

**PEDRO S. RAVELO AND CARMEN TAN RAVELO, PETITIONERS, VS.
THE HONORABLE COURT OF APPEALS AND NATIONWIDE
DISTRIBUTORS, INC., RESPONDENTS.**

G.R. No. 93234. March 16, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This is an appeal by certiorari to review the 19 March 1990 Resolution of respondent Court of Appeals in C.A.-G.R. SP No. 20210 denying due course to petitioners' petition for certiorari, reiterated in its 20 April 1990 Resolution denying petitioners' motion for reconsideration.

The principal issue raised in this petition is whether or not an order granting a motion pending appeal may be enforced by the trial court after the perfection of the appeal.

The facts of the case are not disputed.

On 14 August 1977, petitioners filed with the then Court of First Instance (now Regional Trial Court) of Rizal a complaint for annulment and/or reformation of contract against private respondent praying therein that the deed of absolute sale with assumption of mortgage and the contract of lease over a house and lot entered into with private respondent on 15 May 1967 be declared null and void and that the parties be ordered to execute a Deed of Mortgage over the property for at least one (1) year. The complaint was docketed as Civil Case No. 27053.[1]

In its Answer,[2] private respondent asked that the validity and genuineness of the questioned contracts be upheld and that in the remote event that the deed of sale with assumption of mortgage be declared a simulated document or an equitable mortgage, petitioners be ordered to refund the amounts received as consideration for the sale. Private respondent also prayed for damages and a return of the advances made to the SSS and other agencies in connection with the mortgage with interest thereon.

The complaint was amended on 12 December 1977. In the Amended Complaint, petitioners alleged that the Deed of Sale and the Lease Agreement are null and void, not only because the same were simulated and did not represent the real intent and agreement of the parties, but because the real purpose was to conceal the imposition of a usurious interest rate.[3] In its Answer thereto, private respondent reiterated its defenses in the original Answer and further alleged that petitioner, Atty. Pedro S. Ravelo, is a "seasoned and experienced trial lawyer," who is versed with the law and could not have been "defrauded." [4]

On 13 June 1989, the trial court rendered a decision in Civil Case No. 27053, the dispositive portion of which reads:

"WHEREFORE, the Court renders judgment in favor of the defendant and against the plaintiffs -?

a) Declaring the parties' Deed of Sale with Assumption of Mortgage and the Contract of Lease, both dated May 15, 1967, as valid and subsisting documents; the transactions between the parties not to be illegal nor simulated;

the defendant to have been the party that paid off the loan in favor of the SSS and thereby saved the property from loss thru foreclosure; and the plaintiffs to have used and occupied the property without paying any rentals to the defendant; and

b) Ordering the plaintiffs -?

1. To vacate the house and lot located at and known as 1151 Pasong Tamo Street, Makati Metro Manila and surrender and deliver to the defendant corporation the peaceful possession thereof; and
2. To pay, jointly and severally, to the defendant corporation monthly rentals at the rate of P4,400.00 a month from January 5, 1988 with automatic increase at the rate of 10% every two years until they vacate the property, all with interest at the rate of 12% per annum from the date the payment accrued until fully paid; and
3. To pay, jointly and severally, to the defendant corporation the sum of P20,000.00 as reimbursement of attorney's fees and cost of litigation.

Costs against the plaintiffs.

SO ORDERED."[5]

Copies of the decision were received by the private respondent on 23 June 1989[6] and by the petitioners on 26 June 1989.[7] The latter therefore had until 11 July 1989 to file a motion for reconsideration or notice of appeal.

On 4 July 1989, the prevailing party filed a motion for execution pending appeal.[8] Three (3) days later, or on 7 July 1989, the petitioners filed a motion for reconsideration of the decision.[9] Concurrently, petitioners filed a petition for certiorari before the Court of Appeals, which was eventually denied. The filing of this action, described in the challenged resolution[10] but not mentioned in the present petition, delayed the resolution of both (a) the motion for execution pending appeal and (b) the motion for reconsideration. The trial court finally resolved both motions on 5 February 1990 by granting the first and denying the second, thus:

"If there was any shadow of doubt in favor of plaintiffs, this last ploy completely wiped it out. This Court is pained at fully realizing that plaintiffs are prostituting the Rules of Court in their vain efforts to gain time and continue enjoying the property in question for free. Plaintiffs gambled, and lost, on the Higher Court's looking at them with favor. This Court believes that it cannot improve on the Court of Appeals' Decision in said CA-G.R. SP-18548 in disposing of their instant motion for reconsideration.

