

**CANDIDA BAGAMASPAD MUNEZ AND SEVERINO MUNEZ,
PETITIONERS, VS. THE HONORABLE COURT OF APPEALS, GERMAN
ECHAVEZ AND CRESENCIANA CANOY, RESPONDENTS.**

G.R. No. L-46010. July 23, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition for certiorari seeks to set aside the decision of the Court of Appeals which reversed the order of the then Court of First Instance of Lanao del Norte granting the petition for relief prayed for by the petitioners, on the ground that the petition was filed beyond the reglementary period provided in Section 3, Rule 38 of the Revised Rules of Court.

Way back in 1947, petitioner Candida B. Munez executed a deed of sale pacto de retro over two parcels of agricultural land in favor of private respondent German Echavez for P3,500.00. The period for repurchase was fixed at two years and Echavez, as vendee a retro, took possession.

In 1967, the petitioners filed a civil case to have the sale decreed as an equitable mortgage or antichresis.

In 1971, the Court of First Instance of Iligan City declared the transaction to be a true sale with right of repurchase. It also held that, as the right of repurchase had expired, the respondent was the absolute owner of the parcels of land and that the petitioners had lost their right to take advantage of the last paragraph of Article 1606 of the New Civil Code which gives to the vendor a retro a 30-day period from final judgment within which to exercise the right of repurchase.

The petitioners moved for a reconsideration of the decision. The trial court granted the motion on August 2, 1971 and gave the petitioners the right to redeem within the said 30-day period.

The private respondent filed a motion for reconsideration. The trial court denied the motion on September 28, 1971. On October 19, 1971, the private respondent filed a notice of appeal. However, he was never able to perfect his appeal.

On July 18, 1972, the private respondent moved to have himself and his co-respondent, Cresenciana Canoy, declared as absolute owners of the properties in question and for the execution of judgment on attorney's fees on the ground that the petitioners failed to redeem the properties within the 30-day period from the finality of the judgment.

On November 15, 1972, the trial court granted the motion and declared the private respondents as absolute owners of the properties. It also ordered the issuance of execution for attorneys fees.

On December 11, 1972, the Sheriff, pursuant to the said order, served copy on the petitioners, levied on the property of the latter to answer for the monetary judgment, and subsequently sold a residential lot of the petitioners. A return of the writ was made on February 14, 1973.

On February 24, 1973, the petitioners filed a petition for relief from order and judgment, contending that due to excusable negligence and mistake, having been misled by respondent Echavez's appeal, they were not able to determine when the thirty-day period would begin. The respondent opposed the petition.

On March 28, 1973, the trial court reconsidered its order and granted the petition for relief, giving herein petitioners a period of fifteen (15) days from receipt of the order within which to exercise the right of redemption and ordering the petitioners to pay the sum of P2,000.00 for attorney's fees.

On appeal, the Court of Appeals reversed the order of the trial court, holding that:

"This being the case, in the mind of this Court, that order of 15 November, 1972, was a clearly appealable order on the part of vendor-a-retro, herein plaintiff (petitioner); she should have appealed; she did not; she let pass the period to appeal; not only this, she received a copy of the writ of execution on 11 December, 1972, see Sheriff's return, p. 89, R.A., and she did nothing; the Sheriff levied upon her property and sold it after proper advertisement on 12 February, 1973-and she acted for the first time on 24 February, 1973 when she filed present petition for relief from judgment, - and trial Judge even without hearing evidence thereon in view of opposition of defendant, - granted, - it is the conclusion of this Court that His Honor was plainly wrong, - since R.A. shows that plaintiff had failed to appeal from the order of 15 November, 1972 but did not, she lost all avenues of appeal; if she now claims relief under Rule 38, it should be remembered that on 11 December, 1972, she was served copy with the writ of execution, it is plain that as of that date she was personally notified of the fatal order against her; she had only 60 days from that to file petition for relief, under Rule 38, Sec. 3, but she filed this petition on 24 February, 1973, that is to say, 15 days too late; therefore, the order that granted relief and gave plaintiff still another 15 days was beyond authority of trial Judge to grant; x x x." (p. 49, Rollo)

In this present petition, the petitioners assign the following errors:

I

THE HONORABLE COURT OF APPEALS ERRED IN NOT APPLYING THE PROVISION OF ARTICLE 1606 OF THE NEW CIVIL CODE BY ITS FAILURE TO DETERMINE WHEN THE THIRTY-DAY PERIOD TO REDEEM COMMENCED TO RUN AND EXPIRED IN THE CASE AT BAR.

II

THE HONORABLE COURT OF APPEALS ERRED IN TAKING COGNIZANCE OF A QUESTION RAISED FOR THE FIRST TIME ON APPEAL.

III

THE HONORABLE COURT OF APPEALS ERRED IN NOT EXTENDING SUBSTANTIAL JUSTICE BY INVOKING A TECHNICALITY. (p. 18, Rollo)

In their first assignment of error, the petitioners contend that the respondent court should have determined the definite period for redemption reckoned from the time the decision of the trial court was entered; and that since the decision has not yet been entered, the thirty-day period to redeem has not yet commenced to run and naturally has not yet expired. The petitioners point out that the private respondents did not formally withdraw their appeal and neither did the trial court dismiss the same. Therefore, there being no motion to withdraw the appeal nor an order of the court dismissing the same, and there being no entry of the judgment or order of August 2, 1971, the petitioners had no means of ascertaining when the thirty-day period to redeem began to run.

