

FREDESVINDO S. ALVERO, PETITIONER, VS. M.L. DE LA ROSA, JUDGE OF FIRST INSTANCE OF MANILA, JOSE R. VICTORIANO, AND MARGARITA VILLARICA, RESPONDENTS.

G.R. No. L-286. March 29, 1946

Ponente: DE JOYA, J.

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DE JOYA, J.:

This is an original petition for certiorari filed in this court.

The record shows that, on June 25, 1945, respondent Jose R. Victoriano had filed a complaint, in the Court of First Instance of the City of Manila, against petitioner Fredesvindo S. Alvero and one Margarita Villarica, alleging two causes of action, to wit, (1) to declare in force the contract of sale, made on October 1, 1940, between said Jose R. Victoriano and Margarita Villarica, of two (2) parcels of land in the Manotoc subdivision, Balintawak, in the barrio of Calaanan, municipality of Caloocan, Province of Rizal, with a combined area of 480 square meters, which land was subsequently sold by said Margarita Villarica, in favor of petitioner Fredesvindo S. Alvero, on December 31, 1944, for the sum of P100,000 in Japanese military notes; and (2) to declare said subsequent sale null and void.

On July 7, 1945, Margarita Villarica filed an answer to said complaint, expressly admitting having sold said land to Fredesvindo S. Alvero, for P100,000, in December, 1944, due to the imperative necessity of raising funds with which to provide for herself and family, and that she did not remember the previous sale; at the same time, offering to repurchase said land from Fredesvindo S. Alvero in the sum of P5,000, but that the latter refused to accept the offer.

On July 13, 1945, Fredesvindo S. Alvero, in answering said complaint, denied the allegations made therein, and claimed exclusive ownership of the land in question, and at the same time set up a counterclaim and cross-claim in his answer, demanding from Jose R. Victoriano a P200-monthly rent on said property, beginning from February, 1945, plus P2,000 as damages.

On July 21, 1945, Jose R. Victoriano filed an answer to said counterclaim, denying Fredesvindo S. Alvero's alleged ownership over said land, and the other allegations contained in Alvero's answer.

After the trial of the case before the Hon. Mariano L. de la Rosa, Judge of the Court of First Instance of the City of Manila, one of the respondents in this case, on November 16, 1945, said respondent judge rendered his decision, in which it was declared that the two (2) parcels of land in question, with a combined area of 480 square meters had been sold by Margarita Villarica to Jose R. Victoriano, since October 1, 1940, for the sum of P6,000, on the condition that the purchaser should make a down payment of P1,700, and a monthly payment of P76.86 in 120 equal monthly installments; that Jose R. Victoriano continued making said monthly payments until December, 1941, but that owing to the wartime conditions then existing, Margarita Villarica agreed verbally to suspend such payments until the restoration of peace; that immediately after said sale of said land to him, Jose R. Victoriano took possession thereof and made improvements thereon to the amount of P800, and continued

occupying said property until December, 1944, when he abandoned the same to go to evacuation places, but returned thereto in February, 1945; that Margarita Villarica, having forgotten the sale of said land to Joso R. Victoriano, sold the same for P100,000 in Japanese military notes, on December 31, 1944, to Fredesvindo S. Alvero, but afterwards offered to repurchase said property from him, for the sum of P8,000 in genuine Philippine currency, after liberation; that Fredesvindo S. Alvero presented the deed of sale, executed in his favor, to the Register of Deeds of the City of Manila, on January 3, 1945, and took possession of said property in December, 1944, but afterwards found Jose R. Victoriano in the premises in February, 1945; that in the contract of sale executed by Margarita Villarica, in favor of Jose R. Victoriano, it was agreed that, upon failure of the purchaser to make payments of three (3) successive monthly installments, the vendor would be free to sell the property again, forfeiting the payments made, except in case of force majeure; that there was really a verbal agreement between Margarita Villarica and Jose R. Victoriano, made in February, 1942, for the suspension of the payment of the monthly installments until the restoration of peace; and that although Jose R. Victoriano had presented the deed of sale, executed in his favor, to the Register of Deeds, in Pasig, Rizal, like Fredesvindo S. Alvero, he had also failed to secure the transfer of title to his name. And considering that Jose R. Victoriano's document was older than that, of Fredesvindo S. Alvero, and that he had taken possession of said property, since October 1, 1940, the respondent judge rendered his decision in favor of Jose R. Victoriano, adjudging to him the title over the property in question, including all the improvements existing thereon, and dismissed the counterclaim.

