

FILIPINA G. PAMINTUAN, RAMON GORROMELO, SANCHELO GORROMELO AND POTENCIANA GORROMELO, PETITIONERS. VS. INTERMEDIATE APPELLATE COURT, HON. ESTER N. BANS, PRESIDING JUDGE OF REGIONAL TR...*G.R. No. 70929. June 04, 1990*

Ponente: SARMIENTO, J.

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This petition for review on certiorari assails as erroneous the decision^[1] of the former Intermediate Appellate Court (now Court of Appeals) which upheld the order dated July 19, 1984 of respondent Judge Ester N. Bans, the presiding judge of the Regional Trial Court of Olongapo City, Branch LXXII (72) in Civil Case No. 2325-0 issued in case for recovery of ownership and possession with damages lodged by the herein petitioners as plaintiffs against the herein private respondents, as defendants.

The facts of the case as found by the respondent appellate court are as follows:

x x x In Civil Case No. 2525, the Court of First Instance, in a decision rendered on December 8, 1982, ordered the Rodolfos (the private respondents herein) to return the possession of the land in question to the petitioners, the heirs of Mariano Gorromeo, and to pay damages to them. The Rodolfos filed a notice of appeal, and subsequently an appeal bond and record on appeal, but the Regional Trial Court (which in the meanwhile had replaced the CFI) dismissed the appeal on the ground that the Rodolfos had received a copy of the decision on January 12, 1983 but filed their notice of appeal only on February 1, after more than 15 days as required by section 39 of the new BP 129. However, on motion of the Rodolfos, the trial court on July 29, 1983 reconsidered its order, ordered the status quo "prior to the issuance of the writ of execution on May 12, 1983" to be restored, and approved the record on appeal of the Rodolfos. The trial court made its order on the basis of its finding that the decision of December 8, 1982 had been served on Flora Rodolfo Guzman and Jaime Rodolfo personally when it should have been served instead on their counsel as required by Rule 13, section 12. The trial court reiterated its ruling in its order of February 28, 1984, denying the motion for reconsideration of the Gorromeos.

The Gorromeos then gave notice that they were in turn appealing the orders dated July 29, 1983 and February 28, 1984. On July 19, 1984, however, the trial court, acting on motion of the Rodolfos, directed the respondent sheriff "to restore possession of the land in question to the defendants the Rodolfos pursuant to the Orders of this Court (IAC) dated July 29, 1983 and February 28, 1984." Hence this petition. Originally filed with the Supreme Court, it was later referred to this Court for appropriate determination.^[2]

The contention of the petitioners before the then Intermediate Appellate Court was that as a consequence of their having filed, on March 5, 1984,^[3] their notice of appeal from the trial court's orders dated July 29, 1983 and February 28, 1984, the trial court had already lost jurisdiction over Civil Case No. 2525-0 and acted without authority in issuing the order dated July 19, 1984. The petitioners prayed therefore the respondent appellate court to invalidate the trial court's order of July 19, 1984 and to order the elevation of the records of Civil Case No.

2525-0.

The respondent appellate court found no merit in the petitioners' contentions and thus dismissed their petition. Undaunted by the setback, the Petitioners are now before us with basically the same issue and arguments.

The petition is not meritorious.

The perfection of appeal is explicitly covered by Section 23 of the Interim Rules of Court which states, to wit.:

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.

B. in cases where a record on appeal is required the appeal is perfected upon approval thereof by the Court which should be done within ten (10) days.

(Emphasis ours.)

Thus, in cases where a record on appeal is not required, the mere filing of a notice of appeal does not perfect the appeal.[4]

xxx The mere fact that one party has already filed his notice of appeal does not mean that the appeal has already been perfected because the adverse party still has the reglementary period within which to perfect his appeal.[5]

Corollarily.

"[A]s long as any or the parties may still file his, her or its appeal the court does not lose jurisdiction over the case. xxx it is only after all the parties' respective periods to appeal have lapsed that the court loses its jurisdiction over the case."[6]

Here, it is clear that at the time the private respondents filed their motion to be restored to the possession of the contested property on March 13, 1984, the period within which they could appeal had not yet lapsed, hence, the petitioners' appeal had not yet been perfected. As succinctly discussed by the Court of Appeals:

xxx xxx xxx

In the case at bar, the Rodolfos received a copy of the order of February 28, 1984 on March 13, 1984. On the same day they filed their motion to be restored to the possession of the land. Their motion was thus filed before the expiration of their period of appeal had they desired appeal. On the other hand, it appears that the Gorromeos received the order of July 29, 1983 on August 17, 1983. On August 24, they filed a motion for reconsideration. On March 5, 1984 they received a copy of the order of February 28, 1984, denying their motion for reconsideration. Therefore, deducting the period during which their motion for reconsideration was pending, the Gorromeos had until March 13, 1984 within which to appeal. Therefore, whether it is the period of appeal of the Rodolfos or that of the Gorromeos that is considered, the motion to be restored to possession, which the Rodolfos filed on March 13, 1984, was filed before the expiration of the appeal period. Consequently, there is no merit in the contention of the petitioners that their appeal had been perfected and that the trial court no longer had jurisdiction to issue its order of July 19, 1984.[7]

xxx xxx xxx

The findings of the respondent appellate court and the petitioners are supported by substantial evidence and the law; we therefore find no reason to disturb them.

At any rate, it is to be noted that originally, or at the time the petitioners filed their complaint for recovery of ownership and possession with damages against the private respondents, it was the latter who were in possession

of the property in dispute. it was only later when due to the trial court's erroneous belief that its decision has become final and executory for failure of the private respondents to timely appeal therefrom that the petitioners by virtue of a writ of execution dated May 12, 1983, were placed in possession of the property. As it turned out, however, the trial court's decision was not properly served on the private respondents and thus the same had not yet become final and executory.

Since the trial court's decision was not yet final and executory and there was failure to comply with the requirements contained in Section 2, Rule 39 of the Rules of Court[8] on execution pending appeal, the writ of execution dated May 12, 1983 is thus manifestly invalid. As such, there is equally no valid reason nor ground for the petitioners to keep possession of the contested property pending the final termination or the controversy. The trial court and the respondent appellate court acted correctly then in ordering that the private respondents be restored to the possession of the parcel of land in question.

WHEREFORE, the Petition is DENIED for lack of merit. Costs against the petitioners.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, and Regalado, JJ., concur.
Paras, J., no part.

[1] Promulgated on April 11, 1985; Mendoza. Vicente V., J., ponente; Paras, Edgardo L., and Javeilana, Luis A., JJ., concurring.

[2] Rollo. 15-16.

[3] Id., 30.

[4] Monte libano vs. Bacoiod-Murcia. No. 69800, May 7, 1985, 136 SCRA 294; Yabut vs. Intermediate Appellate Court, No. 69208, May 28, 1986, 142 SCRA 124; Belgado vs. Intermediate Appellate Court. No. 74975. January 12, 1987, 147 SCRA 258.

[5] Magtibay vs. Court of Appeals. No. 77040. November 29, 1988, 168 SCRA 177, 180.

[6] Associated Bank vs. Gonong, No. 77353. July 30, 1987, 152 SCRA 478, 480.

[7] Rollo, id., 17.

[8] SEC. 2. Execution pending appeal.-On motion of the prevailing party with notice to the adverse party the court may, in its discretion, order execution to issue even before the expiration of the time to appeal, upon good reasons to be stated in a special order. if a record on appeal is filed thereafter, the motion and the special order shall be included therein.

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