

**RODRIGO CONTRERAS, PETITIONER, VS. HON. CITY JUDGE
ROLANDO R. VILLARAZA, CITY COURT OF CAGAYAN DE ORO,
GENEROSA GUEVARA CECILIO, ISIDRA GUEVARA NERI, PASCUALA
GUEVARA TABLAN, MA...**

G.R. No. 53372. August 21, 1980

Ponente: AQUINO, J.

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AQUINO, J.:

This is a certiorari and mandamus case involving the period within which to appeal to the Court of Appeals from the decision of the city court in an ejectment suit wherein it adjudicated the issue of ownership in the exercise of its enlarged jurisdiction under Republic Act No. 5967 which is concurrent with that of the Court of First Instance.

In Civil Case No. 5184, a forcible entry case, defendant Rodrigo Contreras received on November 9, 1979 a copy of the decision of the city court of Cagayan de Oro City, ordering him to vacate the two parcels of land described in the complaint. The city court resolved the issue of ownership in conjunction with the issue of possession.

On December 10, 1979 or thirty-one days after service of the decision (the thirtieth day was a Sunday), Contreras filed a notice of appeal (indicating that he was appealing to the Court of Appeals), deposited one hundred twenty pesos as cash appeal bond and filed an urgent motion for an extension of fourteen days or up to December 24, 1979 within which to post a supersedeas bond. A record on appeal was allegedly filed also.

On December 11, 1979, Contreras filed a supposed supersedeas bond which was not signed by him. On the following day, December 12, the city court issued a minute order denying due course to the appeal because it was made beyond the fifteen-day reglementary period. It applied section 2, Rule 40 of the Rules of Court.

In its order of December 27, 1979, the city court denied the motion for reconsideration of Contreras and noted that its judgment was immediately executory. A writ of execution had been issued on December 3, 1979.

Contreras filed on January 11, 1980 a manifestation stating that he was going to file in this Court a petition for certiorari. He filed the instant petition on March 14, 1980. The private respondents contend that the petition was not filed on time and that the period for appealing to the Court of Appeals is fifteen days.

We hold that the petition for mandamus was seasonably filed. Section 15, Rule 41 of the Rules of Court provides that "when erroneously a motion to dismiss an appeal is granted or a record on appeal is disallowed by the trial court, a proper petition for mandamus may be filed in the appellate court".

Section 15 does not specify the period for filing the petition. Rule 65 of the Rules of Court does not likewise specify any period for the filing of the petition for certiorari and mandamus. The petition may be filed within a reasonable time. The petitioner should not be guilty of laches. (*Centenera vs. Yatco*, 106 Phil. 1064; *Province of Misamis Occidental vs. Catolico*, L-24397, June 29, 1968, 23 SCRA 1295; *Cortes vs. Court of First Instance of Capiz*, 52 Phil. 214.)

We further hold that the city court erred in holding that the appeal should be perfected within fifteen days from notice of the decision as provided in section 2 of Rule 40.

Section 5 of Republic Act No. 5967 provides that in cases, like the ejectment case already mentioned, wherein the city court decided the issue of ownership and, therefore, the case was within the concurrent jurisdiction of the city court and the Court of First Instance (not the ejectment suit falling exclusively within the competence of the city court), the "decision rendered shall be directly appealable to the Court of Appeals or Supreme Court, as the case may be, in accordance with the Rules of Court applicable to appeal from judgment of the Court of First Instance". (See *Pelaez vs. Reyes*, L-48168, August 31, 1978, 85 SCRA 233.)

It is the thirty-day period provided for in section 3, Rule 41 of the Rules of Court that applies to this case.

WHEREFORE, the city court's order of December 12, 1979 is reversed and set aside. It is directed to pass upon the sufficiency of petitioner's record on appeal and to give due course to his appeal if there is no other legal ground for disallowing it.

As to the immediate execution of its judgment, the city court should ascertain the adequacy and propriety of petitioner's alleged supersedeas bond in the light of section 8, Rule 70 of the Rules of Court and the jurisprudence on that point. No costs.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., Guerrero,[*] and De Castro,[*] JJ., concur.

[*] Justices Guerrero and De Castro were designated to sit in the Second Division.

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