99 Phil. 952

[G.R. No. L-9334. September 25, 1956]

HEIRS OP MARIANO ARROYO SINGBENGCO, PETITIONERS, VS. THE HON. FRANCISCO ARELLANO, ETC., ET AL., RESPONDENTS.

D E C I S I O N

BAUTISTA ANGELO, J.:

This is a petition for review of a decision of the Court of Appeals rendered on March 30, 1955 holding that petitioners herein filed their record on appeal outside of the reglementary period and, consequently, dismissed their petition for mandamus.

Petitioners are among those who claimed the registration of thirty-three lots of the Sagay Cadastre in Cadastral Case No. 27 (G.L.R.O. Record No. 284) of the Court of First Instance of Negros Occidental. On October 17, 1952, the court, after due hearing, rendered decision adjudicating said lots to Dominador Lacson and Visitacion Lacson, respondents herein. Among those who took steps to perfect the,ir appeal were the petitioners.

Petitioners received copy of the decision on October 24, 1952. On November 20, 1952, they filed their notice of appeal. Four days later, or on November 24, the last day of the period within which the appeal may be perfected, petitioners filed a motion for extension of time to file their record on appeal. This was granted in an order dated November 28, 1952, the court allowing fifteen days more to file their record on appeal. Petitioners filed two more motions for extension, each time one day before the expiration of the period extended, which were also granted. On the last day of the period allowed by the court, or on January 3, 1953, petitioners finally filed their record on appeal without however filing their appeal bond, which was only filed twenty days thereafter, or forty days beyond the reglementary period.

When the record on appeal was submitted to the court for approval, respondents Dominador Lacson and Visitation Lacson registered their opposition on the ground that

both the record on appeal and the appeal bond were filed out of time. On April 23, 1953, the court ordered the dismissal of the appeal on the sole ground that the appeal bond was filed beyond the reglementary period. Petitioners filed a motion for reconsideration. On November 16,1953, the motion was denied, the court reaffirming its order of dismissal.

Dissatisfied with the action of the trial court, petitioners filed a petition for mandamus in the Court of Appeals. Respondents filed an answer thereto reiterating their contention that the record on appeal as ‘well as the appeal bond were filed but of time. In a decision, promulgated on July 26, 1954, the Court of Appeals found that petitioners’ appeal bond was filed out of time but expressed the opinion that appeal bonds are not necessary for the perfection of the appeal in cadastral cases, and since such matter involved a ruling on a point of law, it resolved to certify the case to the Supreme Court, On October 5, 1954, the Supreme Court returned the case to the Court of Appeals holding that the latter could act upon the question involved in aid of its appellate jurisdiction. Finally, on March 30, 1955, the Court of Appeals rendered a new decision finding this time that the record on appeal was belatedly filed and, consequently, denied petitioners’ petition/for mandamus.

It should be noted that when the record on appeal was submitted by petitioners io the lower court for its approval, the latter denied the same and dismissed the appeal, not on the ground that the same was filed outside the reglementary period, but because the appeal bond was filed out of time, the latter being the only ground on which the dismissal was predicated. But when the case was taken to the Court of Appeals on a petition for mandamus, the latter, though expressed the opinion that appeal bonds are not necessary in cadastral cases, found that the record on appeal was filed out of time and, consequently, dismissed the petition for mandamus.

The question that now comes up for determination is: Under the circumstances of this case, can the record on appeal be considered as having been filed within the reglementary period considering the several extensions of time granted to petitioners by the lower court?

It appears that petitioners received copy of the decision on the merits on October 24, 1952. On November 24, 1952, the last day of the period for the perfection of the appeal, they filed a motion for extension of time to file their record on appeal. This motion was granted on November 28, 1952. Two more motions for extension were filed, each on the last day of the extended period, and both motions were granted. And on the last day of the period allowed by the trial court, or on January ,3, 1953, petitioners finally filed their

record on appeal. These facts clearly indicate that, while the order of the court granting the last extension was not issued before the expiration of the period previously extended, the record on appeal was however filed within the additional period granted to petitioners by the trial court. In the circumstances, we hold that the record on appeal was filed on time and the Court of Appeals erred in considering the appeal to have lapsed and in dismissing the petition for mandamus on that ground.

Our reason for this ruling is clear. While this Court has held that "The pendency of a motion for extension of time to perfect an appeal or to file a brief does not suspend the running of the period sought to be extended" (Garcia *vs*. Buenaventura, 74 Phil., 611), however, it was also held "that when the order granting extension of time is issued and notice thereof served after the expiration of the period fixed by law, said extension of time must be counted from the date notice of the order granting it is received" (Alejandro *vs*. Endencia, 64 Phil., 321, 325), which implies that once a motion for extension is favorably acted upon, the appeal may still be perfected within the period so extended. And this is justified under the ruling long observed in this jurisdiction that the motions of this kind are addressed to the sound discretion of the court and may be granted if there are justifiable reasons that warrant them (Moya *vs*. Barton, 76 Phil., 831; Reyes *vs*. Court of Appeals, 74 Phil., 235). Here there are good reasons as pointed out by the trial court in its order of April 23, 1953.

