

**GALILEO D. SIBALA AND ANTHONY CHAN,
PETITIONERS/APPELLANTS, VS. HON. VICENTE BULLECER, JUDGE
COURT OF FIRST INSTANCE OF DAVAO ORIENTAL, AURORA DE
GUZMAN, PAZ DE GUZMAN, AND NICO...**

G.R. No. L-32964. August 30, 1988

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review of the decision of the Court of Appeals[*] dated November 3, 1970, dismissing petitioners' petition for certiorari with preliminary injunction wherein they sought to annul the orders of the then Court of First Instance of Davao Oriental denying their motion to dismiss as well as their amended motion for reconsideration.

The antecedent facts of this case as revealed by the records are as follows:

In Cadastral Case No. N-15, L.R.C. Record No. 447, the Court of First Instance of Davao Oriental adjudicated Lots Nos. 167 and 182 of the Mati Cadastre, in favor of petitioner Galileo D. Sibala. The decree for Lot 167 was issued on June 27, 1966. With respect to Lot 182, the decree was issued on October 26, 1965.

On December 8, 1965, or long before the expiration of the one-year period for filing a petition for review of the decree, the private respondents filed a motion for reconsideration praying that the decisions on said lots be set aside on the ground of fraud. The original motion for reconsideration of December 8, 1965 was superseded by the Amended Motion for Reconsideration of September 29, 1966 and by the Supplemental Amended Motion for Reconsideration of December 9, 1966. On the basis of the allegations of the aforesaid motions for reconsideration, the respondent Judge treated them as an actual Petition for Review of Decree under Sec. 38 of Act 496, without objection from petitioner Galileo D. Sibala. Anthony Chan was impleaded as a respondent in the aforesaid Petition for Review, he being the purchaser of the said lots in question from Galileo D. Sibala.

On December 24, 1966, petitioner Galileo D. Sibala filed a Motion to Dismiss the petition for review of the private respondents on the ground that the lower court "has no more jurisdiction over Lots 167 and 182," because (1) the private respondents were declared in default with regard to Lot 182; (2) their motions for reconsideration (treated by respondent judge as a pe-tition for review) were filed out of time; and (3) the decrees for said lots were now incontrovertible. This motion was denied on March 18, 1968, on the ground that "this case is one for petition for review of decree and not merely a motion for reconsideration of the judgment, and that furthermore, it is not a condition precedent that a judgment in default, if there is one, should be first set aside before a petition for review of a decree may be filed" and on the further ground that the petition "alleges facts showing Anthony Chan is not an innocent purchaser for value."

On July 10, 1968, petitioner Galileo D. Sibala filed a Second Motion to Dismiss alleging as ground that "the lower court lacks jurisdiction to entertain the same by virtue of the failure of the de Guzmans to pay in advance

the filing fee of P6.00 required for a petition for review by Sec. 114 of Act 496, as amended by RA 117." This motion was denied on July 29, 1968.

On September 16, 1968, petitioner Sibala filed his Third Motion to Dismiss claiming this time that the filing fee of P6.00 was paid beyond the one-year period for the filing of a petition for review. Again, this motion was denied on November 25, 1968.

On December 16, 1968, petitioner Sibala filed an Amended Motion for Reconsideration, against which the private respondents filed an opposition on January 14, 1969. This amended motion for reconsideration was denied on September 6, 1969.

The petitioners filed a petition for certiorari in the Court of Appeals which was dismissed.

Hence, the instant petition.

The assigned errors raised in the petition are as follows:

- THE TRIAL COURT AND THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLD-ING THAT THE PETITION FOR REVIEW FILED BY RESPONDENTS DE GUZMAN WAS FILED ON JULY 29, 1968, WHEN THE FILING FEE OF P6.00, PURSUANT TO SEC. 114, ACT 496, AS AMENDED BY RA 117, WAS PAID.
- THE TRIAL COURT AND THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE PETITION FOR REVIEW FILED BY RESPONDENT DE GUZMAN WAS FILED BEYOND THE 1-YEAR PERIOD ALLOWED FOR FILING A PETITION FOR REVIEW UNDER SEC. 38, ACT 496.
- THE TRIAL COURT AND THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLD-ING THAT THE COURT OF FIRST INSTANCE OF DAVAO ORIENTAL DID NOT HAVE JURISDICTION OVER THE PETITION FOR REVIEW FILED BY RESPONDENT DE GUZMAN.

