

ROBERTO ANTONIO, DIONISIO BENSION, CONRADA CHAN, MARINO CUMLAT, VICENTE DIMACUHA, PROCOPIO ESPEJON, RODRIGO FORBES, MANITO FUENTES, ET AL., PETITIONERS, VS. THE HONORABLE COURT ...*G.R. No. 77656. August 31, 1987*

Ponente: GANCAYCO, J.

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This is a petition for certiorari and mandamus with a prayer for a writ of preliminary injunction. It seeks to annul the Resolution of the Court of Appeals[1] promulgated on March 10, 1987 which denied the admission of the petitioners Motion for Reconsideration of the decision[2] earlier rendered. Also, it prays that a writ of preliminary injunction be immediately issued to restrain the respondent. Regional Trial Court in Caloocan City, Branch CXX, from implementing its Order dated March 6, 1987, which issued a writ of execution in accordance with the Court of Appeals decision on the case, thereby asking that said court be directed to defer or stay the execution pending the resolution of this petition and an annulment case allegedly appealed with the Court of Appeals.

The petitioners are lessees of an apartment building located in No. 121, 2nd Street, 9th Avenue, Caloocan City. This property was foreclosed by the Government Service Insurance System (GSIS) after its original owner failed to pay back his loan.

After due notice to the petitioners and all others concerned, the property was sold to the private respondent at a public bidding held on July 29, 1982. It appears, petitioners deliberately did not participate in the said bidding because they believed that, as tenants therein, they have priority in law to acquire the property. Their thinking was that their participation would be deemed a waiver of their right to question the act of the GSIS in selling the property and would adversely affect their offer to buy the same.

The award or sale of the property to the private respondent was duly approved by the GSIS Board of Trustees in its Resolution No. 772 adopted on August 20, 1982. It was then certified that the possession and administration of the property had been transferred to the private respondent. A conditional deed of sale was executed in favor of private respondent by the GSIS stating that for all intents and purposes, the private respondent is the owner of the property.

The GSIS advised the petitioners that they should now pay their rent and arrearages to the private respondent. But despite repeated written demands, the petitioners failed and refused to settle their accounts.

After a barangay conciliation proceeding proved futile, the private respondent filed a complaint for ejectment against the petitioners with the Metropolitan Trial Court in that locality. Said court rendered judgment on January 8, 1985, ordering the petitioners to vacate the premises occupied by them and to pay certain amounts as damages.

Not satisfied therewith, the petitioners appealed to the respondent Regional Trial Court which, on August 20, 1985, rendered a decision affirming in-toto the judgment of the Metropolitan Trial Court.

The petitioners then filed a petition for review on certiorari with the respondent Court of Appeals. This case was docketed as CA-G.R. SP No. 07828.

On December 5, 1986, the respondent Court of Appeals rendered a decision dismissing the petition for review. Later an entry of judgment dated February 3, 1987, was duly certified thereupon by the Clerk of Court attesting to the fact that the judgment became final and executory as of January 22, 1987. The records of the case were consequently, remanded to the respondent Regional Trial Court on February 11, 1987.

On February 23, 1987, the petitioners, through their new counsel, filed an "Appearance And Motion For Leave To Admit Motion For Reconsideration, together with the Motion For Reconsideration With Prayer For Issuance Of Temporary Restraining Order", with the respondent Court of Appeals. They moved that the respondent Court of Appeals admit their motion for reconsideration, which was obviously filed beyond the reglementary period for filing the same, alleging that their counsel of record abandoned them and migrated to the United States without at least informing them that a decision was rendered against them.

The petitioners' motion was denied by the respondent Court of Appeals in the Resolution dated March 10, 1987, now put in issue. It is hereunder reproduced, thus:

"Now before this Court is an 'Appearance and Motion for Leave to Admit Motion for Reconsideration' filed by petitioners in the above-entitled case on February 23, 1987 on the ground that their former counsel Atty. Funelas had abandoned the case and is now abroad, together with the corresponding Motion For Reconsideration With Prayer for Issuance of Temporary Restraining Order.