On November 28, 1945, Fredesvindo S. Alvero was notified of said decision; and on December 27, 1945, he filed a petition for reconsideration and new trial, which was denied on January 3, 1946; and of said order he was notified on January 7, 1946.

On January 8, 1946, Fredesvindo S. Alvero filed his notice of appeal and record on appeal simultaneously in the lower court, without filing the P60 appeal bond.

On January 14, 1946, Jose R. Victoriano filed a petition to dismiss the appeal, and at the same time, asked for the execution of the judgment.

On January 15, 1946, Fredesvindo S. Alvero filed an opposition to said motion to dismiss, alleging that on the very same day, January 15, 1946, said appeal bond for P60 had been actually filed, and alleged as an excuse, for not filing the said appeal bond, in due time, the illness of his lawyer's wife, who died on January 10, 1946, and buried the following day.

On January 17, 1946, the respondent judge, Hon. Mariano L. de la Rosa, ordered the dismissal of the appeal, declaring that, although the notice of appeal and record on appeal had been filed in due time, the P60-appeal bond was filed too late.

On January 23, 1946, Fredesvindo S. Alvero filed a petition for the reconsideration of the said order dated January 17, 1946, dismissing his appeal; and said petition for reconsideration was denied on January 29, 1946. Hence, this petition for certiorari.

On February 11, 1946, the respondents filed their answer to the petition for certiorari, alleging (1) that said petition is defective in form as well as in substance; (2) that there has been no excusable negligence, on the part of the petitioner, or grave abuse of discretion on the part of the respondent judge, in the instant case.

As already stated, the decision rendered by the respondent judge, Hon. Mariano L. de la Rosa, was dated November 16, 1945, of which counsel for Fredesvindo S. Alvero was notified on November 28, 1945; that his motion for reconsideration and new trial was filed on December 27, 1945, and denied on January 3, 1946, and that said counsel for Alvero was notified of said order on January 7, 1946; and that he filed his notice of appeal and

record on appeal the following day, to wit, January 8, 1946, and that the P60-appeal bond was filed only on January 15, 1946.

According to the computation erroneously made by the trial court, the last day for filing and perfecting the appeal, in this case, was January 8, 1946, on which date, Fredesvindo S. Alvero should have filed his (1) notice of appeal, (2) record on appeal, and (3) appeal bond. But the P60-appeal bond was filed only on January 15, 1946.

Failure to perfect the appeal, within the time prescribed by the rules of court, will cause the judgment to become final, and the certification of the record on appeal there after, cannot restore the jurisdiction which has been lost. (Roman Catholic Bishop of Tuguegarao vs. Director of Lands, 34 Phil., 623; Estate of Cordoba and Zarate vs. Alabado, 34 Phil., 920; and Bermudez vs. Director of Lands, 36 Phil, 774.)

The period within which the record on appeal and appeal bond should be perfected and filed may, however, be extended by order of the court, upon application made, prior to the expiration of the original period. (Layda vs. Legaspi, 39 Phil., 83.)

Rules of courts, promulgated by authority of law, have the force and effect of law; and rules of court prescribing the time within which certain acts must be done, or certain proceedings taken, are considered absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of judicial business. (Shioji vs. Harvey, 43 Phil., 333.)

