

EUFRACIA VDA. DE CRISOLOGO, EUSTAQUIO, VICENTE, ESTELA, CAMILA, MAXIMO, LITO, FELIX, ROMAN, CRISTINA AND REY, ALL SURNAMED RAMIREZ, TRIUNFO, RUPERTA AND CARMEN, ALL SURNAMED PAS...

G.R. No. L-44051. June 27, 1985

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition to review on certiorari the decision of the Court of Appeals now the Intermediate Appellate Court which dismissed the petitioners' special civil action for mandamus for lack of appellate jurisdiction over it. In said special civil action, the petitioners prayed that the trial court be ordered to approve their record on appeal which was dismissed for having been filed out of time.

The petitioners filed an action against the private respondent for ownership, annulment of sale, and delivery of possession of various properties, with writ of preliminary injunction and damages. Claiming to be legal heirs of the vendor, they sought the annulment of four deeds of sale covering seventeen (17) parcels of land and a residential house executed by Lutgarda Capias in favor of respondent Mallillin. The latter filed a motion to dismiss which was however denied for not being indubitable at that stage of the proceedings. The private respondent, therefore, filed his answer.

After termination of the pre-trial proceedings and during the trial on the merits, the parish priest of the Roman Catholic Church, Rev. Father Roque N. Fido, testified on the witness stand. He was duly cross-examined by Atty. Aguirre, counsel for the petitioners.

The private respondent filed a motion for summary judgment on the following grounds:

"1. THAT LEOGUARDA (ALIAS LUTGARDA) WAS THE ILLEGITIMATE DAUGHTER OF THE LATE JULIA CAPIAS CONSEQUENTLY PLAINTIFFS ARE COMPLETE STRANGERS TO HER (LEOGUARDA) AND THEY (PLAINTIFFS) ARE NOT THE REAL PARTIES IN INTEREST AND HAVE NO CAUSE OF ACTION, MUCH LESS PERSONALITY TO MAINTAIN THE PRESENT PROCEEDINGS; and

"2. THAT INSEPARABLY CONNECTED WITH THE FACT THAT PLAINTIFFS ARE STRANGERS TO THE LATE LEOGUARDA CAPIAS AND HAVE NO CAUSE OF ACTION OR PERSONALITY TO PURSUE THE PRESENT PROCEEDING, IT FOLLOWS AS A COROLLARY THAT DEFENDANT IS ENTITLED TO A SUMMARY JUDGMENT AS A MATTER OF LAW IN ACCORDANCE WITH HIS PRAYER FOR RELIEF ISSUE AS TO MATERIAL FACT."

The petitioners filed a motion to admit their amended complaint. The private respondent filed his amended answer with additional exhibits. On the date set by the court for another pre-trial conference, the private respondent filed a motion reiterating his previous motion for summary judgment.

After the petitioners filed an opposition to the motion and the respondent had filed his reply, the respondent judge rendered a summary judgment dismissing the amended complaint. The judgment was based on the following findings:

"The original complaint and the amended complaint filed by the plaintiffs alleges in quintessence or in substance the following: 'That Julia Capiao, who maintained extra-marital relations with one Victoriano Taccad, begot with him one child and/or forced heir, named Lutgarda (Leogarda) Capiao, who was married to Raymundo Zipagan, both of whom died at Cauayan, Isabela in 1970 and 1964, respectively, without any children and/or immediate forced heirs' (paragraph 5 of the amended complaint); That Lutgarda (Leogarda) Capiao having died on November 11, 1970 at Cauayan, Isabela, without any will intestate succession took place and the herein plaintiffs, as relatives within the fifth civil degree to her. (Lutgarda [Leogarda] Capiao), were consequently instituted as Lutgarda's legal heirs and were legally entitled to inherit all the properties which were hers by virtue of the extra-judicial partition, Annex "B", (paragraph 15, amended complaint).

"The motion to dismiss, particularly the motion is reiteration of defendant's previous motion for summary judgment, contains as Page 2-A diagram of the family tree of the plaintiffs and the defendant, showing that their common ancestor was Pablo Capiao. x x x As shown by the family tree or diagram, Julia Capiao, deceased, who maintained extra-marital relations with one Victoriano Taccad had one issue, the deceased Leogarda and/or Lutgarda Capiao, married to Raymundo Zipagan, both having died without any children and/or immediate forced heir. x x x.

"The source of these properties in question deceased Lutgarda (Leogarda) is undoubtedly an illegitimate child. In fact, her surname is Capiao and not Taccad, retaining the surname or family name of her mother Julia Capiao. Article 992 of the Civil Code, cited by the movant, the defendant, provides:

" 'Art. 992. Illegitimate child has no right to inherit ab intestate from the legitimate children and relatives of his father or mother; nor shall such children or relatives inherit in the same manner from the illegitimate child.'"

