

FELISA S. MARCELO, PLAINTIFF AND APPELLEE, VS. DANIEL V. ESTACIO, DEFENDANT AND APPELLANT.

G.R. No. 46626. November 07, 1939

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the defendant Daniel V. Estacio from the orders of the Court of First Instance of Rizal of November 18 and 28 respectively, the first of which denied his motion to reconsider the order of August 23, 1938 directing his arrest, and the second of which denied his motion of November 7, 1938, for the same purpose.

In support of his appeal, the appellant assigns the following alleged errors of law committed by the trial court in its aforesaid orders, to wit:

"1. In denying the motion of October 3, 1938, when in its order of October 4, 1938, the same court stated that the said motion could not be resolved without the presentation of evidence.

"2. In denying the motion for reconsideration of November 9, 1938.

"3. In ordering the arrest of the defendant in accordance with the order of August 23, 1938."

It appears from the record that the plaintiff-appellee, Felisa S. Marcelo, married the defendant-appellant, Daniel V. Estacio, on April 24, 1921, but she separated from him after a year of marital life. On May 17, 1937, when she learned that the defendant had been named justice of the peace of the municipalities of Moncada and San Manuel, Province of Tarlac, said plaintiff-appellee brought suit for support. In its judgment of October 25, 1937, the court ordered the said defendant-appellant to pay to the plaintiff-appellee a monthly allowance of P30 from May 18, 1937. On November 18, 1937, the defendant-appellant filed a motion for new trial which was denied by the court in its order of December 7, 1937. On January 8, 1938, the said defendant-appellant announced his exception and intention to appeal. On February 5, 1938, the said defendant-appellant filed his bill of exceptions. On February 8th of the same year, the attorney for the plaintiff-appellee filed in the Court of First Instance of origin a motion asking that the said defendant-appellant be ordered to pay her the allowance awarded to her in the decision, or to post a bond of P2,000 notwithstanding the appeal taken by him to the Court of Appeals. The prayer of said motion reads:

"Wherefore, the plaintiff respectfully asks this Honorable Court to order the defendant to put up an appeal bond of not less than P2,000, in order to secure the collection of the back allowance during the pendency of the appeal, and should the defendant be unable or unwilling to put up this bond, to order him to deposit in the office of the Clerk of this Court the monthly allowance of P30 which he was sentenced to pay to the plaintiff under the judgment of this Court."

On February 19, 1938, the court approved the bill of exceptions and on the same date it granted the aforesaid motion by an order reading:

"Upon hearing and consideration of the motion filed by counsel for the plaintiff dated February 8, 1938, and

finding the same to be meritorious:

"The same is hereby granted, and the defendant is ordered, within ten (10) days from receipt of a copy of this order, to file an appeal bond for two thousand (P2,000) pesos, or to deposit in the office of the clerk of this court, within the first ten (10) days of each month, the monthly amount of thirty (P30) pesos which he was sentenced to pay to the plaintiff by way of allowance for support, during the pendency of the appeal taken by said defendant."

On August 23, 1938, the court issued an order requiring the defendant to pay to the plaintiff her allowance for the months of October, 1937 to July, 1938, inclusive, at the rate of P30 a month, pursuant to the decision rendered in the case. For failure of the defendant-appellant to comply with said order, a warrant of arrest was issued.

The first question to be decided in this appeal is whether or not the trial court erred in not affording the defendant an opportunity to prove his poverty and his inability to pay to his wife, the plaintiff-appellee, the allowance for support to which he was sentenced.

The record shows that for failure of the defendant to comply with the order of August 23, 1938, to pay to his wife, the plaintiff-appellee, the allowance to which he had been sentenced, or to deposit the monthly allowance of P30 in the office of the clerk of court, the corresponding order of arrest was issued. On October 3, 1938, said defendant filed a motion for the suspension of his compliance with the said order because he has presented a motion to reconsider the order of August 23, 1938. After various postponements of the trial of said motion, upon petition of the attorney for the defendant-appellant, the same was finally submitted to the court on October 29, 1938, but the defendant adduced no evidence. Although the honorable Judge Leopoldo Rovira, in suspending compliance with the order of arrest, stated that the defendant's motion of October 3, 1933, could not be acted upon until evidence is presented, setting the motion for trial on July 15, 1938, nevertheless, the said trial having eventually taken place on October 29, 1938, and the defendant-appellant not having presented evidence on his alleged inability to give allowance to the plaintiff-appellee, the Court of First Instance of Rizal acted within its sound discretion in denying said motion, and he may not now complain that he was not permitted to adduce evidence on his alleged inability to pay the allowance to which he had been sentenced.