Strict compliance with the rules of court has been held mandatory and imperative, so that failure to pay the docket fee in the Supreme Court, within the period fixed for that purpose, will cause the dismissal of the appeal. (Salaveria vs. Albindo, 39 Phil., 922.) In the same manner, on failure of the appellant in a civil case to serve his brief, within the time prescribed by said rules, on motion of the appellee and notice to the appellant, or on its own motion, the court may dismiss the appeal. (Shioji vs. Harvey, 43 Phil., 333.)

Counsel for the petitioner Fredesvindo Alvero alleges as an excuse, for his failure to perfect and file his appeal, in due time, the illness of his wife, which ended in her death on January 10, 1946, and by which he was greatly affected.

How little, indeed, does one realize that in life he lives in the midst of death; and that every moment that passes is a step nearer towards eternity. Yet, notwithstanding the inexorable laws of human destiny, every mortal fears death, and such fear is worse than death itself. That is perhaps the reason why those feeling its approach, in their last moments, want to be surrounded by the ones dearest to their heart, to hear from them words of tenderness and eternal truth, and thus receive as balm their love and the cheering influence of the traditional faith, and the consolation of religious hope.

The virtuous and loving wife is the peculiar gift of heaven, and Mother is the name for God in the innocent lips and hearts of adoring children. "She looketh well to the ways of her household, and eateth not the bread of idleness." "And her daughters arise up and call her blessed." And when she dies in the bosom of God, her children find solace in the contemplation of her eternal bliss, as mirrored in her tranquil beauty.

It is not, therefore, difficult to understand the state of mind of the attorney, and his intense devotion and ardent affection towards his dying wife.

Unfortunately, counsel for petitioner has created a difficult situation. In his motion for reconsideration and new trial, dated December 27, 1945, he did not point out specifically the findings or conclusions in the judgment, which are not supported by the evidence or which are contrary to law, making express reference to the pertinent evidence or legal provisions, as expressly required by Rule 37, section 2, paragraph (c) of the Rules of Court.

Motions of that kind have been considered as motions pro forma intended merely to delay the proceeding, and, as such, they cannot and will not interrupt or suspend the period of time for the perfection of the appeal. (Valdez vs. Jugo, 74 Phil., 49, and Reyes vs. Court of Appeals and Bautista, 74 Phil., 235.) Hence, the period for perfecting herein petitioner's appeal commenced from November 28, 1945 when he was notified of the judgment rendered in the case, and expired on December 28, 1945; and, therefore, his notice of appeal and record on appeal filed on January 8, 1946, were filed out of time, and much more so his appeal bond, which was only filed on January 15, 1946.

It is futile to speak of hospitals, doctors and nurses to minister alone to the needs of the sick and the dying, who are dearest to us, for our reasoning powers are of little avail when sorrow or despair rages within.

But human laws are indelible and no personal consideration should stand in the way of performing a legal duty.

The attorney for petitioner Fredesvindo S. Alvero could have asked for an extension of time, within which to file and perfect his appeal, in the court below; but he had failed to do so, and he must bear the consequences of his act. A strict observance of the rules of court, which have been considered indispensable to the prevention of needless delays and to the orderly and speedy dispatch of judicial business, is an imperative necessity.

It may not be amiss to state in this connection that no irreparable damage has been caused to the petitioner Fredesvindo S. Alvero, as Margarita Villarica, the vendor to the two, of the land in question, has shown readiness to repair the damage done.

No showing having been made that there had been merely an excusable negligence, on the part of the attorney for petitioner Fredesvindo S. Alvero, and that there had been grave abuse of sound judicial discretion, on the part of the respondent judge, the petition for certiorari filed in this case, is, therefore, hereby dismissed, without costs. So ordered.

Moron, C. J, Ozaeta, Paras, Jaranilla, Feria, Pablo, Perfecto, Hilado, Bengzon, and Briones JJ., concur.
Petition dismissed.

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