

**ABELARDO APORTADERA, SR., ABELARDO APORTADERA, JR., AND
RUBEN C. BATOY, PETITIONERS, VS. THE HON. COURT OF APPEALS,
HON. JUDGE VICENTE N. CUSI, JR., IN HIS CAPACITY AS PRESIDING...**

G.R. No. L-41358. March 16, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The petitioners question the judgment against them having become final and executory simply because their counsel did not claim from the Post Office the registered mail containing the copy of the resolution denying due course to their petition.

The petitioners filed a petition for certiorari and/or prohibition entitled Abelardo Aportadera, Sr., Abelardo Aportadera, Jr., and Ruben C. Batoy v. Hon. Judge Vicente N. Cusi, Jr., Presiding Judge, Court of First Instance of Davao City, Branch I, and Jose S. Joaquin, as Judicial Administrator of the Intestate Estate of the deceased Helen Corrales-Joaquin with the Court of Appeals. The case was docketed as CA-G.R. NO. Sp-03481-R.

The petitioners questioned the jurisdiction of the Court of First Instance in proceeding with Civil Case No. 8403 filed by respondent Jose S. Joaquin for quieting of title of Abelardo Aportadera, Jr.'s parcel of land covered by Original Certificate of Title No. P-3321, Free Patent No. 530218. The petition also raised the issue of lack of cause of action, estoppel, prescription and lack of legal personality to sue by Jose S. Joaquin. Earlier, the trial court denied the motion to dismiss Civil Case No. 8403 as well as two motions for reconsideration based on the aforesaid grounds submitted by the petitioners. The final order disposing of the second motion for reconsideration issued by the trial court stated that the grounds of the motion to dismiss did not appear indubitable, hence the determination of the said motion was deferred until the trial.

On October 10, 1974, the Court of Appeals promulgated a resolution denying due course to the petition, to wit:

"What this Court understands from petition and annexes is that: On 18 December, 1972, respondent Joaquin on basis of his Free Patent 526491, secured OCT No. P-3301, Davao City; and a few months later, on 6 March, 1973 on basis of petitioner Aportadera's Free Patent 530218, he was able to secure OCT No. 3321, but that thereupon, about a year later, on 27 June, 1974, respondent Joaquin filed Civil 8403 CFI Davao against Aportadera for quieting title and reconveyance of a portion of 974 sq. m. from Aportadera's title and free patent unto him. Joaquin, on the thesis that the same had been included in Aportadera's title by fraud, against which Aportadera moved to dismiss on various grounds, which respondent trial Judge denied, and his Honor maintained denial over motions for reconsideration; it is because of this that Aportadera comes here on certiorari and prohibition on various grounds;

"Considering: That both lands had already ceased to become public after issuance of the free patents and corresponding titles, therefore, conflicts between respective title holders could no longer be addressed to the Director of Lands but the trial court is the authority that has jurisdiction over the conflicting claims as it is the position of Joaquin that portion of his land was included in Aportadera's title, the remedy was really reconveyance on the ground of fraud prescribed in 4 years from its discovery, therefore, the action was filed

within the prescriptive period; as to the point that if granted, this would violate Sec. 118 of the Public Land Law which prohibits conveyance of lands acquired under homestead of free patents within 5 years, trial judge held that that provision is inapplicable to present case, and this Court concurs, surely that prohibition is a prohibition upon titleholder, but can not by him be used as an arm to defeat the rights of a rightful owner who has filed a case for reconveyance against him, otherwise, that prohibition would be utilized as an arm to perpetrate a wrong.

"IN VIEW WHEREOF, this Court is constrained to deny as it now denies, due course." (p. 49, Rollo)

A copy of the resolution was sent to the counsel of the petitioners by registered mail at P.O. Box 89, Anda St., Davao City. The counsel's address on record was Anda St., Davao City.

For failure of the petitioners to file a motion for reconsideration, the resolution became final and executory on November 26, 1974. Accordingly, entry of judgment was issued in the case.

On April 16, 1975, the petitioners received a copy of the entry of judgment by ordinary mail.

On the ground that their counsel had not received a copy of the October 10, 1974 resolution, the petitioners, on April 21, 1975 filed a motion to vacate entry of judgment.

