

TEOFISTA DE CASTRO BALAJADIA, ELPIDIA DE CASTRO, CRISANTA DE CASTRO, EFRENA DE CASTRO, ROGELIO DE CASTRO AND JUAN DE CASTRO, PETITIONERS, VS. THE HONORABLE GREGORIO G. PINEDA, C...

G.R. No. L-45335. January 31, 1978

Ponente: AQUINO, J.

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AQUINO, J.:

This special civil action of certiorari was filed by Teofista de Castro Balajadia and her co-heirs, Elpidia, Crisanta, Efrena, Rogelio and Juan, all surnamed De Castro, in order (1) to annul the writs of execution and possession dated December 16, 1976, issued in Civil Case No. 17115 of the Court of First Instance of Rizal, Pasig Branch XXI, and (2) to reinstate their appeal in CA-G.R. No. 59188-R, "Elpidia de Castro, et al. vs. Pantaleon Sto. Domingo", which was dismissed due to their failure to print their record on appeal.

That case is a litigation over Lot No. 5589, with an area of 704 square meters, situated at Barrio San Juan, Morong, Rizal which has been registered in the name of respondent or defendant Pantaleon Sto. Domingo since 1966, as shown in OCT No. 5380. However, that, lot is in the actual possession of the petitioners or the plaintiffs.

In that case, respondent Judge rendered a decision dated October 24, 1975, dismissing plaintiffs' complaint for reconveyance of Lot No. 5589 and ordering them to pay defendant Sto. Domingo P15,000 as moral and exemplary damages and attorney's fees.

Plaintiffs De Castro's appeal to the Court of Appeals from that decision was given due course by respondent Judge in his order of February 24, 1976. Defendant Sto. Domingo did not object to the record on appeal.

The clerk of court of the lower court in his letter dated March 8, 1976 transmitted to the Court of Appeals the notice of appeal, appeal bond, record on appeal, minutes, exhibits and the index thereof. Those papers were received in the Court of Appeals on March 24, 1976.

Although the record had already been elevated to the Court of Appeals, defendant-appellee Sto. Domingo on March 18, 1976 filed in the trial court a motion for the reconsideration of the approval of the record on appeal and to require the plaintiffs to include certain orders or pleadings such as the partial stipulation of facts.

Respondent Judge granted the motion in his order of May 20, 1976 and directed the plaintiffs to include all the necessary orders and pleadings in the record on appeal.

In the meanwhile, the Court of Appeals sent a notice dated April 5, 1976 to petitioners' counsel for the payment of the docket fee and the printing of the record on appeal. That notice was received by petitioners' counsel on April 8, 1976. He paid the docket fee on April 20. The appeal was docketed as CA-G.R. No. 59188-R. The deadline for submitting the printed record on appeal was June 7, 1976.

As the plaintiffs or petitioners did not print their record on appeal, the Court of Appeals in its resolution of August

23, 1976 dismissed their appeal.

Before that dismissal, or on June 18, 1976, the plaintiffs filed in the lower court a motion for a five-day extension within which to amend their record on appeal. They did not amend their record on appeal. On July 21, 1976 the defendant filed a motion to dismiss the appeal and for the issuance of a writ of execution on the ground that the plaintiffs had not amended their record on appeal.

The lower court in its order of August 2, 1976 directed its clerk of court to retrieve the record from the Court of Appeals "for further proceedings" in the lower court. Upon defendant's motion of August 16, 1976, the Court of Appeals in its resolution of September 7, 1976 remanded the record to the lower court for further proceedings. The record was remanded to the trial court on October 4, 1976.

On October 29, 1976 defendant Sto. Domingo filed in the lower court an ex parte motion for a writ of possession. On November 10, 1976 the lower court, after noting that the Court of Appeals had dismissed plaintiffs' appeal, ordered the issuance of writs of possession and execution.

On December 16, 1976 the writs of possession and execution were issued and were served on the plaintiffs by Arcadio Sto. Domingo, an alleged special sheriff. The sheriff stated in his report of January 18, 1977 that Elpidia de Castro, the actual occupant of the disputed lot, refused to comply with his demand to vacate it.

On January 5, 1977 the plaintiffs filed the instant petition for certiorari in this Court, praying that the writs of possession and execution be set aside. The question is whether the lower court's judgment had become final and executory or whether petitioners' appeal can be reinstated.

In resolving that issue, it is necessary to state that Sto. Domingo's motion for the reconsideration of the order approving the record on appeal was unwarranted. The lower court's order granting that motion and directing the plaintiffs to include in the record on appeal all the necessary orders and pleadings, without specifying what orders and pleadings had been omitted, is a void order for being coram non judice or having been issued when the court had no more jurisdiction over the case.

The lower court had no more jurisdiction to issue that order because the record on appeal had already been approved and had been elevated to the Court of Appeals.

After the perfection of the appeal, the trial court loses its jurisdiction over the case, except to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, to approve compromises offered by the parties prior to the transmittal of the record on appeal to the appellate court, and to permit the prosecution of pauper's appeals (Sec. 9, Rule 41, Rules of Court; Commissioner of Immigration vs. Romero, 119 Phil. 475, 478).

