

AMADO TAGULAO, PETITIONER AND APPELLANT, VS. JUDGE FORTUNATA PADLAN-MUNDOK, ET AL., RESPONDENTS AND APPELLEES.

G.R. No. L-15550. May 30, 1960

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an appeal from a decision of the Court of First Instance of Pangasinan dismissing the appeal of petitioner for his failure to pay the docketing fee within the reglementary period.

It appears from the record that in Civil Case No. 115 for forcible entry filed before the Justice of the Peace Court of San Carlos, Pangasinan, judgment was rendered in favor of Felipe Rescober, respondent herein, against Amado Tagulao, petitioner herein, ordering the latter to vacate the land in question and to pay damages. Petitioner, thru counsel, received copy of the decision on July 24, 1956. On the same day, petitioner filed an appeal bond in the amount of P30.00 under official receipt No. D-0703601. Subsequently, he filed a motion ex parte asking the court to fix the supersedeas bond inasmuch as he has already filed a notice of appeal and paid the amount of P30.00 as appeal bond, and upon fixing by the court of the supersedeas bond in the amount of P720.00, petitioner paid the same on July 26, 1956.

On August 18, 1956, counsel for respondent Felipe Rescober filed a motion for the execution of the judgment on the ground that petitioner failed to pay the appellate court docket fee as required by Rule 40, Section 2, of the Rules of Court. On August 22, 1956, petitioner paid to the municipal treasurer the amount of P5.00 "as additional to the amount receipted on receipt No. 0703601, dated July 24, 1956", and with the word "docketing fee". And on August 30, 1956, he filed an opposition to the motion for execution of judgment of respondent alleging, among others, that he has complied with the requirements of Rule 40, Section 2, of the Rules of Court and praying that the motion for execution be denied and the records of the case be forwarded to the Court of First Instance of Pangasinan for further proceedings. Again, petitioner filed a memorandum on December 10, 1956 praying for the denial of the motion for execution and attaching thereto his affidavit and that of the Municipal Treasurer of San Carlos, Pangasinan, wherein the latter states that on July 24, 1956 Amado Tagulao came to his office and asked him how much was the amount necessary to appeal a decision; that upon informing him that it was P30.00, Tagulao deposited in cash the said amount under receipt No. D-0703601, and that he committed a mistake in writing on the receipt the words "appeal bond" instead of "cash deposit and/or appellate court docket fee".

On December 17, 1956, the court issued an order granting the petition for execution on the ground that since petitioner failed to perfect his appeal because of his failure to pay the required docket fee, the decision has long become final and executory. On January 3, 1957, petitioner filed an action for certiorari with preliminary injunction before the Court of First Instance of Pangasinan, praying that the provincial sheriff or his deputies be enjoined from executing the judgment, and upon filing by petitioner of a bond amounting to P300.00, the court issued the writ prayed for.

The parties did not submit any evidence during the hearing except the record of Civil Case No. 115 pending before the justice of the peace court after which they submitted the case for decision. And on September 26, 1957, the Court of First Instance of Pangasinan rendered decision affirming in effect that of the justice of the peace court that petitioner did not perfect his appeal due to his failure to pay the docket fee as required by law. Petitioner appealed the case to the Court of Appeals, but the latter court certified the case to us on the ground that the issues raised are not factual but legal.

The question to be determined hinges on whether or not petitioner has perfected his appeal within the reglementary period as required by Rule 40, Section 2, of the Rules of Court, which provides.

"Sec 2. Appeal, how perfected.—An appeal shall be perfected within fifteen days after notification to the party of the judgment complained of, (a) by filing with the justice of the peace or municipal judge a notice of appeal; (b) by delivering a certificate of the municipal treasurer showing that the appellant has deposited the appellate court docket fee, or, in chartered cities, a certificate of the clerk of such court showing receipt of the said fee; and (c) by giving a bond."

