

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
EN BANC**

**HERMOGENES PALOMARES, ET AL.,  
*Plaintiffs-Appellees,***

***-versus-***

**G.R. No. L-4513  
January 31, 1952**

**AGRIPINO JIMENEZ, ET AL.,  
*Defendants-Appellants.***

X-----X

**DECISION**

**TUASON, J.:**

This is an appeal from an order of Honorable Eusebio Ramos, Judge of the Court of First Instance of Marinduque, denying a motion for relief under Rule 38 on the ground that the motion had been filed out of time.

In so far as the facts may be gleaned from the papers before us, the plaintiffs, now appellees, sought to recover a real estate. The case coming on to be heard, both parties presented their evidence. It is not definitely shown whether the case was submitted for decision before the trial closes, or the court declared the trial terminated and the case ready for decision. It is asserted, however, in the motion for relief as reproduced in the record on appeal, that upon the conclusion of the trial, which had been held before another Judge, Hon. Juan F.

Enriquez, “the attorney for the defendant requested that the same (Exhibit “A”) be forwarded to the National Bureau of Investigation, Manila, for examination as to the age of the entire writing, etc., which request was granted by the court without objection on the part of the attorney for the plaintiff and (that) pending action on the said request, the court proceeded to render the decision above mentioned and the proceeding thus taken behind the back of the defendants was taken against them by surprise and excusable neglect, depriving the defendants their right to present other proof in maintaining their legal defense.”

Of the above decision, which was against the defendants, the latter or their attorney was notified on December 30, 1948, according to the appellee’s brief. It is also stated that the defendants filed on January 28, 1949, a pro forma motion for new trial, which was denied in an order of February 14, 1949; that thereafter, on February 21, a motion for reconsideration was filed by the defendants, which motion was denied in an order dated March 7, 1949; that in the meantime, on February 14, 1949, a writ of execution was issued, the judgment, it was held, having become final and executory.

To set aside the writ of execution, the defendants filed a petition for certiorari in this Court against Judge Eusebio Ramos. This Court, in a unanimous decision, with the exception of Mr. Justice Feria who did not take part, denied the petition on December 31, 1949. Four months after that, namely, on April 30, 1950, the present motion for relief was docketed.

It was contended in the court below, and it is contended on this appeal, that although “more than 15 months have elapsed, after the judgment was taken, nevertheless, from March 19, 1949 to March 4, 1950 or about 12 months, the Judge of First Instance of Marinduque had lost jurisdiction and control of the aforesaid judgment for the reason that the same was then under the jurisdiction of the Supreme Court in certiorari proceedings, G. R. No. L-2893.” Counsel adds: “Obviously, the defendants-appellants were in no way responsible for the period of time used by the higher court in giving due consideration to the said petition for certiorari.” In other words, it is the position of the present appellants that the petition for certiorari before this Court suspended the period prescribed by Rule 38.

The relief provided for by Rule 38 is of equitable character and is allowed only in exceptional cases: where there is no other available or adequate remedy. (49 C. J. S. 693.) It is not regarded with favor and the judgment would not be voided where the party complaining “has, or by exercising proper diligence would have had, an adequate remedy at law, or by proceedings in the original action, by motion, petition, or the like to open, vacate, modify, or otherwise obtain relief against, the judgment.” (49 C. J. S. 695.)

The defendants could have appealed and had indeed taken steps in that direction. In fact, the proper procedure to correct the alleged mistake was by appeal. There had been a full trial, and the sole complaint was that the court had decided the cause without waiting for the result of the examination of a documentary exhibit by the National Bureau of Investigation, a document, by the way, which, the opposing party alleged, had not been introduced in evidence.

The fact that the defendants did not appeal and that the time to appeal from the decision as it stood is now gone, does not alter the situation. Considering the purpose behind it, the period fixed by Rule 38 is non-extendible and is never interrupted. It is not subject to any condition or contingency, because it is itself devised to meet a condition or contingency. The remedy allowed by Rule 38 is an act of grace, as it were, designed to give the aggrieved party another and last chance. Being in the position of one who begs, such party’s privilege is not to impose conditions, haggle or dilly-dally, but to grab what is offered him.

This observation also answers the main or sole proposition urged in this appeal – that upon the institution of the certiorari proceedings in the Supreme Court, the trial court lost jurisdiction to vacate its judgment. What is more, the proposition is not well taken. The application for certiorari was an independent action, not a part or continuation of the trial which resulted in the rendition of the judgment complained of. An independent action, needless to say, does not interrupt the course of a cause unless there be a writ of injunction stopping it. For another reason, the defendants could no longer avail themselves of the relief under Rule 38 even if we assume that the certiorari proceedings did prevent the respondent judge from

touching his judgment. It has generally been held that a party waives his right to apply for a vacation of the judgment by pursuing other remedies, as by taking an appeal from it, or by instituting an independent action for substantially the same purpose. (49 C. J. S. 513).

**WHEREFORE**, the appealed order will be affirmed with costs.

**Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo and Bautista Angelo, JJ., concur.**

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