If defendant-appellee, now respondent, Sto. Domingo honestly believed that certain vital orders and pleadings had not been included in the record on appeal, his remedy would have been move in the Court of Appeals for the completion of the record (Sec. 6, Rule 48, Rules of Court; 2 Moran's Comments on the Rules of Court, 1970 Ed., p. 513). Sto. Domingo had no more remedy in the trial court.

The petitioners in their reply to private respondent's comment prayed that the resolution of the Court of Appeals dismissing their appeal and the entry of judgment be set aside and that their appeal be reinstated. They filed an amended petition impleading the Court of Appeals and reiterating their prayer for the reinstatement of their appeal. The respondents did not comment on the amended petition.

We hold that petitioners' appeal should be reinstated in consonance with the dictates of justice and fair play. An appeal may be reinstated, even after the remand of the record to the trial court, where it appears that the dismissal

of the appeal was made under the erroneous impression that the appellants had abandoned their appeal (See *Krug vs. Meehan*, 239 Pac. 2nd 46; *Heirs of Celestino vs. Court of Appeals*, L-38690, September 12, 1975, 67 SCRA 22, 28-29; 4 C. J. 609).

The instant case has some similarity to *Whitehurst vs. Pettipher*, 10 SE 857, 105 N. C. 39, where an appeal was dismissed because the appellant failed to file fifteen copies of the record. The appellant moved for the reinstatement of his appeal. He explained that the record was actually printed but he failed to file the requisite number of copies because of conversations with the opposite counsel which led him to understand that that appeal would be passed over when reached, and not called for argument at that time. It was held that the appeal should be reinstated.

The petitioners explained in their verified amended petition why their counsel failed to print the record on appeal. He was hospitalized because of injuries suffered in a vehicular accident. Moreover, he thought that the printing was suspended by the lower court's order for the amendment of the record on appeal. But he could not amend the record on appeal because the order did not specify what pleadings and orders should be included.

The petitioners added that their appeal is meritorious because their action for reconveyance is sanctioned by the ruling laid down in *Quiñiano vs. Court of Appeals*, L-23024, May 31, 1971, 39 SCRA 221.

If the failure of the petitioners to print their record on appeal was entirely attributable to their counsel's negligence, then the rule that, generally, the client is bound by the acts or omissions of his counsel may be applied and, therefore, the appeal of the petitioners should not be reinstated.

But the fact is that the lower court, in re-asserting jurisdiction over a case already appealed to the Court of Appeals, impaled petitioners' counsel on the horns of a dilemma; if he printed the record on appeal, then it might become useless in view of the trial court's order that he should amend it; if he complied with the trial court's order to amend the record on appeal, then he would have to disregard the resolution of the Court of Appeals for the printing of the original record on appeal.

Apparently, petitioners' counsel wanted to amend the record on appeal in compliance with the trial court's directive and on the erroneous assumption that the trial court had jurisdiction to order the amendment. But, when he tried to comply with the trial court's directive, he found himself in another quandary: he did not know what orders and pleadings should be included in the amended record on appeal since they had not been specified by the trial court nor by the private respondent.

Private respondent's inconsistent maneuvers, coupled with the trial court's re-assumption of jurisdiction, which it had already lost, spawned mischievous consequences and thus prejudiced the petitioners.

It should be underscored that the petitioners failed to print their record on appeal because of the unwarranted proceeding for the amendment of the record on appeal instituted by the private respondent. To private respondent's anomalous motion for the amendment of the record on appeal may be traced the dismissal of petitioners' appeal.

WHEREFORE, the resolutions of the Court of Appeals dated August 23 and September 7, 1976 and the entry of judgment in CA-G.R. No. 59188-R and the trial court's orders of May 20 and November 10, 1976 and the writs of execution and possession issued in Civil Case No. 17115 are all set aside. Petitioners' appeal is reinstated. The trial court is ordered to elevate to the Court of Appeals petitioners' record on appeal and the evidence.

Upon receipt of the record on appeal, the Court of Appeals is directed to give the petitioners anew the reglementary sixty-day period for the printing of their record on appeal. Costs against private respondent

Pantaleon Sto. Domingo.

SO ORDERED.

Fernando, (Chairman), Antonio, and Concepcion, Jr., JJ., concur.

Barredo, J., see concurrence below.

Santos, J., on leave.

CONCURRING OPINION

BARREDO, J., concurring:

The record shows that rightly or wrongly, on May 20, 1976, the trial court granted Sto. Domingo's motion for reconsideration of the approval of his record on appeal, even after it had already been elevated to the Court of Appeals, and that subsequently, the trial court directed the clerk of court to retrieve the record from the Court of Appeals. This was on August 2, 1976. The action thus taken by the trial court became known to the Court of Appeals because of Sto. Domingo's motion of August 16, 1976, pursuant to which it ordered on September 7, 1976 that the records be remanded to the lower court for further proceedings. Accordingly, the order of dismissal of the Court of Appeals of August 23, 1976 was inconsistent with the remand order.

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