

**BENJAMIN DEL ROSARIO AND CONSTANCIA DEL ROSARIO,
PETITIONERS, VS. HON. CECILIO F. BALAGOT, ETC., AND THE
SPOUSES JUANITO MAGNO AND ROSITA GONZALES, RESPONDENTS.**

G.R. No. 55377. October 18, 1988

Ponente: NARVASA, J.

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NARVASA, J.:

By this special civil action of certiorari and prohibition the Spouses Benjamin and Constancia del Rosario would have this Court nullify the Order of respondent Judge granting execution pending appeal as having been rendered without or in excess of jurisdiction.

The del Rosarios were sued in an action of unlawful detainer filed by the Spouses Juanito Magno and Rosita Gonzales in the Municipal Court of Solano, Nueva Vizcaya.[1] Despite summons having been duly served on them, the del Rosarios neither filed answer nor appeared before the Court when the case was called for preliminary hearing. They were consequently declared in default on motion of the Magnos, and the Court received the latter's evidence. Before judgment could be rendered, however, the del Rosarios filed a motion to set aside the order of default, accompanied by an answer to the complaint. In their answer, they asserted that while the term of their lease had indeed expired, there had been an implied renewal thereof by virtue of the lessors' continued acceptance of rentals. The Municipal Court lifted the order of default and set the case for trial. The trial was however several times postponed, mostly at the del Rosarios' instance. At the last setting, the del Rosarios made no appearance, for which reason they were again declared in default, and the case deemed submitted for decision. The Court thereafter rendered judgment, commanding the del Rosarios to vacate the premises, and pay actual damages, attorney's fees and costs.

The del Rosarios received notice of the judgment on October 6, 1978. Instead of taking an appeal[2], they filed a special civil action of certiorari with the Court of First Instance of Nueva Vizcaya,[3] praying for nullification of the inferior court's judgment principally on the ground they had been denied due process by reason of their having been wrongfully declared in default. Their petition was dismissed by Order dated July 18, 1979 upon the Court's finding that (1) they had in truth been properly declared in default, and (2) the extraordinary remedy of certiorari could not be availed of as a substitute for an appeal.

The del Rosarios sought to take an appeal from this order. They filed within the period of appeal a notice of appeal, an appeal bond and a record on appeal. While the appeal bond and record on appeal were pending approval by the Court, the Magno Spouses moved for immediate execution of the judgment, alleging as grounds therefor, (1) that the decision sought to be appealed, being against the defendants in an unlawful detainer action, is an exception to the rule that an appeal vacates the judgment of an inferior court and that execution may be had only after a judgment has become executory; (2) that the del Rosarios had not posted a supersedeas bond; and (3) that the house subject of the suit was in danger of deterioration. The del Rosarios opposed the motion, arguing that the perfection of their appeal, and the absence of good reason, precluded favorable action thereon. For

reasons not quite clear on the record, the incident remained unresolved until July 7, 1980 when the Court, then already presided over by a new judge, respondent Judge Balagot, issued the Order now challenged in this certiorari action before this Court. The Order authorized execution of the judgment pending appeal on the following considerations: (1) the Court still had jurisdiction to act on the motion for immediate execution, it appearing that the record on appeal and appeal bond still awaited its approval (and consequently the appeal had not yet been perfected); (2) there was good reason for immediate execution, the house being in danger of deterioration since the del Rosarios had made no move to preserve and protect it; and (3) no supersedeas bond had been posted by the del Rosarios.[4]

Before this Court the del Rosarios postulate the invalidity of Judge Balagot's Order. They theorize that (1) the mere filing by them of their notice of appeal, appeal bond and record on appeal had the effect of perfecting their appeal, independently of court action thereon, thus causing the loss by respondent Court, as a consequence, of jurisdiction to order immediate execution; (2) there was no need for a supersedeas bond because the inferior court's decision did not order payment of back rentals as they had indeed been paying rentals regularly; and (3) there was in fact no good reason for execution pending appeal, the fact being that the house was up for sale and the Magnos were in a hurry to dispose of it.

The petition is devoid of merit and must be denied.