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"Going back to the diagram, putting in black and white the family tree of the parties graphically showing their relationship with the late Lutgarda Capiao, the source of the properties in question and their relationship with one another, the question that arises x x x is the following:

"THE RELATIVES OF JULIA CAPIAO, NAMELY: THE PLAINTIFFS IN THIS CASE, CAN THEY INHERIT FROM LUTGARDA CAPIAO, THE ORIGINAL OWNER OF THE PROPERTIES IN QUESTION?"

Clearly, they can not because the legitimate relatives of Julia Capiao cannot inherit from an illegitimate child of the latter, because that is the clear and unmistakable provision of Article 992 of the New Civil Code. Neither can Lutgarda Capiao inherit from the legitimate relatives of Julia Capiao who are the plaintiffs in the instant case."

A copy of the above decision was received by the petitioners on April 22, 1974. On May 14, 1974, they filed their motion for reconsideration. The motion having been denied, they filed their notice of appeal on August 26, 1974, stating that they were appealing to the Supreme Court from the summary judgment in view of the denial of their motion for reconsideration. They received the order of denial on August 22, 1974.

On September 18, 1974, petitioners submitted their record on appeal for approval. On October 2, 1974, the same was approved in open court. The approval was, however, revoked on the same day by the respondent judge after he received a telegram from the private respondent's counsel stating that they had just received a copy of the record on appeal through unregistered mail without a copy of the summary judgment and other exhibits and annexes. The respondent's counsel prayed for fifteen days within which to file his opposition to the record on appeal.

On January 24, 1975, after considering the motion for approval of the record on appeal, the respondent's

opposition thereto and the petitioners' reply, the respondent judge issued another order dismissing the record on appeal for having been filed outside the reglementary period. The petitioners moved for a reconsideration. After the motion was denied, they filed a petition for mandamus before the Court of Appeals seeking to compel the respondent judge to approve their record on appeal and to annul the latter's order dismissing said record on appeal.

While the petition was pending before the appellate court, the petitioners filed a motion to elevate the case to the Supreme Court.

In denying the above motion and in dismissing the petition altogether, the appellate court held:

"This case is analogous to *Philippine National Bank v. Court of Appeals, et al.* (8 SCRA 254).

"There, a petition for mandamus was denied by this Court which 'considered itself without jurisdiction to act on the petition because it found from the very notice of appeal and record on appeal submitted by petitioner that it was its intention to appeal the main case directly to the Supreme Court' on questions of law. This Court's resolution was sustained by the Supreme Court.

"It was also contended, in said case, that the Court of Appeals should not have dismissed the petition outright but should have transferred it to the Supreme Court upon the theory that it was erroneously filed. In short, petitioner believed that the case should have been certified or elevated to the proper appellate tribunal. However, it was held that this Court was correct as 'Section 31 of the Judiciary Act of 1948, invoked by petitioner, only applies to cases that are erroneously appealed and not to special civil actions . . . ' x x x; see also *Philippine Products Co. v. Court of Appeals*, 21 SCRA 870)

"WHEREFORE, the petition should be, as it is hereby dismissed. No costs."

The legal questions raised to us are: (1) whether or not the trial court committed grave abuse of discretion when it dismissed the appeal of petitioners on the ground that the record on appeal was filed out of time; and (2) whether or not the Court of Appeals in dismissing the petition acted in accordance with law or with the applicable decisions of the Supreme Court and whether or not it departed from the usual course of judicial proceedings as set down by this Court.

With regard to the first issue, we hold that the trial court acted correctly in dismissing the appeal on the ground that the record on appeal was filed out of time. The records bear out the fact that the petitioners filed their record on appeal nineteen days after the last day to perfect the appeal. Moreover, it did not incorporate the Motion for Summary Judgment with its Annexes and Exhibits nor was it accompanied by any motion for an extension of time to file a record on appeal which, if approved, could have justified its having been filed late. Furthermore, the appeal bond was filed fifteen (15) days late. We, therefore, rule that no grave abuse of discretion may be imputed against the respondent judge. As we held in the case of *Garcia v. Echiverri* (132 SCRA 638-639):

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"Well-rooted is the principle that perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional and failure to do so renders the questioned decision final and executory that deprives the appellate court of jurisdiction to alter the final judgment much less to entertain the appeal (*Acda v. Minister of Labor*, 119 SCRA 309; *Agricultural and Industrial Marketing, Inc. v. Court of Appeals*, 118 SCRA 49; and *Santos v. Court of Appeals*, 125 SCRA 22).

"In the case at bar, it is admitted that the decision of the lower court was received by private respondents on March 9, 1976. On March 29, 1976 (or on the 20th day) private respondents filed their first motion for reconsideration. On April 29, 1976, private respondents received the lower court's order denying the first motion for reconsideration, therefore, the last day for perfecting their appeal would be May 9, 1976. Since private respondents filed their notice of appeal only on June 4, 1976, the same was filed out of time.

Consequently, the decision appealed from is already final and executory."