As to the second assignment of error, consisting in that the trial court denied his motion for reconsideration of November 9, 1938, wherein he prayed that a day be set for the presentation of evidence in support of his motion of October 3, 1938, and that a new order of arrest be issued, it being a mere corollary of the first assignment of error, it is likewise devoid of merit.

As to the third assignment of error, namely, in ordering the arrest of the defendant pursuant to the order of August 23, 1938, after the approval of the bill of exceptions and the elevation of the case to the Court of Appeals, it was said in *Rustia vs. Judge of First Instance of Batangas* (44 Phil., 62), that:

"As to the second proposition that the court below could not dismiss the case after the bill of exceptions had been approved, it is very true that upon such approval the lower court loses its jurisdiction over all contentious matters connected with the issues in the case. But there is nothing to prevent all of the parties by agreement to withdraw the bill of exceptions with the consent of said court and resubmit the case to the jurisdiction of the court."

And in *Viuda de SyQuia vs. Concepcion and Palma* (60 Phil., 186), this court held 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."

In accordance with the doctrines above cited, the lower court has no more jurisdiction over the case where, after

approving the bill of exceptions and ordering the elevation of the case to the Court of Appeals, it ordered the execution of the appealed judgment, and its actuation in that respect was null and void and did not produce any legal effect.

In *Benedicto vs. De la Rama* (2 Phil., 293), this court said:

"Under section 144 of the Code of Civil Procedure the filing of a bill of exceptions shall of itself stay execution. In this case, therefore, the order made by the trial court in the judgment for the payment of alimony for the period from the institution of the action to the date of such judgment was suspended by the filing of the defendant's bill of exceptions. The trial court might undoubtedly, under section 144, have provided that execution should not be stayed as to the order for the payment of alimony, but it did not do so."

Section 144 of Act 190 provides the following:

"SEC. 144. Stay of Execution.—Except by special order of the court, no execution shall issue upon a final judgment rendered in a Court of First Instance until after the period for perfecting a bill of exceptions has expired. But the filing of a bill of exceptions shall of itself stay execution until the final determination of the action, unless for special reasons stated in the bill of exceptions the court shall order that execution be not stayed, in which event execution may at once issue. But the court may require as a condition of a stay of execution that a bond shall be given reasonably sufficient to secure the performance of the judgment appealed from in case it be affirmed in part or wholly."

The power of a Court of First Instance to order that a judgment be executed notwithstanding the filing of the bill of exceptions, arises from the existence of special reasons therefor, which reasons should be stated in the bill of exceptions. The record does not show, nor is there even an insinuation, that there exists a special reason authorizing the Court of First Instance of Rizal to order the execution of the judgment suspended by virtue of the filing of the bill of exceptions.

In view of the foregoing considerations, we are of the opinion and so hold that the Court of First Instance of Rizal, in ordering the execution of the judgment, rendered by it against the defendant-appellant Daniel V. Estacio, sentencing him to pay an allowance to his wife, and the issuance of an order of arrest in case of non-compliance with said judgment, after the approval of the bill of exceptions, acted without jurisdiction, wherefore, said order of execution of the judgment is illegal and void.

Wherefore, the appealed judgment is affirmed insofar as it orders the defendant Daniel V. Estacio to pay an allowance for support to his wife, Felisa S. Marcelo, and the order directing the execution of said judgment and the arrest of the defendant for non-compliance therewith, issued after the approval of the bill of exceptions and the elevation thereof to the appellate court, is reversed, without special pronouncement as to the costs.

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

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