

CATALINO CAISIP, ET AL., PETITIONERS, VS. THE HON. JUDGE DOMINGO M. CABANGON, OF THE COURT OF AGRARIAN RELATIONS AND JESUS T. PINEDA, RESPONDENTS.

G.R. Nos. 14684-86. August 26, 1960

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

In Cases Nos. 366-T, 354-T, and 368-T of the Court of Agrarian Relations, Third Regional District (at Tarlac, Tarlac), Jesus T. Pineda sought the ejectment of 27 tenants working on his parcel of riceland in Barrio San Martin, Concepcion, Tarlac, on the share tenancy system, for allegedly refusing to follow proven farm practices in the Masagana System (Case No. 366-T), and for cultivating their own farms given by the National Resettlement and Rehabilitation Administration (NARRA) while at the same time working on petitioner's land. After trial, the Agrarian Court ordered the ejectment of 24 of the respondent tenants, subject to the provisions of subsections S and 4 of Sec. 22, Rep. Act 1199. From this judgment, the 24 ejected tenants appealed by certiorari to this Court, in accordance with sec. 13, Rep. Act 1267.

Respondent Jesus T. Pineda urges the dismissal of the petition upon the ground that petitioners had not perfected their appeal as required by law, and that as a consequence, the judgment of the court a quo has become final and executory and that this Court has no jurisdiction to entertain this appeal; and upon a careful examination of the records, we agree with respondent that the petition should be dismissed.

The records show that respondents received copy of the decision of the court below on July 16, 1958. From this date, they had fifteen (15) days within which to appeal in the manner provided for by sec. 13 of Republic Act 1267 and Rule 44 of the Rules of Court, to wit:

"Section 13. Review by the Supreme Court.—Appeal may be taken from an order or decision of the Court of Agrarian Relations promulgated under the provisions of this Act and a review of such order or decision may be obtained in the Supreme Court by filing in such Court within fifteen days from receipt of notice of such order or decision a written petition praying that it be modified or set aside in whole or in part. The review by the Court shall be limited to questions of law, and findings of fact when the decision is not supported by substantial evidence. (As amended by Sec. 8, Rep. Act No. 1409)." (Rep. Act No. 1267)

"Sec. 1. How to perfect an appeal.—An appeal by certiorari from an award, order or decision of the Court of Industrial Relations, shall be perfected by filing with said court a notice of appeal and with the Supreme Court a petition for certiorari against the adverse party within fifteen (15) days from notice of the award, order or decision appealed from." (Rule 44, Rules of Court) (This rule applies to appeals from the Court of Agrarian Relations, according to resolution of January 5, 1956 of this Court)

Petitioners' period for appeal would have expired on July 31, 1958. However, on July 30, 1958, with only one day remaining within which to perfect their appeal, petitioners filed a motion to extend the period for the filing of a motion for reconsideration. The court a quo gave them 10 days from July 31, 1958. On August 6, 1958, they

mailed their motion for reconsideration. On October 7, 1958, the court denied their motion to reconsider, and petitioners received copy of the order of denial on October 23, 1958. On the same day, October 23, petitioners filed a notice of appeal to the Supreme Court. But on October 26, 1958, they withdrew their notice of appeal, having before that date mailed on October 25 another motion for reconsideration and a petition for relief from judgment. On October 29, the court approved the withdrawal of the notice of appeal. On November 11, 1958, the Court denied the second motion for reconsideration for raising questions already disposed of in the first motion for reconsideration, and the petition for relief from judgment for not having the required affidavits of merit as well as for not being meritorious. But on November 6, the tenants had already filed in this Court the present petition for review under section 13 of Republic Act No. 1267. On November 21, 1958, respondent moved ex parte for the execution of the judgment, which he claimed had already become final and executory. The Court set the motion for hearing to give petitioners the right to be heard. After hearing, the Court issued on December 17, 1958 an order finding that its decision had already become final and executory, but withholding actions on the motion for execution until this petition for certiorari, which the ejected tenants had filed before this Court, would have been disposed of.

From the above facts, it is quite evident that, as pointed out by respondent Pineda, petitioners had failed to perfect their appeal in accordance with law, first, by not filing the necessary notice of appeal with the Agrarian Court, and second, by filing this petition for certiorari beyond fifteen days from their receipt of copy of the Court's decision. As to the first ground, petitioners never filed a second notice of appeal in the lower court after their first was withdrawn. As to the second, the petition was filed beyond the statutory period of fifteen days for appeal, because petitioners' period for appeal expired on October 24, 1958, while this petition was filed with this Court only on November 6, 1958. Needless to say, perfection of an appeal in the manner and within the period laid down by law is not only mandatory but jurisdictional, and failure to perfect an appeal as legally required has the effect of rendering final and executory the judgment of the court below and deprives the appellate court of jurisdiction to entertain the appeal (*Miranda vs. Guanzon, et al.*, 92 Phil., 168; 48 Off. Gaz. No. 10, 4859; *Garganta, et al. vs. C. A.* 105 Phil., 412; 56 Off. Gaz. [26] 4323.) Indeed, petitioners themselves admitted that the decision of the Agrarian Court had already become final and executory when they filed a petition for relief from said decision on October 26, 1958. There is no question, therefore, that this Court has no jurisdiction over this appeal.

Of course, the present petition may also be looked upon as a special civil action for certiorari, in which case petitioners need not comply with the provisions of section 13 of Republic Act 1267 and Rule 44 of the Rules of Court. As such, however, the petition must meet the requirements called for by such special action, in that the court a quo must have acted without or in excess of its jurisdiction, or with grave abuse of discretion, in rendering the decision complained of, and furthermore, that petitioners must have no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law (Sec. 1, Rule 67, Rules of Court). Unfortunately for petitioners, the present petition cannot pass these tests. No question of jurisdiction nor grave abuse of discretion is here raised, the only error assigned being one that concerns the Agrarian Court's appraisal of the evidence presented by the parties. What is more, petitioners did have the remedy of appeal, as already discussed, and the rule is that certiorari will not lie where appeal is an adequate remedy, even if the period for appeal has already elapsed (*Yucuanseh Drug Co. vs. National Labor Union*, 101 Phil., 409).

However, with respect to petitioner Pedro Magtoto, who died during the pendency of this case in the Court below, the authority of counsel to represent him ceased upon his demise (*Barrameda, et al. vs. Barbara*, 90 Phil., 718; *I Moran*, Rules of Court, 4th Ed., p. 74). It appearing that no legal representative had been appointed to represent Magtoto, nor had his heirs been substituted in his stead, in accordance with the provisions of section 17, Rule 3, Rules of Court, it is necessary that the court below order such appointment or substitution, before judgment can validly be taken against this deceased.

Wherefore, the petition is dismissed for lack of jurisdiction of this Court to entertain the same. With respect to petitioner Pedro Magtoto, however, the court a quo is ordered to comply with the provisions of section 17, Rule 3, Rules of Court. Costs against all the petitioners with the exception of Pedro Magtoto.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, and Gutierrez David, J., concur. Barrera, J., took no part.

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