With respect to the Motion for Execution Pending Appeal, this Court is inclined to grant the same. Sec. 2, Rule 39 of the Rules of Court provides that 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 the special order. To the Court's mind, the fact that the plaintiffs have been in the premises in question since 1977 without paying defendant any amount whatever for their use of the same is good enough reason for the execution of the decision pending appeal. It is high time that defendant should have possession of the premises. In any event, the Court is requiring defendant to put up a bond in the amount of P1,500,000.00 to answer for whatever damage plaintiffs would suffer as a result of the execution of the decision pending appeal should it later on be ruled that defendant is not entitled to such remedy.

WHEREFORE, the plaintiffs' Motion for Reconsideration and/or Motion to Lift and Set Aside the Decision is hereby denied for the reasons discussed in said Decision as well as in the Court of Appeals Decision of September 25, 1989 in CA-GR SP-18548.

Defendant's Motion for Execution Pending Appeal is granted.

Let the Writ of Execution pending appeal be implemented by the Deputy Sheriff of this Court upon approval of said execution bond and only after the lapse of ten (10) days from plaintiffs' receipt of copy hereof to enable

them to take whatever measure they may deem necessary to protect their interest.

SO ORDERED."[11]

Petitioners received a copy of this Order on 19 February 1990. On 21 February 1990, they filed a notice of appeal from the decision dated 13 June 1989.[12]

On 22 February 1990, the trial court issued an Order directing the Clerk of Court to forward the records of Civil Case No. 27053 to the Court of Appeals in view of the appeal interposed by petitioners.[13]

Thereupon, on 23 February 1990, petitioners filed a manifestation with the Regional Trial Court of Pasig alleging that since their appeal was perfected by the filing of the notice of appeal on 21 February 1990, the issuance and implementation of the writ of execution, pursuant to the 5 February 1990 Order granting execution pending appeal, should be suspended. They further aver that the trial court's power to order execution pending appeal ceased upon perfection of the said appeal.[14]

On 9 March 1990, petitioners filed with the respondent Court of Appeals a Petition for Certiorari and Prohibition with prayer for preliminary injunction and restraining order. The petition, docketed as C.A.-G.R. SP No. 20210,[15] was directed against the 5 February 1990 Order of the trial court. Petitioners contend therein that their appeal from the decision of the trial court was perfected when they filed their notice of appeal on 21 February 1990. As a consequence thereof, the trial court should have then suspended the issuance and implementation of the writ of execution pending appeal because it had already lost jurisdiction over the case.[16]

Respondent Court of Appeals, in its Resolution of 19 March 1990,[17] denied due course to the abovementioned petition in this wise:

"The present petition is utterly without merit.

1. The defendant's motion for execution pending appeal was filed within said party's period for appealing the decision, and even before plaintiffs filed their motion for reconsideration of the decision, which motion was also timely filed. Hence, defendant's motion was filed before the perfection of any appeal.

2. The period to appeal was tolled when plaintiffs filed their motion for reconsideration on July 7, 1989. Consequently, when the respondent judge denied plaintiffs' aforesaid motion and granted defendant's motion for execution pending appeal on February 5, 1990, the lower court no doubt still had jurisdiction over the case.

3. That plaintiffs filed their notice of appeal from the judgment and the order denying their motion for reconsideration thereof on February 21, 1990 (which was seasonably filed since they received notice of the February 5, 1990 order on February 19, 1990) is proof enough of the fact that the lower court had not lost jurisdiction over the case.

4. And since the motion for execution pending appeal was filed and was granted when the lower court had jurisdiction over the action, the implementation of the writ of execution cannot be suspended by the mere fact that the losing parties had subsequently appealed from the decision."

Their motion for a reconsideration of this Resolution having been denied in the respondent Court's Resolution of 20 April 1990,[18] petitioners filed this petition on 25 May 1990, well within the extended period granted to them. They urge this Court to set aside the challenged Resolution of the respondent Court because the latter erred (a) in not applying in this case the provisions of Section 9, Rule 41 of the Rules of Court in relation to Section 23 of the Interim Rules and Guidelines adopted by this Court on 11 January 1983, and (b) in not holding that the execution pending appeal of the decision in said Civil Case No. 27053 will deprive them of the possession of their property without due process of law.[19]

After the filing of the Comment by private respondent[20] and the Reply by petitioners,[21] this Court, in the Resolution dated 20 August 1990,[22] gave due course to the petition and required the parties to submit their respective Memoranda, which they complied with.

