

PEDRO L. GALANG, PETITIONER, VS. THE HONORABLE P. M. ENDENCIA, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, AND PHILIPPINE ENGINEERING CORPORATION, RESPONDENTS.

G.R. No. 48306. November 07, 1941

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On December 26, 1940, respondent Judge Pastor M. Endencia rendered judgment in civil case No. 55934 of the Court of First Instance of Manila in favor of the plaintiff therein, the Philippine Engineering Corporation, and against defendant, Pedro L. Galang. Defendant interposed an appeal and five days after the perfection thereof the Philippine Engineering Corporation filed with the respondent court a petition for a writ of attachment, alleging among others, "that the defendant (petitioner here) has disposed of his property or is about to do so with intent to defraud his creditors." The petition was granted, and the sheriff of Manila levied on five boilers and six parcels of land belonging to the defendant and garnished his deposits with the Philippine Trust Company in the sum of P491.97. Defendant filed a motion for the discharge of the writ alleging that the disposal of his properties was in the regular and legitimate course of his business and was, therefore, not intended to be in fraud of his creditors. The court refused to discharge the writ unless the defendant file a counterbond in the amount of the judgment. The defendant, instead of filing the counterbond, applies now to this court for a writ of certiorari to declare respondent Judge to have acted without jurisdiction in the issuance of the writ of attachment.

It is contended that the respondent court had no jurisdiction to issue the writ of attachment after an appeal has been duly perfected from its final judgment. Section 9 of Rule 41 of the Rules of Court provides:

"Upon the filing of the notice of appeal and the approval of the appeal bond and the record on appeal, the appeal is deemed perfected and the trial court loses its jurisdiction over the case, except to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, and to approve compromises offered by the parties prior to the transmittal of the record on appeal to the appellate court.

The levy in attachment of the properties of the defendant upon the allegation that he is about to dispose of the same to defraud his creditors is one which is intended for the protection and preservation of the rights of the plaintiff and which in no way involves any matter litigated by the defendant's appeal. And as the respondent court had jurisdiction to issue the writ of attachment, its errors, if any, committed in the appreciation of the probative value of the facts stated in the petition for the writ do not affect its jurisdiction but merely the exercise of such jurisdiction. We need not belabor here the rule that what makes up jurisdiction is the authority to act in a particular case and not the correctness of the action taken thereon. Without such authority, as determined by law, the court cannot act, or if it does, its actuations are null and void; but where the authority exists, all orders and decisions of the court rendered in the exercise thereof and within its limits are valid even if they were erroneous. In such cases, appeal, not certiorari, is the proper remedy.

Petition is dismissed, with costs against petitioner.

Abad Santos, Diaz, Horrilleno, and Ozaeta, JJ., concur.

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