The above contentions have no merit,

Article 1606 of the New Civil Code upon which the petitioners base their right to repurchase provides:

"The right referred to in article 1601, in the absence of an express agreement, shall last four years from the date of the contract.

"Should there be an agreement, the period can not exceed ten years.

"However, the vendor may still exercise the right to repurchase within 30 days from the time final judgment was rendered in a civil action on the basis that the contract was a true sale with right to repurchase."

It is clear from the above article that the period to redeem is reckoned from the time judgment becomes final. And when does a judgment become final?

In the case of *Abbot v. National Labor Relations Commission* (145 SCRA 206, 209), we reiterated the well-settled rule that a judgment becomes final after the period to appeal had lapsed without one having been perfected:

"In *Sawit v. Rodas* and *Daquis v. Bustos*, we held that a judgment becomes final and executory by operation of law, not by judicial declaration. (73 Phil., 310, 315; 94 Phil. 913, 917) Accordingly, finality of judgment becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected. (*Garcia v. Echevarria*, 132 SCRA 631) In such a situation, the prevailing Party is entitled as a matter of right to a writ of execution; (*De Fiesta v. Llonente*, 25 Phil. 554, 565; *Lim v. Singian*, 37 Phil. 817, 823-824; *Philippine Trust Co. v. Santamaria*, 53 Phil. 463, 467; *Ebero v. Canizares*, 79 Phil. 152, 155; *Manansala v. Narvasa*, 101 Phil. 1260-1261; *De los Angeles v. Victoriano*, L-13623, July 27, 1960) and issuance thereof is a ministerial duty, compellable by mandamus. (*Hidalgo v. Crossfield*, 17 Phil. 466, 469-470; *Amor v. Jugo*, 77 Phil. 703, 706-707; *Buenaventura v. Garcia*, 78 Phil. 759, 762)."

Also, in the case of *St. Dominic Corporation v. Intermediate Appellate Court* (138 SCRA 242, 251), we distinguished the date of the finality of judgment from the date of the entry thereof.

We stated:

"Secondly, even if we reckon the 60-day period from the date of the finality of the decision as interpreted by the appellate court, such finality should be counted from March 5, 1982, which was the date the decision became final as indicated in the entry of judgment and not from August 26, 1982 which is the date the entry was made. The date of a finality of a decision is entirely distinct from the date of its entry and the delay in the latter does not affect the effectivity of the former as such is counted from the expiration of the period to appeal. x x x."

It is, therefore, clear that the thirty-day period within which the petitioners should have exercised the right of redemption must be reckoned from August 2, 1971 or from the time the petitioners received a copy of the trial court's order granting their motion for reconsideration and not from the time the said order was entered as maintained by the petitioners.

There was also no need for the trial court to dismiss the appeal upon motion by the private respondents because there was never a perfected appeal in the first place. Hence, the appellate court did not commit any grave abuse of discretion when it failed to fix the beginning and the end of the thirty-day period of redemption as said period had clearly elapsed.

With regard to the second assigned error, the petitioners contend that the appellate court erred in taking cognizance of the issue of the timeliness of the filing of the petition for relief when it was raised only for the first time on appeal by the private respondents and because the primary purpose of the petition for relief was for the trial court to determine when the thirty-day period to redeem will commence to run.

There is likewise no merit in this contention.

The records bear out the fact that in their motion for reconsideration, the private respondents stressed the fact that although it may be said that the petitioners came to know of the order of November 15, 1972 only on December 11, 1972 when a writ of execution was served on them, their petition for relief from judgment was filed only on February 24, 1973. Furthermore, it is the duty of the petitioners to show that their petition for relief was filed within the period provided for under Rule 38 of the Revised Rules of Court. In *Arcilla v. Arcilla* (138 SCRA 560, 566), we ruled:

“The rule, therefore, is that in order for a petition for relief filed under Rule 38 to be entertained by the court, the petitioner must satisfactorily show that he has faithfully and strictly complied with the provisions of said Rule 38. Consequently, in assailing the lower court's dismissal of his petition for relief for having been filed out of time, it is incumbent upon herein petitioner to show that the said petition was filed within the reglementary period specified in Section 3, Rule 38. He has failed to do so, instead he argues on the merits of his petition for relief, without first showing that the same was filed on time in the court below. On this ground alone, the instant case should be dismissed.”

In the case at bar, the petitioners have not successfully rebutted the fact that they were at least served a copy of the writ of execution on December 11, 1972, a fact which sufficiently makes them aware of the finality of the judgment against them. Instead, the petitioners persistently question the propriety of the appellate court's passing upon the timeliness of the filing of the petition for relief, when it is incumbent upon them to prove that their petition was indeed filed on time.

On the third assigned error, the petitioners argue that the Rules of Court should be applied to secure justice and not to allow the commission of fraud.

There is no evidence of any commission of fraud on the part of the private respondents. The decision of the appellate court is sustained by the records of the case. The petitioners, therefore, can not contend that they were denied substantial justice on the basis of pure technicality. As we have held in the case of *Vda. de Crisologo v. Court of Appeals* (137 SCRA 231, 238):

“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. x x x.”

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

SO ORDERED.

Fernan (Chairman), Feliciano, Bidin and Cortes, JJ., concur.

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