

TOMASA L. BELGADO, IN HER CAPACITY AS ADMINISTRATRIX OF THE ESTATE OF THE LATE AMADA T. LAIZ, PETITIONER, VS. THE INTERMEDIATE APPELLATE COURT, FRANCISCO LAIZ, REMEDIOS LAIZ, AN...

G.R. No. 74975. January 12, 1987

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

The present controversy addresses itself mainly to the proper interpretation of Section 23 of the Interim Rules and Guidelines promulgated by this Court, providing:

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

Particularly, the timeliness of a Motion for Immediate Partial Execution is involved.

On September 1, 1984, in an action for annulment with damages filed by petitioner-plaintiff against private respondent-defendant, the Regional Trial Court of General Santos City, Branch XXIII, rendered a Decision in petitioner's favor declaring the Deed of Absolute Sale and the Deed of Conveyance of Real Properties, subject matter of the annulment action, as null and void and, in so far as pertinent to this case, "ordering defendants (private respondents herein) upon receipt of this decision to deposit to this Court the rentals and/or income due the properties subject of this case from the date of filing" (par. 4, Dispositive portion).

The Decision was received by private respondents on September 25, 1984. They had, therefore, until October 10, 1984 within which to appeal.

On October 2, 1984, or, on the seventh (7[th]) day from receipt of the Decision, private respondents filed a Notice of Appeal.

On the other hand, petitioner was served with copy of the Decision on October 1, 1984. Her last day to appeal, therefore, fell on October 16, 1984.

On October 11, 1984, or, on the tenth (10[th]) day after receipt of the judgment, petitioner filed a Motion for Immediate Partial Execution pending appeal of that portion of the judgment, among others, requiring the deposit of rentals in Court on the ground that it "necessitates immediate implementation." Private respondents opposed the Motion alleging that the Motion for Partial Execution was filed after the perfection of their appeal and that no mention was made of any good reason to warrant execution pending appeal.

The Trial Court initially denied execution pending appeal on the ground that it had lost jurisdiction over the case with the perfection of private respondents' appeal. Subsequently, however, it reconsidered, not by way of granting execution pending appeal, but on the theory that the decretal portion of the judgment directing the deposit of rentals in Court was, in effect, an order of accounting of the rentals due so that pursuant to Section 4,

Rule 39 of the Rules of Court,[1] execution may not be stayed by the perfection of an appeal. On January 11, 1985, the Trial Court issued an Order requiring the lessees of the properties, subject of the action, to deposit the rentals in Court.

On Certiorari, respondent Appellate Court found the Orders of the Trial Court devoid of legal justification on the ground that the judgment directing the deposit of rentals in Court is not an order of accounting within the contemplation of Section 4 of Rule 39. It further opined that the appeal was perfected on October 10, 1984, so that when petitioner filed a Motion for Immediate Partial Execution pending appeal on October 11, the Trial Court had lost jurisdiction over the case pursuant to Section 23 of the Interim Rules, *supra*. Thus, it allowed private respondents to withdraw whatever rentals had been deposited in Court "either in obedience to the nullified orders of respondent Court or by way of consignment thereof." The authorization to withdraw was reiterated in a Resolution, dated October 23, 1985, while petitioner's Motion for Reconsideration thereof was denied on June 13, 1986.

We find that Section 23 of the Interim Rules has been misread. The period to perfect an appeal should be reckoned not only from the date one party receives a copy of the Decision but also from the date the other party had notice hereof. In this case, the "last day to appeal by any party" is October 16. The appeal can be deemed to be perfected only upon the expiration of that last day to appeal, which is later than the period to appeal of private respondents.[2] Consequently, when petitioner filed a Motion for Immediate Partial Execution on October 11, the Trial Court still retained jurisdiction over the case. To rule otherwise would be to allow a party litigant to deprive the adverse party of the latter's right to move for new trial or for reconsideration or even for execution pending appeal by the simple expedient of immediately perfecting his appeal by filing a Notice of Appeal.

ACCORDINGLY, the judgment under review is hereby SET ASIDE and this case is hereby ordered REMANDED to the Regional Trial Court of General Santos City, Branch XXIII, for determination, on the merits, of petitioner's Motion for Immediate Partial Execution pending appeal. No costs.

SO ORDERED.

Yap, (Chairman), Narvasa, Cruz, and Feliciano, JJ., concur.

[1] "SEC. 4. Injunction, receivership and accounting, not stayed. — Unless otherwise ordered by the court, a judgment in an action for injunction or in a receivership action, or a judgment or order directing an accounting in an action, shall not be stayed after its rendition and before an appeal is taken or during the pendency of an appeal. The trial court, however, in its discretion, when an appeal is taken from a judgment granting, dissolving or denying an injunction, may make an order suspending, modifying, restoring, or granting such injunction during the pendency of the appeal, upon such terms as to bond or otherwise as it may consider proper for the security of the rights of the adverse party."

[2] *Yabut vs. IAC*, 142 SCRA 124 [1986]; *Montelibano vs. Bacolod-Murcia Milling Co., Inc.*, 136 SCRA 295 [1985].

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