

ANDRES DY AND GLORIA DY, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS, HONORABLE ZEUS G. ABROGAR, HONORABLE FELICIDAD NAVARRIO-QUIAMBAO, SHERIFF ERNESTO ADAN, CLERK OF COURT ...

G.R. No. 93756. March 22, 1991

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

Nothing is more settled than the rule that in every litigation the parties thereto are entitled to due process and if there is a denial thereof then the validity of the proceedings is open to question. This principle should be observed even in cases where the rules on summary procedure are applied.

Predicated on these accepted postulates the Court finds merit in this petition.

On July 21, 1982 private respondent filed a complaint for ejectment of petitioners from his property in the Metropolitan Trial Court of Makati, Metro Manila. Summons was issued requiring petitioners to answer within ten (10) days from notice pursuant to the Rules on Summary Procedure.

Petitioners filed their answer thereto to which private respondent filed a reply. At the preliminary conference the issues were defined and the parties were required to submit the affidavits of their witnesses and other evidence together with their position papers. In due course, the inferior court rendered a decision on November 9, 1989, the dispositive part of which reads, as follows:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants ordering the latter and all persons claiming rights under them to vacate the premises in question located at 520 Zamora St., corner Makati Avenue, Poblacion, Makati, Metro Manila and to peacefully surrender possession thereof to the plaintiffs to pay the amount of Fifteen Thousand (P15,000.00) Pesos monthly rentals to start from June 1, 1989 up to the time that defendants have actually vacated and surrendered the premises to the plaintiff; to pay P1,000.00 as attorney's fees and costs." [1]

An appeal therefrom was interposed by petitioners to the Regional Trial Court of Makati. After the parties submitted the required memorandum, on February 22, 1990 the trial court rendered a decision, the dispositive part reading:

"WHEREFORE, judgment is hereby rendered affirming in toto the Decision appealed from dated November 9, 1989, and, considering this case is governed by the Rule on Summary Procedure, the Decision shall be immediately executory in accordance with Section 18 of the Rule on Summary Procedure.

Let the entire records of this case be remanded to the court of Origin for the immediate execution of this Decision." [2]

The records of the case appear to have been promptly remanded to the inferior court. An ex-parte motion for

immediate execution of judgment was filed by the private respondent in the inferior court on February 23, 1990. It was granted on the same day. At 11:30 p.m. on the following day, respondent sheriff, assisted by several policemen and other persons, ejected petitioners from the premises by throwing out all their belongings into the street and turning over possession of the premises to private respondent.

On February 26, 1990, petitioners, through counsel, filed an urgent ex-parte motion to quash and/or recall writ of execution and nullify all proceedings had therein on the ground they have not been served a copy of the decision of the trial court. The motion was denied by the inferior court on the same day.

On March 6, 1990, petitioners received a copy of the decision of the trial court.

On March 7, 1990 petitioners filed in the Court of Appeals a petition for certiorari with prayer for the issuance of a writ of preliminary mandatory injunction alleging that they have not been furnished a copy of the decision of the trial court when its immediate execution was effected. The appellate court dismissed the petition for lack of merit on May 30, 1990, with costs against petitioners.

Hence, this petition wherein it is alleged that the appellate court committed a grave abuse of discretion in dismissing the petition when execution of the judgment of the lower court was effected before a copy of said judgment was served on petitioners

As stated earlier, the petition is impressed with merit.

Under Section 1, Rule 39 of the Rules of Court, it is provided that "(e)xecution shall issue only upon a judgment or order that finally disposes of the action or proceeding." A copy of such final order or judgment shall be served personally or by registered mail on the parties.[3] There must be proof of service.[4]

Section 12 of the Rules on Summary Procedure provides:

"SEC. 18. Appeal. - The judgment or order, including that rendered under Section 5 hereof, shall be appealable to the appropriate regional trial court which shall decide the same on the basis of the records in accordance with Section 22 of Batas Pambansa Blg. 129. The decision of the regional trial court in such civil cases shall be immediately executory."

Section 19 thereof also provides that the "regular procedure prescribed in the Rules of Court shall apply to special cases herein provided for in a suppletory capacity insofar as they are not inconsistent herewith."

The question raised is - may such a judgment or order of the regional trial court be immediately executed even before a copy thereof was served on the losing party? The answer must be in the negative.