In the first place, it is not possible to ignore the palpable absence of right on the part of the del Rosarios to continue in occupancy of the premises. The record indubitably establishes that the del Rosarios' written lease of the Magnos' property prescribed a five-year term ending on September 30, 1976. Having been "made for a determinate time," the lease ceased "upon the day fixed, without need of a demand." [5]

The del Rosarios' claim of a tacita reconduccion (an implied new lease) is utterly without foundation. Such a tacita reconduccion can come into being only if, "at the end of the contract the lessee should continue enjoying the thing leased for fifteen days with the acquiescence of the lessor, and unless a notice to the contrary by either party has previously been given;" and even then, the new lease is "not for the period of the original contract, but for the time established in articles 1682 and 1687." [6] But in this case, there was a notice formally served on the del Rosarios to vacate the premises forthwith upon the expiry of the lease. The Magnos subsequently agreed to grant the del Rosarios, at their request, a three-month option to purchase the property (and by implication, a three-month extension of occupancy). The option lapsed, however, without being exercised by the del Rosarios. So, a second demand was made on the del Rosarios to vacate the leased property, which they ignored. These circumstances, no less than the filing of an ejectment suit by the lessors, absolutely precluded the creation of an implied new lease which, in any event could have been authorized only on a month-to-month basis. [7]

Neither is it possible to overlook the fact that the judgment of the Municipal Court had become final and executory by reason of the del Rosarios' failure to appeal therefrom. Having been served on October 6, 1978 with notice of the judgment against them, they had until October 21, 1978 within which to perfect their appeal. They did not appeal. What they did was to file a petition for certiorari in the Court of First Instance for the invalidation of that adverse judgment. But it is elementary that the special civil action of certiorari is not and cannot be made a substitute for an appeal, where the latter remedy is available, [8] as it was in this case. The filing by the del Rosarios of the certiorari suit did not therefore toll the period for appeal or prevent the judgment from becoming final. [9]

Since the judgment had thus become final and executory, execution thereof became a matter of right on the part of the Magnos, as prevailing parties, [10] and consequently, the matter of whether or not there was ground to authorize discretionary execution pending appeal [11] ceased to have any relevance.

There but remains to overrule one other erroneous argument of the petitioners, that relative to the perfection of an appeal. Contrary to their submittal, an appeal under Rule 41 of the Rules of Court of 1964 is not deemed perfected until approval by the Court of the record on appeal and the appeal bond;^[12] and the rule is settled that prior to such approval, the Court has power to order immediate execution pending appeal in accordance with Section 2 of Rule 39.^[13]

WHEREFORE, the petition is DISMISSED, and the Order of respondent Judge subject thereof as well as the judgment of the inferior court are SUSTAINED. This decision is immediately executory. Costs against petitioners.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] The suit was filed on May 26, 1977 and docketed as Case No. 965, Judge Isabelo Ordoñez, presiding.

[2] SEE Sec. 2, Rule 18, in relation to Sec. 9, Rule 13 and Sec. 2, Rule 41, of the Rules of Court; Moran, Comments on the Rules, 1979 ed., Vol. 1, pp. 530-531

[3] Docketed as Case No. 2606

[4] Rollo, pp. 71-78

[5] ART. 1669, Civil Code

[6] ART. 1670, Civil Code; Arevalo Gomez Corporation v. Lao Hian Liong, G.R. No. 70360, March 11, 1987

[7] ART. 1670 in relation to ART. 1687, Civil Code

[8] Sec. 1, Rule 65, Rules of Court; Silvestre v. Torres, 57 Phil. 885, 890; Pachoco v. Tumungday, L-14500, May 25, 1960; Lopez et al. v. Alvendia, et al., L-20697, Dec. 24, 1964; Government v. Judge, 50 Phil. 975, 979, cited in Moran, op. cit., 1980 ed., Vol. 3, pp. 176-177

[9] Palomares v. Jimenez, 90 Phil. 773; Yucuanseh Drug Co., Inc. v. National Labor Union, 101 Phil. 409; Bacabac v. Delfin, 1 SCRA 1194; Peza v. Hon. Alikpala, G.R. No. L-29749, April 15, 1988

[10] Sec. 1, Rule 39, Rules of Court

[11] Pursuant to Sec. 2, Rule 39

[12] The rule has since been changed by Batas Pambansa Blg. 129. Now an appeal from the Regional Trial Court may be taken simply by filing a notice of appeal, within fifteen (15) days from notice of the judgment or final order, except in special proceedings or other cases where multiple appeals are allowed, in which case a record on appeal is still required and the appeal period is still thirty (30) days (Sec. 39). The rule as to perfection of the appeal has also been changed. Now, perfection is "upon the expiration of the last day to appeal by any party," although in cases where a record on appeal is still required, perfection takes place upon its approval by the Court, which should be done within 10 days (par. 23, Resolution of the Court en banc dated Jan. 11, 1983) (Interim - Transitional Rules Relative to the Implementation of BP 129).

[13] SEE Borja v. de la Costa, G.R. No. 48310, cited in Moran, op. cit., Vol 2, p. 258; Universal Far East Corporation v. C.A., 131 SCRA 642, 646

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