

**FILOIL REFINERY CORPORATION, PETROPHIL CORPORATION AND
FILOIL MARKETING CORPORATION, PETITIONERS, VS. HON.
RAFAEL T. MENDOZA AND HON. MARIANO A. ZOSA, IN THEIR
CAPACITY AS JUDGE...**

G.R. No. 55526. June 15, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for the issuance of the writs of 1) CERTIORARI to annul and set aside: (a) the order issued on September 24, 1979, by the Court of First Instance of Cebu in Civil Case No. R-14164, entitled "Jesus P. Garcia, et al. vs. Filoil Refinery Corporation, et al.", dismissing petitioners' appeal from the decision rendered in the same case on May 14, 1976; and (b) the order issued on October 20, 1980, in the same case denying petitioners' motion for reconsideration of the dismissal of their appeal and 2) MANDAMUS to compel respondent Honorable Rafael T. Mendoza, as Presiding Judge of Branch V, Court of First Instance of Cebu, to give due course to petitioners' appeal.

In a complaint filed by herein private respondents, the lower court rendered on May 14, 1976, a decision rescinding the contract of lease over a 750 square meters lot situated in Cebu City covered by TCT No. 30712 entered into between Filoil Refinery Corporation and private respondents Jesus P. Garcia and Severina B. Garcia and ordering the petitioners herein to vacate the leased premises. It appears that the herein petitioners violated the terms and conditions of the lease agreement in the sense that the signatory Filoil Refinery Corporation subleased it to Filoil Marketing and subsequently to petitioner Petrophil Corporation and that herein petitioners were delayed several times in the payment of the monthly rentals.

On June 11, 1976, private respondents filed their Motion for execution of the aforementioned decision pending appeal. Petitioners opposed said motion and on July 15, 1976 petitioners filed their notice of appeal. On July 30, 1976 they filed their Record on Appeal.

On November 10, 1976, the private respondents filed a Motion for Execution pending appeal which was opposed by petitioners in their Motion for Reconsideration. Said Motion for Reconsideration was denied by the lower court prompting petitioners to file a Petition for Certiorari and Review with the Court of Appeals docketed as CA-G.R. No. 06145-SP. On September 29, 1980, the Court of Appeals rendered its decision denying the petition for certiorari and review to annul and set aside the order of the lower court granting the Motion for Execution pending appeal.

Meanwhile herein private respondents filed a motion to dismiss the appeal of petitioners in the original complaint on the ground of alleged abandonment thereof by reason of the failure of the petitioners to amend their record on appeal so as to include in their Record on Appeal two important orders of the lower court dated July 30, 1975 and February 4, 1976, the "Motion for Execution Pending Appeal", and the "Order" of the lower court granting said "Motion for Execution Pending Appeal."

The lower court issued an order dismissing the appeal on September 24, 1979 stating as follows:

"Let it be remembered that the Order of this Court of July 30, 1975, authorized the plaintiffs to implead the Filoil Marketing Corporation as one of the defendants in this case; the Order dated February 4, 1976, contained the agreement of the parties to submit this case for summary judgment and listed the exhibits presented by both parties which were admitted in evidence. There is no gainsaying that the inclusion of these orders in defendants' record on appeal is necessary for a proper understanding of the issues involved in the appeal. Without them, it is believed the Court of Appeals will not be in a position to know why the case was decided on summary judgment, what exhibits have been admitted in evidence and why Filoil Marketing Corporation had been ordered impleaded." (Rollo, pp. 69-70)

Petitioners filed their Motion for Reconsideration of the said Order which was denied by the lower court in its Order dated October 20, 1980. Hence, the present petition for certiorari and mandamus.

Petitioners' contentions merit Our consideration.

The records reveal that the lower court dismissed petitioners' appeal because of their failure to amend or to complete their record on appeal. Such alleged failure was brought to the attention of the lower court by private respondents in their opposition to the approval of the Record on Appeal on the ground that petitioners failed to include in the Record of Appeal the Motion for Execution pending appeal dated July 30, 1975 and the Order granting the motion for execution pending appeal dated February 4, 1976. However it is a fact that petitioners filed their record on appeal well within the reglementary period and that the lower court never issued an order declaring the Record on Appeal incomplete or defective nor an order ordering petitioners to complete or correct the same. The lower court did not act on the record on appeal filed by petitioners despite the opposition of the private respondents to the approval of the same. Obviously as there was no order by a competent court requiring them to complete their record on appeal, the petitioners were under no obligation to amend the same, petitioners having the impression that their record on appeal was then adequate and regular. Petitioners were also under the belief that the failure of the lower court in not acting immediately on their record on appeal was because at the time the record on appeal was awaiting approval by the lower court, the petition for certiorari filed with the Court of Appeals to question the execution of the decision pending appeal was still unresolved by the Court of Appeals; and that had the lower court approved outright the record on appeal, or had it required petitioners to amend the same and petitioners complied, constraining it to give its approval thereto, it would have lost its jurisdiction to order execution of the decision pending appeal. Petitioners cited the ruling handed by Us in the case of *De Leon vs. De Los Santos*[1] to invoke the rule that once an appeal has been perfected, the trial court loses jurisdiction over the case and cannot generally act anymore on any matter raised therein. It was more for these reasons that petitioners felt there was no need to follow up or to inquire about the approval of their record on appeal rather than an act of abandonment of their appeal as theorized by private respondents.

Anent petitioners' grounds for appealing, petitioners aver that they have good and valid grounds. In rescinding the contract of lease between petitioner Filoil Refinery Corporation and private respondents, the lower court found that petitioners illegally subleased the lot to petitioner Filoil Marketing Corporation and that the latter, in turn, assigned its sublease to petitioner Petrophil Corporation. However an examination of the lease contract reveals that there is no express prohibition against the assignment of the leasehold right. Under the law, when there is no express prohibition, the lessee may sublet the thing leased[2] and all rights acquired by virtue of an obligation are transmissible, if there has been no stipulation to the contrary.[3]

Petitioners admit that on a few occasions, they were late in paying the rentals which were due within the first 15 days of each month but their delay was only for a few days. The delayed rentals for the months of May, July, August and September, 1974 were remitted to private respondents on May 21, July 19, August 19 and September

16, 1974, respectively. Such breaches were not so substantial and fundamental as to defeat the object of the parties in making the agreement because the law is not concerned with such trifles.

All these arguments however have become moot and academic considering that the contract of lease sought to be rescinded expired or terminated last September 16, 1982 or almost 5 years ago by its own terms as provided for in the Lease Contract. Petitioners have won the case without the necessity of an order by this Court to reverse the judgment of the respondent court and/or to grant the petition as prayed for.

WHEREFORE premises considered the petition is hereby DISMISSED, with the petitioners ordered to VACATE the premises.

SO ORDERED.

Fernan, (Chairman), Gutierrez, Jr., Padilla, Bidin, and Cortes, JJ., concur.

[1] 78 Phil. 461

[2] Art. 1650, New Civil Code

[3] Art. 1178, New Civil Code

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