The main issue in this case is whether or not the petition for the review of the decrees was filed on time.

The petitioners contend that an action or proceeding is deemed filed on the date the filing fee is paid. The mere delivery by the private respondents to the clerk of the Court of First Instance of their motions for reconsideration which were treated by respondent Judge Bullecer as a petition for review, without the payment of the filing fee of P6.00, as required by Sec. 114, Act 496, as amended by RA 117, produced no legal effect, until the payment of the filing fee was made on July 29, 1968. Since the payment of the filing fee was made on July 29, 1968, it was on this date that the petition for review of the decrees should be considered as filed. The one-year period within which to file a petition for review for Lot No. 167 and Lot No. 182 having expired on June 27, 1967, and October 26, 1966, respectively, or one year after the issuance of their respective decrees of registration, the petition was filed out of time. The time limit allowed by Sec. 38, Act 496, is a matter of computation, and cannot be extended by reason of circumstances, such as excusable negligence or good faith, and/or willingness on the part of a party to comply with legal requisites then still uncomplied with.

This contention is untenable.

As correctly found by the Court of Appeals, private respondent De Guzman originally filed a motion for reconsideration on December 8, 1965 and an amended motion for reconsideration on September 29, 1966. However respondent Judge treated aforesaid motions as petitions for review, by his order of March 18, 1968.

Under the circumstances, it is understandable why the Clerk of Court did not require them to pay the docket fee upon filing and why private respondents who filed aforesaid motions well ahead of the expiry period of one year (June 27, 1967 as regards Lot 167 and October 26, 1966 as regards Lot 182) did not pay the docket fee of P6.00

upon filing of said motions but only on July 29, 1968, after they were notified of said Order.

Otherwise stated, private respondents cannot be blamed for the late payment of docket fees, much less may they be made to suffer whatever errors may have been committed in this case which are obviously not of their doing.

Hence, this Court has invariably ruled that where petitioner has acted in good faith (in fact here, he was from the beginning ready and willing to pay to the court the correct amount of the docket fee), it would be whimsical, unjust, and unwarranted to dismiss his appeal because of the error of the Clerk of Court in not charging him with the correct amount. To penalize such citizen for relying upon said officer in all good faith is repugnant to justice (*Marasigan vs. Palacio*, 87 Phil. 839 [1950]; *Segovia vs. Barrios, et al.*, 75 Phil. 764, 765 [1946]; *Tagulao vs. Padlan-Mundok*, 108 Phil. 499 [1960]).

More specifically where the appeal fee has been paid although it was delayed, it was held that failure to pay the docketing fees did not automatically re-sult in the dismissal of the appeal. Dismissal is discretionary with the Appellate Court (*Nawasa vs. Secre-tary of Public Works and Communications*, 16 SCRA 536, 539 [1966]) and discretion must be exercised wisely and prudently, never capriciously with a view to substantial justice (*Cucio vs. CA*, 57 SCRA 401 [1974]) and "in accordance with the tenets of justice and fair play" with a great deal of circumspection considering all attendant circumstances (*Fortanar vs. Bonsubre*, 145 SCRA 663 [1986]).

Thus while it is true that the requirement of an appeal fee is by no means a mere technicality of law or procedure but is an essential requirement in the perfection of an appeal, without which the decision appealed from would become final and executory (*Acda vs. Minister of Labor*, 119 SCRA 307 [1982]), it has been held that where as in the case at bar, the fee had been paid, although payment was delayed, the broader interests of justice and the desired objective of resolving controversies on the merits demand that the appeal be given due course (*Del Rosario & Sons Logging Enterprises Inc. vs. NLRC*, 136 SCRA 669 [1985]).

PREMISES CONSIDERED, the petition is DENIED and the assailed decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

[*] CA, Special Fourth Division, penned by Justice Antonio G. Lucero, with the concurrence of Justices Ramon O. Nolasco and Arsenio Solidum.

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