The instant appeal by certiorari is devoid of merit. The respondent Court committed no reversible error in dismissing C.A.-G.R. SP No. 20210. The due-course resolution then of 20 August 1990 is hereby recalled.

Section 23 of the Interim Rules and Guidelines promulgated by this Court on 11 January 1983 provides:

"SECTION 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 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."

It is clear from this section that for purposes of determining when an appeal is deemed perfected, the commencement of the reglementary period shall be reckoned from the last of the dates any of the parties received a copy of the decision. It is only after all the parties' respective periods to appeal have lapsed that the court loses its jurisdiction over the case.[23] A party must, however, file his notice of appeal within fifteen (15) days from receipt of a final order, resolution, award, judgment or decision of any court.[24] The filing of a motion for reconsideration or a motion for new trial would interrupt this period unless the same is pro-forma or is not filed in accordance with Rule 37, in relation to Rule 15, of the Rules of Court.

As earlier stated, petitioners received a copy of the 13 June 1989 decision of the trial court in Civil Case No. 27053 on 26 June 1989. On the other hand, private respondent received a copy thereof on 23 June 1989. Applying the aforequoted Section 23 of the Interim Rules, the basis for determining perfection of the appeal should be 26 June 1989. Petitioners then had until 11 July 1989 to file, and thereby perfect, their appeal. However, on 7 July 1989, or on the eleventh day of their period to appeal, petitioners filed a motion to reconsider the decision. Earlier, on 4 July 1989, private respondent filed a motion for execution pending appeal. The filing of the motion for reconsideration thus tolled the running of the period to appeal. It started running again only after receipt by the parties of copies of the 5 February 1990 Order denying the motion for reconsideration and granting the motion for execution pending appeal. Petitioners received a copy thereof on 19 February 1990; hence, they still had four (4) days therefrom, or until 23 February 1990, within which to file a notice of appeal. They filed such notice on 21 February 1990. Again, applying Section 23 of the Interim Rules, such appeal should be deemed perfected only upon the last day to file the notice. Obviously, therefore, the motion for execution pending appeal and its resolution were all done before the appeal was perfected.

The order granting execution pending appeal having been issued within the prescribed period, it can be executed or implemented even after the filing of the notice of appeal. Such execution merely carries out the pre-existing order over which the court retains jurisdiction. To hold that an order for execution pending appeal cannot be enforced by the trial court after the appeal is perfected because it has lost jurisdiction over the case is to negate or nullify the power granted it by Section 2, Rule 39 of the Rules of Court.[25] Said section reads:

"SECTION 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."

In *Naredo vs. Yatco*,[26] this Court ruled that trial courts have jurisdiction to issue orders for the execution of judgment to carry out a pre-existing order even if in the meantime the record on appeal had already been

approved. The approval of the record on appeal, if one is required, perfects the appeal.

It should be stressed that Section 6, Rule 135 of the Rules of Court provides that when by law, jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer.

Petitioners' second assigned error was not raised before the respondent Court in C.A.-G.R. SP No. 20210. It is a well-settled rule that no question will be entertained on appeal unless it has been raised in the court below.[27]

WHEREFORE, in view of the foregoing, the petition is hereby DISMISSED for lack of merit.

Costs against the petitioners.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, and Romero, JJ., concur.
Feliciano, J., on leave.

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- [1] Rollo, 53.
[2] Id., 60.
[3] Id., 73.
[4] Id., 87.
[5] Rollo, 104.
[6] Id., 29.
[7] Id.
[8] Id., 119.
[9] Id., 121.
[10] Id., 29.
[11] Rollo, 151-153.
[12] Rollo, 154.
[13] Id., 155.
[14] Id., 156.
[15] Id., 34.
[16] Rollo, 34.
[17] Id., 30.
[18] Rollo, 32.
[19] Id., 15.
[20] Id., 161.

[21] Id., 179.

[22] Id., 193.

[23] Associated Bank vs. Gonong, 152 SCRA 478; see also Magtibay vs. Court of Appeals, 168 SCRA 177; Sonida Industries vs. Wasan, Sr., et al., 179 SCRA 763.

[24] Section 39, Batas Pambansa Blg. 129.

[25] Alkuino, et al. vs. Arrieta, et al., 9 SCRA 458.

[26] 80 Phil. 220.

[27] Rebodos vs. WCC, 6 SCRA 717; Galicia vs. Polo, et al., 179 SCRA 371; Vencilao vs. Vano, 182 SCRA 491; Ruiz, et al. vs. Caneba, et al., 191 SCRA 865.

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