Given a judgment or order that finally disposes of an action or proceeding, if no appeal therefrom had been interposed within the reglementary period, execution shall issue as a matter of right.[5] There should be proof of service of a copy of said judgment or order on the parties to determine if the period of appeal had lapsed, before a motion of execution thereof may be granted and implemented.

Similarly, the execution of an appealed judgment may issue as a matter of right from the date of the service of the notice provided in Section 11 of Rule 51 as follows:

"SEC. 11. Return of case. - Ten (10) days after entry of judgment, the clerk shall return the records of the case to the lower court, unless notice is given of intention to petition the Supreme Court for a writ of certiorari, in which event the mittimus shall be stayed. Upon returning the case, the clerk shall transmit to the court below a certified copy of the judgment for execution.

It shall be the duty of the clerk of the lower court to notify the parties within five (5) days of the receipt by him

of the records of a case from the appellate court."[6]

From the foregoing, it is clear that the records of the case are returned to the lower court for execution of the judgment within ten (10) days after entry of judgment. Such judgment shall be entered only upon the expiration of fifteen (15) days after the service of notice thereof upon the parties.[7]

By the same token, under Section 2, Rule 39 of the Rules of Court, the execution pending appeal of a judgment or order may be granted upon motion of the prevailing party, upon good reasons, with notice to the adverse party. Of course, such judgment or order may not be considered to be pending appeal unless notice of such judgment or order had been served on the losing party. Thus, its execution pending appeal cannot be authorized without previous notice to the losing party of such judgment or order.

Applying these rules in a suppletory manner to cases falling under the Rules on Summary Procedure, it is clear that a judgment or order of a Regional Trial Court which disposes of the action or proceeding must be served on the losing party before the same may be considered immediately executory. While an ex-parte motion for issuance of a writ of execution thereof may be filed in the proper court, such motion must be supported by a proof of service of the judgment or order on the losing party.

Moreover, under the provisions of the Interim Rules relating to Batas Pambansa Blg. 129 promulgated by this Court, it is also provided:

"(b) Review of appealed cases from regional trial courts. - In actions or proceedings originally filed in the metropolitan trial courts, municipal trial courts and municipal circuit trial courts appealed to the regional trial courts, the final judgments or orders of the latter may be appealed by petition for review to the Intermediate Appellate Court which may give due course only when the petition shows prima facie that the lower court has committed an error of fact or law that will warrant a reversal or modification of the decision or formal order sought to be reviewed."

Thus, a petition for review by the Court of Appeals of a judgment of the Regional Trial Court originally filed in the inferior court, may be filed by a losing party only after notice of said judgment or order had been served on the losing party. If such judgment or order may be immediately executed without prior notice to the losing party, then such a party shall be left without any remedy against a judgment not supported by any evidence and/or the applicable law. The appellate court shall be deprived of the power to stay the hand of the inferior court against the immediate execution of a patently illegal if not void judgment. The basic requirements of due process demand such previous notice.

Consequently, the Court finds and so holds that in a civil case which was decided under the Rules of Summary Procedure, the immediate execution of the judgment of the Regional Trial Court may not be effected unless prior notice of the judgment or order had been served on the losing party and proof of such service accompanies the motion for execution of the judgment. This will enable the losing party to take any appropriate steps to protect his interests when warranted. The losing party is entitled to such notice as an essential requirement of due process; otherwise, the entire proceedings leading to the execution of the judgment may be nullified and set aside.

While the petitioners' cause in this case is meritorious, unfortunately they failed to interpose an appeal from the questioned judgment of the Regional Trial Court within the reglementary period after notice thereof on March 6, 1990. They explained it is a futile exercise as they have already been actually dispossessed of the property subject of litigation.

Needless to say, the petition for certiorari filed in the Court of Appeals cannot take the place of an appeal. What petitioners should have done, besides filing this special civil action for certiorari under Rule 65 of the Rules of

Court, is to interpose an appeal within the reglementary period. As it is now, the judgment had lapsed into finality and no further relief can now be afforded the petitioners under the circumstances.

The judgment of the appellate court must thus be upheld on this account.

WHEREFORE, the petition is DENIED. No costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Page 16, rollo.

[2] Page 17, rollo.

[3] Section 2, Rule 13, Rules of Court.

[4] Section 8, 9 and 10, supra.

[5] Section 1, Rule 39, Rules of Court.

[6] Second paragraph, Section 1, Rule 39, *ibid.*

[7] Section 10, Rule 51, *ibid.*

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