Considering that the decision sought to be reconsidered dated December 5, 1986 had become final, entry of judgment having been issued am February 3, 1987 and the records remanded to the court a quo on February 11, 1987, for which reason the said decision has become final and this Court has become bereft of jurisdiction to act thereon, the abovementioned Motions are hereby noted. Parenthetically, and merely for purposes of record, it is observed that counsel of record of petitioners is the law office Funelas Perez and Associates and not Atty. Funelas alone. Therefore, the fact that Atty. Funelas has abandoned the case and is now abroad is not a valid ground for the late filing of the motion for reconsideration." [3]

Earlier, on March 6, 1987, the respondent Regional Trial Court issued an order [4] for a writ of execution to be issued against the petitioners for the enforcement of the decision in CA-G.R. No. 07828.

Henceforth, the petitioners, believing that they were deprived of their day in court when the respondent Court of Appeals denied their motion for reconsideration, instituted this petition.

As their initial argument in this petition and as contained in their "Appearance And Motion For Leave To Admit Motion For Reconsideration", the petitioners maintain that they were deprived of their day in court - equivalent to a denial of due process of law -- when their motion for reconsideration was refused due course by the respondent Court of Appeals. They alleged that their counsel at that time, Atty. Pitty A. Funelas, virtually abandoned them by leaving abroad without at least notifying them. So when the Court of Appeals decision was rendered and a copy was sent to Atty. Funelas, no notice thereof was ever received by the petitioners. The petitioners only had knowledge of the judgment against them after it was eventually entered in the Book of Entries Of Judgments for being final and executory.

A certain Romeo S. Obligar, representing himself as the former messenger of Atty. Funelas executed an affidavit on February 19, 1987 stating among others that while getting the mails from the Post Office last January 6, 1987, for his new employer, he received the decision in CA-G.R. SP No. 07828; that since the records of that case was with Atty. Funelas, he was not able to contact the petitioners herein; and that he forgot all about said decision until a secretary informed him that the petitioners were verifying the said case when they happened to visit the office of

his new employer.

We agree with the Court of Appeals in denying the petitioners' motion for reconsideration. It is well-settled that after the lapse of fifteen (15) days from notice of judgment, the same becomes final and the Court of Appeals loses jurisdiction over the case. And the subsequent filing of a motion for reconsideration cannot disturb the finality of the judgment nor restore jurisdiction which had already been lost.[5] The court a quo cannot decide the case anew. A decision rendered anew notwithstanding the finality of the original one is null and void.[6]

In this case, the messenger, Mr. Obligar, received a copy of the decision on January 6, 1987. This decision became final and executory on January 22, 1987. Thus, the motion for reconsideration filed by the petitioners on February 23, 1987, could not be acted upon on the merits and could only be noted by the respondent Court of Appeals. It was properly denied.

The negligence attributed by the petitioners to their then counsel, Atty. Funelas, is not excusable. Clear and as it can be seen from the pleadings filed that the petitioners' counsel of record is the law office of Funelas Perez and Associates and not Atty. Funelas alone. Atty. Funelas signed the documents in his capacity as the representative of the said law firm. The respondent Court of Appeals made this same observation in its questioned resolution.

In an attempt to belie the preceding observation, the petitioners submitted to this Court another affidavit executed by Mr. Obligar dated March 17, 1987. This affidavit stated that the law firm of Funelas, Perez and Associates was actually composed of only Atty. Funelas; that Atty. Perez was only a partner in name, never handled any case of the law office, and did not actually report in said office; that there were no associates of Atty. Funelas; and that said law firm was dissolved in August, 1986. This affidavit has no evidentiary value. It was executed and submitted after the questioned resolution was already promulgated. Hence, it could not have affected or influenced the adjudication of the said resolution.

It is safe to presume that a law firm which registered and represented itself as such, with at least two named partners, is composed of at least two lawyers. And if it is true that this law office was earlier dissolved, the winding up process is presumed to have been performed in a regular manner, with all the obligations properly accounted for. Very concrete evidence must be presented in order that these presumptions may be rebutted.