The question that now rises is: The Court of Appeals having dismissed the petition for mandamus on a wrong premise as above pointed out, can this Court now look into the issue raised by respondents in their brief to the effect that said Court of Appeals likewise erred in its view that appeal bonds are not necessary in the perfection of appeals in cadastral cases even if this issue is not now raised by petitioners in their petition for review? In other words, can respondents raise new issues even if they have not appealed from the decision of the Court of Appeals if their purpose is to sustain that decision on another ground?

Our answer is in the affirmative, following our ruling that "Appellee, who is not appellant, may assign errors in his brief where his purpose is to maintain the judgment on other grounds, though (but) he may not do so if his purpose is to have the judgment modified or reversed, for, in such a case, he must appeal."[1] This is the only purpose or ground advanced by respondents namely, to sustain the decision of the Court of Appeals on a ground different from that on which was predicated, and we are inclined to uphold this view in this case considering that the issue involved is important and merits serious

consideration.

It should be recalled that, while the record on appeal was filed by petitioners within" the additional period granted them by the lower court, they however failed to file the appeal bond on time, the same having been filed forty days beyond the reglementary period. However, the Court of Appeals found that such failure did not have the effect of defeating the right of petitioners to appeal because in its opinion appeal bonds are not necessary in the perfection of appeals in cadastral cases, basing its ruling on paragraph (*a*), section 18, of Act 2259 (Cadastral Law, as amended by Act 3081), which provides that "One-tenth of the cost of the registration proceedings and the cadastral survey and monumenting * * * shall be borne by the Insular Government; one-tenth shall be paid by the province concerned, and one-tenth by the city, municipality, municipal district, township or settlement in which the land is situated * * * and the remaining seven-tenths shall be taxed by the court against each and all of the lots included in a cadastral proceeding." In other words, it is the view of that court that since the costs in cadastral proceeding are assessed, not against the losing party but against those declared to be the owners of the lots, an appeal bond is unnecessary when a losing party appeals in a cadastral case.

We disagree with this point of view. In the first place, the cost mentioned in said section 18 refer to the expenses that are incurred by the Government in the cadastral survey and monumenting that are undertaken in connection with the cadastral proceedings, and not necessarily to the costs of action that are awarded in a court litigation. It is for this reason that under said section 18 (*c*), as amended by Republic Act No. 1151, the amount of the cost so assessed does not go to the winning party but to pay "for all services rendered by the Land Registration Commission and the clerk or his deputies in each cadastral proceeding." In the second place, the reason why these costs are not taxed against the losing party is obvious. Unlike ordinary registration proceedings which are voluntary in character, the registration under the cadastral law is compulsory, the purpose of the law being to quiet title to lands when public interest so requires (section 1). The proceeding being compulsory it is but fair that costs be not charged to those who in response to the call center to court though they may lose their case. And so it was provided that these costs be charged against the winner.

It is therefore an error to consider the costs contemplated in section 18 as costs charged in an ordinary litigation. They have a different nature and peculiar purpose. They have been designed merely for the purpose of the cadastral proceedings. The situation differs when the losing party appeals from the decision of the cadastral court where he has to

perfect his appeal in same manner as in ordinary case. An appeal bond in this case is necessary to answer for regular costs should he lose his appeal. These costs have their own legal meaning and import, for, as it was said, "Costs are in the nature of incidental damages allowed to the successful party to indemnify him against the expense of asserting his rights in court, when the necessity of so doing was caused by other's breach of legal duty" (Spicer *vs*. Benefit Asso., 90 A. L. R., 517)

On the other hand, Rule 132 of the Rules of Court provides that "These rules shall not apply to land registration, cadastral, and election cases * * * except by analogy or in a suppletory character and whenever practicable and convenient." And in line with this rule, section 14 of Act 496 (Land Registration Law) provides that "Every order, decision, and decree of the Court of Land Registration may be reviewed by the Supreme Court in the same manner as an order, decision, decree, or judgment of a Court of First Instance might be reviewed." And in section 11 of Act 2259 (Cadastral Act) we also find the following proviso: "except as herein otherwise provided all of the provisions of said Land Registration Act, as now amended, and as it hereafter may be amended, shall be applicable to proceedings under this Act." An analysis of all these provisions leads us to conclude that the requirements of our Rules of Court relative, to the perfection of an appeal in an ordinary case apply in the same manner and with equal force and effect to appeals from a decision of a court of first instance in registration and cadastral proceedings.

It appearing that petitioners have failed to file their appeal bond within the reglementary period it follows that they have lost their right to appeal. It is plain that the Court of Appeals erred in concluding that such failure is no legal consequence and in not dismissing the petition for mandamus on that ground. The finding of said court on this matter should therefore be modified in the sense that the petition for mandamus, should be dismissed not on the failure to file the record on appeal on time, but on the failure to file the appeal bond on time.

Wherefore the petition is dismissed, with costs against petitioners.

Paras, C. J., Padilla, Montemayor, Labrador, Concepcion, Reyes, J. B. L., Endencia, and *Felix, JJ.,* concur.

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[1] Saenz *vs.* Mitchell, 60 Phil., 69, 80; Mendoza *vs.* Mendiola, 53 Phil., 267; Villavert vs. Lim, 62 Phil., 178; Balajadia *vs.* Eusala, G. R. No. 42579; Bunge Corporation and Universal Agencies *vs.* Elena Camenforte & Co., 91 Phil., 861, 48 Off. Gaz. p. 3377; Pineda & Ampil Manufacturing Co., et al. *vs.* Arsenio Bartolome, et al., 95 Phil., 930.

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