On certain occasions, this Court has allowed the filing of an appeal outside the period prescribed by law in the interest of justice. Emphatic in the decisions cited by the petitioner are strong considerations of substantial justice. The present case does not warrant such liberality because the decision of the lower court is satisfactorily supported by the records. It is clear from the records that the petitioners cannot inherit the properties in question because of Article 992 of the Civil Code. Being relatives on the legitimate line of Julia Capiao, they cannot inherit from her illegitimate daughter. Their relative Julia Capiao predeceased the daughter, Lutgarda Capiao. As explained by Manresa, whom the private respondents cited:

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"Between the natural child and the legitimate relatives of the father or mother who acknowledged it, the Code denies any right of succession. They cannot be called relatives and they have no right to inherit. Of course, there is a blood tie, but the law does not recognize it. In this Article 943 is based upon the reality of the facts and upon the presumptive will of the interested parties; the natural child is disgracefully looked down upon by the legitimate family; the legitimate family is, in turn, hated by the natural child; the latter considers the privileged condition of the former and the resources of which it is thereby deprived; the former, in turn, sees in the natural child nothing but the product of sin, a palpable evidence of a blemish upon the family. Every relation is ordi-narily broken in life; the law does no more than recognize this truth, by avoiding further grounds of resentment. (7 Manresa, 3rd ed., p. 110)."

In the case of *Castro v. Court of Appeals* (123 SCRA 787), we ruled:

"Where the interests of justice would not be served by a policy of liberality, however, we cannot cite a lower court as having acted with grave abuse of discretion simply because it has correctly but strictly applied the rules. In the instant case, the decision of the respondent court is supported by the records. A remand for further proceedings, therefore, would only result in needless delays - a few more years perhaps of a tortuous journey through new proceedings in the trial court, an intermediate appeal, and another resort to this Court through a petition for review to finally achieve the same result which is an order to pay an admitted indebtedness."

Anent the second issue raised by the petitioners, we hold that the appellate court correctly dismissed the petition for mandamus on the ground that it had no appellate jurisdiction over the same. It should be noted that the petitioners stated that they were appealing the main case to this Court. Therefore, the Court of Appeals could not have exercised its appellate jurisdiction over the petition for mandamus since it was merely incidental to the main case. In the case of *Philippine National Bank v. Court of Appeals* (8 SCRA 254), the same case relied upon by the appellate court, we ruled:

"It As evident from the above-quoted resolution that the Court of Appeals denied the petition for mandamus because it found that petitioner unequivocally manifested in its notice of appeal dated September 1, 1960 its intention to appeal directly to the Supreme Court on purely questions of law and that it reiterated the same intention in the record on appeal it submitted on September 9, 1960 wherein it prayed that the same be approved and duly transmitted to the Supreme Court. And the Court of Appeals predicated its resolution on Section 30 of Republic Act 296 wherein it is expressly provided that the Court of Appeals shall have original jurisdiction to issue, among others, a writ of mandamus when such remedy is invoked merely in aid of its appellate jurisdiction. This has been interpreted to mean that, should the main case be appealed and the appeal should fall under the exclusive jurisdiction of the Court of Appeals, it is only then that said court can act on the special civil action of mandamus; otherwise, the jurisdiction to act thereon would devolve upon the Supreme Court. x x x."

Similarly, in the case of *Philippine Product Co. v. Court of Appeals* (21 SCRA 874), we ruled:

"Petitioner's submission that the Court of Appeals had no jurisdiction of entertain the petition for certiorari and

prohibition filed before it is well taken. By statute (Section 30, Republic Act 296 [The Judiciary Act]) the Court of Appeals may only issue writs of certiorari and prohibition 'in aid of its appellate jurisdiction.' This phrase has been consistently interpreted to mean that should the main case be appealed and the appeal fall under the exclusive appellate jurisdiction of the Court of Appeals, then only can it act on said special civil actions concerning a matter incidental to the main case. Otherwise, i.e., if the main case is not properly appealable to the Court of Appeals, jurisdiction to act on the special civil actions would devolve on the Supreme Court exclusively. (*Miailhe v. Halili*, 103 Phil. 639; *Albar v. Carandang*, L-18003, Sept. 29, 1962; *PNB v. Court of Appeals*, L-18728, May 31, 1963; and *Tuason v. Jaramillo*, L-18932-34, etc., Sept. 30, 1963)"

Furthermore, it is an established principle that the writ of mandamus may not be issued to control the discretion of a judge or to compel him to decide a case or motion in a particular way, the writ being available only to compel him to exercise his discretion or jurisdiction. (*Phil. Air Lines Employees Association v. Phil. Air Lines, Inc.*, 111 SCRA 220). The respondent judge, therefore, cannot be compelled by such special civil action to approve the petitioners' appeal which was perfected after the reglementary period to do so had expired. The petitioners contend that the appellate court should have certified the petition to the Supreme Court, thus leaving the resolution of the issues to this Court. Since the main case is manifestly without merit, the action of the appellate court cannot be impugned. No considerations of substantial justice which would warrant the exercise of equity powers exist in this petition.

WHEREFORE, the petition is hereby DISMISSED for lack of merit, with costs against the petitioners.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, Relova, and Alampay, JJ., concur.

De La Fuente, J., no part.

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