said petitioner having asked for the dismissal which was granted, the latter could no longer present his evidence—is tantamount to the allegation that the said order is contrary to law, and such allegation is one of the grounds provided by section 145 of the Code of Civil Procedure for the granting of a new trial. The motion for rehearing filed by the petitioner Manuel S. Concepcion being thus based upon one of the grounds indicated in section 145 of Act No. 190, the filing thereof on September 26, 1938 suspended the thirty-day period; consequently, when the respondent judge acted upon it on October 11, 1938, the petitioner still had six of the aforesaid thirty days. Granting that the petitioner received on October 12, 1938 the notice of the resolution denying the aforesaid motion for rehearing, the filing on the 17th of the same month and year of his exception and notice of intention to appeal was seasonable.

Although the petition herein filed is styled certiorari and it alleges that the respondent judge exceeded his jurisdiction in holding final and executory his decision of August 27, 1938, we nevertheless consider it as a petition for mandamus because there was no such excess of jurisdiction but only a refusal to allow the filing of the bill of exceptions.

Wherefore, the respondent judge is ordered to grant to the petitioner the reglementary period within which to file his bill of exceptions, with the costs to the respondent West Coast Life Insurance Co. So ordered.

Avanceña, C. J., Imperial, Diaz, Laurel, and Moran, JJ., concur.

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