

ROBERTO YABUT, PETITIONER, VS. THE HON. INTERMEDIATE APPELLATE COURT, JOSE CALAYAG, NICOLAS CALAYAG, BERNARDO CALAYAG, JESUS CALAYAG AND ANY OTHER PERSON IMPLEMENTING THE WRIT, ...

G.R. No. 69208. May 28, 1986

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Jose, Bernardo, Nicolas and Jesus all surnamed Calayag sued Roberto Yabut before the defunct Court of Agrarian Relations at Guagua, Pampanga. They claimed to be tenants of Yabut's fishponds and they asked that the leasehold rental be fixed, a liquidation of the harvest be made and for other remedies. Yabut countered that the Calayags were not lessees but mere employees to guard the fishponds.

After trial, the Regional Trial Court also at Guagua which replaced the Court of Agrarian Relations, rendered judgment as follows:

"WHEREFORE, in view of all the foregoing, judgment is hereby rendered:

1. DENYING the claim of the plaintiffs that they are either tenant-lessees or plain share/tenants of the fishpond in question and declaring them to be fishpond guards and/or overseer of the defendant;
2. LIFTING AND SETTING ASIDE the interlocutory order dated July 11, 1980 cancelling the provisions which hastily considered the plaintiffs as leasehold-tenants even before the trial on the merits were conducted, removing the custody and possession of the fishponds from the plaintiffs and returning the full possession and custody of the fishponds to the defendant;
3. DECLARING that the plaintiffs are neither entitled to a re-liquidation of the past harvest nor to the outright delivery of their shares to them since as fishpond guard/overseer they are only entitled to wages, commissions, bonuses and shares due to them for services rendered.
4. NO COSTS." (Rollo, p. 231.)

The Calayags received a copy of the decision on July 23, 1984, which they appealed the following day - July 24, 1984.

Yabut received a copy of the decision on July 20, 1984, and on July 25, 1984, he filed a motion for execution which the trial court granted.

The Calayags went to the Intermediate Appellate Court to question the order granting the execution of the judgment. The appellate court nullified the order on the ground that "the motion for execution pending appeal was filed on July 25, 1984 or after the appeal has [had] been perfected." (Id., p. 191.)

The instant petition by Yabut seeks a reversal of the de-cision of the Intermediate Appellate Court.

The issue: whether the trial court had jurisdiction to issue a writ of execution on the basis of a motion which was filed after the Calayags had filed a notice of appeal.

The petition is impressed with merit.

Section 23 of the Interim Rules provides:

"23. Perfection of appeal. - In cases where appeal is taken, the perfection of the appeal shall be upon the expiration of the last day to appeal by any party."

In the light of this provision, when was the appeal of the Calayags perfected?

The Calayags received a copy of the decision on July 23, 1984, and they filed a notice of appeal the day following, on July 24, 1984. Did the filing of the notice of appeal perfect the appeal? According to *Montelibano vs. Bacolod-Murcia Milling Co., Inc.*, G.R. No. 69800, May 7, 1985, 136 SCRA 294, an appeal is not perfected on the date the notice of appeal was filed but on the expiration of the last day to appeal. Applying the *Montelibano* rule to the instant case, the appeal of the Calayags was not perfected on July 24, 1984 but after August 7, 1984 which was their last day to appeal.

Yabut, as aforesaid, filed a motion for the execution of the judgment in his favor on July 25, 1984, which the trial court granted. Considering then that the motion was filed well before the perfection of the Calayag's appeal, the trial court had jurisdiction to act on the motion.

WHEREFORE, the petition is granted; the decision of the appellate court in AC-G.R. No. 04153 is hereby set aside. Costs against the private respondents.

SO ORDERED.

Yap, Narvasa, Melencio-Herrera, and Cruz, JJ., concur.

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