

SPOUSES WARLITO AND HERMINIA BUSTOS, PLAINTIFFS- APPELLANTS, VS. SPOUSES VENANCIO AND CECILIA VIRAY, ET AL., DEFENDANTS- APPELLEES.

Ponente: VIDAL, M.D., J.

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VIDAL, M.D., J.:

Before Us is an Appeal[1] filed by Plaintiffs- Appellants Spouses WARLITO[2] and HERMINIA BUSTOS (hereinafter Appellants) assailing the Order[3] dated 12 January 2001 of the Regional Trial Court, Third Judicial Region, Branch 54, Macabebe, Pampanga in CIVIL Case No. 99-0913(M) entitled SPS. WARLITO C. BUSTOS and HERMINIA REYES vs. SPS. VENANCIO M. VIRAY and CECILIA R. NUNGA, et al. for Annulment and Cancellation of Free Patents. The fallo of the Order reads:

WHEREFORE, the Court rules as follows:

(a) Denies the Motion for Reconsideration dated August 8, 2000;

(b) Dismisses the complaint for lack of cause of action, without however, prejudice to the filing of an appropriate complaint for Recovery or Reconveyance of real property by the parties concerned should a cause of action exist for the same.

SO ORDERED.[4]

THE FACTS

The instant controversy involves Lot 284 of the Masantol Cadastre which was originally part of the estate of PAULINO FAJARDO (PAULINO). Said lot, after an extra-judicial partition of PAULINO's estate, was apportioned to one of his heirs, MANUELA FAJARDO (hereinafter MANUELA), who in turn sold her share to her brother-in-law MOSES MENDOZA (hereinafter MOSES), i.e., the husband of MANUELA's sister BEATRIZ.[5]

Meanwhile, the physical possession of Lot 284 was with TRINIDAD FAJARDO (hereinafter TRINIDAD) who refused to surrender said land to MOSES despite demand. Hence, MOSES filed with the Court of First Instance of Pampanga a complaint for Partition, claiming the one-fourth (1/4) portion of the subject land, representing MANUELA's share which was sold to him.[6]

While the aforementioned case was still pending, TRINIDAD died. Thereafter, her heirs executed an extra-judicial partition of her estate. LUCIO FAJARDO (hereinafter LUCIO), one of TRINIDAD's heirs, caused the subdivision of the lot into Lot 284-A and Lot 284-B.[7] Thereupon, LUCIO sold Lot 284-B to Defendants-Appellees Spouses VENANCIO and CECILIA VIRAY (hereinafter Appellees VIRAY).[8]

On 8 February 1989, the Regional Trial Court of Macabebe, Pampanga rendered a decision in favor of MOSES, granting the latter one-fourth (1/4) of the abovementioned share of MANUELA.[9]

On 13 September 1991, MOSES sold the subject land (Lot 284) to the Appellants.

In the meantime, Appellees VIRAY sold Lot 284-B to the Defendants- Appellees FRISCO and EPIFANIA GABRIEL (hereinafter Appellees GABRIEL). Thereafter, Appellees GABRIEL applied for the issuance of a free patent over Lot 284-B and were subsequently issued Free Patent No. 035412 under their names.[10]

Defendants- Appellees Spouses FELIMON and GLORIA GUINTO (hereinafter Appellees GUINTO) likewise caused the registration of a free patent over Lot 284-A.[11]

Consequently, Appellants filed a complaint for annulment/ cancellation of free patents with damages[12] against Appellees VIRAY, GABRIEL, GUINTO, LUCIO IGNACIO, ROMARICO P. MELCHOR, CELSO L. PACATE and BIENVENIDO C. OCAMPO.

Acting on a motion to dismiss filed by the Appellees on 20 June 2000, the court a quo issued an order dismissing the aforesaid complaint for failure of the Appellants to exhaust administrative remedies, thus:

The court finds that it has no jurisdiction and cannot acquire jurisdiction over the subject matter of this case considering that the matter pertains to the authority of the executive department to issue free patents covering properties applied for by the applicants-patentee and the said proceedings pertaining to the same should first be exhausted before the matter may be brought to the Court for appropriate review.[13]

Appellants filed a motion for reconsideration of the abovementioned order which was subsequently denied by the court a quo. Said denial was further anchored on the fact that Appellants failed to bring the matter in controversy to the appropriate Lupong Tagapamayapa pursuant to the Local Government Code of 1991 considering that all the principal parties therein were residents of Masantol, Pampanga.[14] The court a quo, however, conceded to the argument of the Appellants that the doctrine of exhaustion of administrative remedies could not be applied to the case considering that the land in dispute is a private land.[15]