Petitioner contends that he has substantially complied with the requirements of the law because when he received copy of the decision on July 24, 1956, he filed a notice of appeal, paid P30.00 as appeal bond, and on the third day he filed the supersedeas bond. He avers that since the amount of appeal bond required in his appeal is only P25.00 and he paid P30.00 instead, the extra P5.00 should be applied as docketing fee. He alleges further that since the municipal treasurer committed a mistake in informing him that the amount to be paid was only P30.00 instead of the amount of P35.00 (P25.00 appeal bond and P10.00 as docketing fee), and he wrote on the receipt the words "appeal bond" instead of "cash deposit and/or appellate court docket fee", such act should not militate against him because he acted in good faith and has already paid the sum of P5.00 to complete the docket fee, citing in his favor the case of *Segovia vs. Barrios and Bretania*, 75 Phil., 764 wherein we held:

"The fact remains that the petitioner, as appellant from the judgment of the Municipal Court of Iloilo, duly paid the docket fee to the Clerk of Court of First Instance in the amount required by the latter in accordance with his practice based on his bona fide understanding of the statute on the subject; and when the judge required the appellant to pay P8 more he did so without delay. Under the circumstances, to dismiss his appeal would be whimsical, unjust, and unwarranted. Every citizen has the right to assume and trust that a public officer charged by law with certain duties knows his duties and performs them in accordance with the law. To penalize such citizen for relying upon said officer in all good faith is repugnant to justice."

We are inclined to agree to this contention for it appears that as soon as he received copy of the decision on July 24, 1956, appellant went to the office of the municipal treasurer to inquire about the requisite, fees he needs to pay to perfect his appeal, and upon being informed that it was P30.00, he then and there paid said sum to said official who thereupon issued to him an official receipt mistakenly denominating it as appeal bond.

The rule requires that to perfect an appeal from a decision of a justice of the peace court, besides filing a notice of appeal and giving a bond within the period of fifteen days, he must pay the docket fee of P10.00 to the municipal treasurer (Sections 2 and 3, Rule 40). The bond consists in the sum of P30.00 to be executed by the adverse party with at least one sufficient surety conditioned that the appellant will pay all costs which the court of first instance may award against him. However, in lieu of such bond, the appellant may file with the court a certificate of the municipal treasurer showing that he has deposited the sum of P25.00 to be available for the satisfaction of any judgment for costs that may be rendered against him.

It, therefore, appears that the totality of the fees that one has to deposit to perfect the appeal is P35.00—P25.00 as cash bond, and P10.00 as docket fee. Yet, the amount which the municipal treasurer informed appellant that he should deposit to perfect his appeal is only P30.00, which he immediately paid. Apparently, the failure of

appellant to pay the required docket fee is due to the mistake of the municipal treasurer and not to the fault of appellant for he merely relied on the information given him by said official. For this mistake, appellant should not be made answerable, for he acted in good faith relying upon the word of the municipal treasurer who because of the nature of his duties is in a position to know the correct amount of fees needed to perfect an appeal. To hold otherwise would be unfair and unjust and would amount to a miscarriage of justice. As this Court aptly observed: "Every citizen has the right to assume and trust that a public officer charged by law with certain duties knows his duties and performs them in accordance with the law. To penalize such citizen for relying upon said officer in all good faith is repugnant to justice." (Segovia vs. Barrios and Bretania, supra)

"Where an appellant was from the beginning ready and willing to pay into court the correct amount of docketing fee and the correct amount was not paid because of error of the clerk of the justice of the peace court, who, believing P8 to be the correct fee, required petitioner to pay that amount only, it would be unjust to dismiss the appeal, just for the mistake of the government clerk" (Marasigan vs. Palacio, 87 Phil., 839).

Wherefore, the decision appealed from is reversed. The Justice of the Peace Court of San Carlos, Pangasinan, is hereby ordered to forward the record of Civil Case No. 115 to the lower court for further proceedings. No costs.

Paras, C. J., Bengzon, Montemayor, Labrador, Concepcion, Barrera, and Gutierrez David, JJ., concur.

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