

ALEJANDRO MAGTIBAY, PETITIONER, VS. HONORABLE COURT OF APPEALS, SPOUSES MAXIMO PORTO AND ROSARIO ANDAYA, RESPONDENTS.

G.R. No. 77040, November 29, 1988

Ponente: PARAS, J.

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PARAS, J.:

This petition had its origin in Civil Case No. S-329 of the Regional Trial Court, Branch 33 of Siniloan, Laguna. Said case was filed by plaintiffs (private respondents herein) for recovery and possession of land with damages against defendant (petitioner herein). Decision against the defendant was rendered by said court on September 24, 1985 and was received by his counsel on October 5, 1985.

On the same day, defendant filed his Notice of Appeal. On October 9, 1985, the lower court acting on said Notice of appeal issued an order directing the Clerk of Court to transmit to the Intermediate Appellate Court (now the Court of Appeals) the entire records of the case. On October 11, 1985, plaintiff's filed a motion for execution pending appeal and offered to post a bond alleging that the appeal was merely dilatory and that the defendant failed to comply with the order of the court requiring him to deposit the harvest for which reason he was cited for contempt and was made to pay a fine therefor.

On October 23, 1985, plaintiffs filed their Supplemental Argument in Support of their Motion for Execution Pending Appeal, wherein they signified amenability to a partial execution of the judgment. On October 25, 1985, the lower court issued its challenged order granting partial execution pending appeal upon the plaintiffs filing a bond in the amount of Thirty Thousand (P30,000.00) Pesos.

On November 12, 1985, defendant filed a Motion to Set Aside the Order of October 25, 1985, which motion was denied by the lower court in its order dated November 18, 1985.

On December 15, 1985, a Writ of Partial Execution was issued. On December 17, 1985, the Provincial Sheriff by virtue of said writ delivered the material possession of the parcel of land in question to the plaintiffs.

Before the respondent appellate court, defendant brought a petition questioning the authority of the lower court to issue execution pending appeal. The respondent appellate court, in its decision[*] dismissed the petition ruling as follows:

"Petitioner contends that respondent court had no jurisdiction to issue the writ of partial execution, on private respondents' motion, which was filed after his appeal had been perfected. Further, petitioner claims that his appeal had been perfected when respondent court issued its order on October 9, 1985 directing the Clerk of Court to promptly transmit the entire records of the case to the Intermediate Appellate Court.

"The contention is devoid of merit. Section 19 (a) of the Interim Rules provides for the period within which to take an appeal from the judgment or order. Said section reads, as follows:

'19. Period of Appeal. -

'(a). All appeals, except in habeas corpus cases referred to in paragraph (b) hereof, must be taken within fifteen (15) days from notice of the judgment, order resolution or award appealed from.'

The perfection of such appeal is set forth in Section 23 of the Interim Rules, which provides thus -

'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 case at bar, petitioner received a copy of the decision on October 5, 1985. He took an appeal on the same date that he was notified of the decision. In pursuance of Section 23 of the Interim Rules, his appeal was perfected on the expiration of the last day for him to appeal the decision, that is, on October 21, 1985. Hence, petitioner's contention that his appeal was perfected when respondent court issued its order of October 9, 1985 directing the transmittal of the records and transcript of stenographic notes to the Intermediate Appellate Court, is plainly without merit.

"It is clear, therefore, that on October 11, 1985, when private respondents filed their motion for execution pending appeal, petitioner's appeal was not yet perfected. Hence, respondent court had not yet lost jurisdiction over the case. For it is only upon the perfection of the appeal that the trial court loses jurisdiction over subject matter and the parties can no longer act on a motion for execution of its judgment. Since the present motion for execution pending appeal was filed before the perfection of the appeal, it is of no moment that the respondent court resolved said motion after the expiration of the reglementary period of fifteen (15) days. It has been held that 'it would be difficult, if not impossible to require the trial judge to dispose of the motion for execution within the fifteen-day period. It would not be pragmatic and expedient and could cause injustice' (Universal Far East Corporation vs. Court of Appeals, et al., 131 SCRA 642).

"ACCORDINGLY, the petition for certiorari is hereby dismissed. The temporary restraining order issued in this case is ordered set aside. Costs against the petitioner.

"SO ORDERED." (pp. 10-11, Rollo)

Petitioner filed his Motion for Reconsideration which was denied by the respondent appellate court in its Resolution[**] promulgated January 1, 1987.

Hence the present petition for certiorari raising before Us a lone issue reading as follows:

ISSUE

WHETHER OR NOT THE REGIONAL TRIAL COURT, FOURTH JUDICIAL REGION, BRANCH XXXIII, PRESIDED BY HONORABLE NARCISO D. SALCEDO HAS STILL JURISDICTION OVER THE CASE WHEN IT ISSUED AN ORDER FOR PARTIAL WRIT OF EXECUTION. (p. 28, Rollo)

Petitioner contends that the mere filing of a notice of appeal perfects the appeal and once the appeal is perfected, the trial court loses jurisdiction over the case.

Petitioner's contention is meritless. 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. There can be several reasons for this, but one will suffice for purposes of this case, namely, the latter party since presumably, they received the decision also on October 5, 1985, (the same date it was received by petitioner herein), respondents still had fifteen (15) days within which to appeal. They filed a motion for execution pending appeal on October 11, 1985, (note that they had up to October 20, 1985 within which they could still appeal, before the judgment as to them would be final) therefore before the appeal is deemed perfected as to themselves. (See Universal Far East Corp. vs. Court of Appeals, 131 SCRA 642). Note

that under the law (Sec. 23 of the Interim Rules, See Batas Pambansa Bilang 129)

The perfection of the appeal shall be upon the expiration of the last day to appeal by any party. (*Italics supplied*)

WHEREFORE, this petition is DENIED.

SO ORDERED.

Melencio-Herrera, (Chairperson), Padilla, Sarmiento, and Regalado, JJ., concur.

[*] Penned by Justice Jose F. Racela, Jr., concurred in by Justices Carolina C. Griño-Aquino, Fidel P. Purisima and Jorge S. Imperial.

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