THE ISSUES

Appellants instituted instant appeal raising the sole issue, to wit:

Whether or not the court a quo erred in dismissing Appellant's complaint on the ground that there was no prior referral to the Lupong Tagapamayapa pursuant to the Local Government Code of 1991.[16]

OUR RULING

Glaring is the fact that the Appellants' complaint was dismissed by the court a quo on the ground of non-compliance with a condition precedent for filing their claim, viz: no prior recourse to barangay conciliation in accordance with the Katarungang Pambarangay provision of the Local Government Code of 1991. Appellants contend that resort to barangay conciliation was unnecessary in this case because aside from the fact that not all parties are residents of the same city or municipality, the parties cannot possibly come to a settlement before the Lupon considering that through the years the parties have been into litigation involving the lot in question.[17]

Be that as it may, the appeal is dismissable for choosing the wrong procedural remedy. As borne by the recorded evidence, the dismissal was pronounced by the court a quo as without prejudice.[18]

In *American Insurance Company vs. United States Lines Company, et al.*[19], the Supreme Court emphatically ruled, thus:

Where the lower court had expressly provided that the dismissals of the x x x cases were without prejudice, said dismissals were removed from the general rule that they should have the effect of an adjudication upon the

merits.

Simply put, therefore, dismissals without prejudice, as in the case at bar, are not considered as adjudication on the merits.

Section 1 of Rule 41 of the Revised Rules of Court provides:

SECTION 1. Subject of appeal – An appeal may be taken from a judgment or final order that completely disposes of the case or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

x x x

(h) An order dismissing an action without prejudice.

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65. (Underscoring supplied)

The reason for the abovesited rule is to avoid the multiplicity of appeals in a single action. Said rule however affords the aggrieved party alternative modes to assail the lower court's order via a Petition for Certiorari under Rule 65 or if the grounds therefor are not available, institute another action considering that the dismissal is without prejudice.[20]

Moreover, Section 1 of Rule 50 of the Revised Rules of Court mandates:

SECTION 1. Grounds for dismissal of appeal. – An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the Appellee, on the following grounds:

x x x

(i) The fact that [the] order or judgment appealed from is not appealable.

Thus, considering that in the instant case the order subject of the notice of appeal is indubitably not appealable, We are constrained to reject Appellants' plea.

Long ingrained in our jurisprudence is the rule that the right to appeal is just a statutory right, not a natural or inherent one. Hence, the party who seeks to avail of the said right must faithfully comply with the Rules.[21] As the Highest Tribunal underscored in *Sps. Gil and Elma del Rosario vs. Court of Appeals, et al.*[22], thus:

The rationale for this strict attitude is not difficult to appreciate. These rules are designed to facilitate the orderly disposition of cases. In an age where courts are bedeviled by clogged dockets, these rules need to be followed x x x with greater fidelity. Their observance cannot be left to the whims and caprices of appellants.

With the abovementioned disquisition, We need not belabor on the lone issue, *supra*, raised by the Appellant.

WHEREFORE, premises considered, the instant Appeal is hereby DISMISSED. The assailed Order stands.

SO ORDERED.

Reyes, and Lampas Peralta, JJ., concur.

[1] Rollo, pp. 8-29

[2] Per Manifestation dated 7 September 2001, Appellant WARLITO BUSTOS, Sr. died last 14 August 2001; Rollo, page 73

[3] Rollo, pp. 30-32

- [4] Rollo, page 32
- [5] Rollo, page 34; Spouses Bustos vs. Court of Appeals, GR No. 120784-85, 24 January 2001
- [6] Rollo, page 35
- [7] Rollo, page 60
- [8] Rollo, page 35
- [9] Rollo, page 36
- [10] Rollo, page 61
- [11] Rollo, page 11
- [12] Records, pp 2-15
- [13] Rollo, pp 30-31
- [14] Rollo, page 31, 32
- [15] Rollo, page 31
- [16] Rollo, page 22
- [17] Rollo, pp 23, 25
- [18] Rollo, page 32
- [19] GR No. L-40247, 25 March 1975
- [20] FERIA, NOCHE, Civil Procedure Annotated, Vol. II, pp 151; 155
- [21] Florentino Ozaeta vs. Court of Appeals, et al., GR No. 83281, 4 December 1989
- [22] GR No. 113890, 22 February 1995

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