At most, the affidavit must be classified as a mere afterthought and a futile attempt to contradict the findings of the respondent Court of Appeals.

Recently, this Court laid down a ruling that is applicable to this case. It reads:

"When a party appears by attorney in an action or proceeding in court, all notices required to be given therein must be given to the attorney and not to the client. Hence, a notice given to the client and not to his attorney is not a notice in law.

"The rule in this jurisdiction is that the client is bound by the negligence or failings of counsel. It is the duty of an attorney to himself and to his clients to invariably adopt a system whereby he can be sure of receiving promptly all judicial notices during his absence from his address of record. The attorney must so arrange matters that communications sent by mail, addressed to his office or residence, may reach him promptly. x x x."[7]

In the motion for reconsideration, the sole issue presented for reconsideration was a mere amplification of one argument already passed upon by the respondent Court of Appeals in its decision.

On January 18, 1983 before the ejectment case was instituted, the petitioners filed a complaint in the then Court of First Instance to annul the award in a public auction of the leased premises by the GSIS to the private respondent for they claimed that as tenants therein, they have the priority in law over the same. The court, in a decision

rendered on January 28, 1985, dismissed the case for lack of a cause of action. Now, this case is allegedly pending appeal in the Court of Appeals.

The issue, thus, advanced in the motion for reconsideration is whether the pendency of an annulment case of an award in public auction is prejudicial to an ejectment suit as to warrant the suspension of the latter proceeding.

We quote with approval the holding of the respondent Court of Appeals on this matter, thus:

"The pendency of an action for title filed by the defendants (now petitioners) with the Regional Trial Court does not have the effect of removing the ejectment case from the jurisdiction of the Metropolitan Trial Court. The rule is well-settled that an action for ownership or annulment of title is not a bar to an action for forcible entry and detainer (Alviar, et al. vs. Pampolina, et al., 84 Phil. 45, at p. 47; Padilla vs. de Jesus, et al., 95 Phil. 688, at p. 691; Aguilar vs. Cabrera, et al., 74 Phil. 658, at p. 868.)"[8]

In an ejectment case, the issue is possession, while in an annulment case the issue is ownership. Therefore, an ejectment case can very well proceed independently of an annulment case. The only recognized exception to the preceding doctrine is the situation wherein the question of possession is so intertwined with the question of ownership to the effect that the question of possession cannot be resolved without resolving the question of ownership.[9] This case at bar does not fall within the exception. Accordingly, the petitioners' position that this ejectment proceeding should be suspended in deference to an annulment proceeding presently pending in another forum must necessarily be rejected.

The order of the respondent Regional Trial Court for the issuance of a writ of execution was because the decision in the ejectment case had already become final and executory. Its implementation cannot be stayed.

WHEREFORE, the instant petition for certiorari and mandamus with preliminary injunction is hereby DISMISSED for lack of merit. With costs against petitioners. This is immediately executory.

Teehankee, C.J., Narvasa, and Cruz, JJ., concur.

Paras, J., no part. Justice Gloria C. Paras, my wife, concurred in the CA decision.

[1] Penned by Justice Lorna S. Lombos-de la Fuente, concurred in by Justices Gloria C. Paras and Celso L. Magsino of the Special Eleventh Division.

[2] Ibid.

[3] Resolution of the CA, pp. 180-181, Rollo.

[4] P. 112, Rollo.

[5] Pflieger vs. Victoriano, L-49809, June 30, 1980, 98 SCRA 491; Bolanos vs. Intermediate Appellate Court, L-68458, August 7, 1985, 138 SCRA 99.

[6] Comia vs. Nicolas, L-26079, September 30, 1969, 29 SCRA 492.

[7] Republic of the Philippines vs. Hon. Jose P. Arro, et al., L-48241, June 11, 1987.

[8] Decision of the Court of Appeals, p. 77, Rollo.

[9] Sy vs. Dalman, L-19200, February 27, 1968, 22 SCRA 834. See also Section 32(2) of Batas Pambansa Blg. 129 which makes a distinction between ownership and possession as justiciable controversies.

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