In a resolution dated May 21, 1975, the Court of Appeals denied the aforesaid motion stating "According to record, p. 110-B, the registered letter to counsel containing the resolution denying due course was returned because unclaimed by him." (p. 57, Rollo)

The Court of Appeals denied a motion for reconsideration of the May 21, 1975 resolution.

The petitioners now reiterate that their counsel had not received the resolution of the appellate court denying due course to their petition. To substantiate their stand they cite the following circumstances: (1) On December 17, 1974, the petitioners through their counsel sent an inquiry as regards the status of the petition to the Court of Appeals; (2) On January 10, 1975, not receiving any reply, the petitioners sent a tracer-letter to the Clerk of Court of the Court of Appeals; (3) The copy of the resolution dated October 10, 1974 was addressed to P.O. Box 89 Anda St., Davao City which was not the address of record of their counsel because in all their pleadings from the Court of First Instance to the Court of Appeals their counsel's address was Anda St., Davao City; and (4) Affidavits of Atty. Gregorio A. Palabrica and Postman Patricio Alima attached to the petition attest to the fact that P.O. Box 89, the address used by the Court of Appeals was closed during the period when notices were allegedly sent to the petitioners.

The petition is devoid of merit.

We quote with approval the appellate court's findings which satisfactorily answer the asseverations of the petitioners, to wit:

"RESOLVED.

"Since petitioners' counsel bases his plea for lifting the entry of judgment upon his claim that he never received any registry notice of the resolution denying due course to his petition for certiorari returned unclaimed January 3, 1975. Corroborating this claim is a letter of inquiry dated January 10, 1975.

"Against the above claim are the notations: '2nd notice 11/20/74; last notice 11/28/74' on the envelop containing the resolution of dismissal, but returned unclaimed on page 110-B of the rollo.

"Said resolution was correctly addressed to movant's counsel - the address was taken not only from petitions but from counsel's letter of transmittal of his petition to this Court (p. 1, rollo), his letter of inquiry on page 96 of the rollo). Mr. Aquiling sent his reply letter at the same address (pp. 110-B, 111 rollo) which counsel

received (p. 102, rollo).

"It may be noted that the address given in the petition is merely 'Anda St., Davao City' without a number. The P.O. Box added to such address ensures delivery of the registry notices which according to the envelop on page 110-B rollo were sent to counsel on Nov. 20 and 28, 1974. Notices could be delivered thru the P.O. Box or at the street address. The first seems safer than on the street address without number.

"Whom to believe: the postmaster or counsel - may be the question; but it is the postmaster who should.

"In view thereof, DENIED." (p. 63, Rollo, Emphasis supplied)

Indeed, as between the denial of the petitioners' counsel that he received the notices of the registered mail and the postmaster's certification that said notices were sent to him, the postmaster's claim should prevail. The postmaster has the official duty to send notices of registered mail and the presumption is that official duty was regularly performed. (*Feraren v. Santos*, 113 SCRA 707; *Grafil v. Feliciano*, 20 SCRA 616; *Enriquez v. Bautista*, 79 Phil. 220).

The petitioners' claim that the P.O. Box Address used by the Court of Appeals was closed at the time the notices were sent to their counsel is not worthy of belief.

It is to be noted that in their motion for reconsideration of the appellate court's resolution denying their motion to vacate entry of judgment, the petitioners alleged that the two secretaries of their counsel never received notices as regards the petition with the Court of Appeals attaching thereto the secretaries' affidavits. The petitioners did not allege that the P. O. Box Address they now question was closed. It is only in this petition that the petitioners assert the claim that the said P. O. Box Address was closed at the time the notices were sent to their counsel. The Court of Appeals did not give any evidentiary value to these affidavits. We see no basis for reversing the factual findings of the respondent court. To the mind of this Court, the petitioners' claim is an afterthought on their part in an attempt to save their lost cause.

Section 8, Rule 13 of the Revised Rules of Court provides that if the addressee of a registered mail fails to claim it from the Post Office within five days from the date of the first notice of the postmaster, service becomes effective upon the expiration of that five-day period. (*Feraren v. Santos*, *supra*.)

In the instant case, the registered mail containing the copy of the October 10, 1974 resolution denying due course to the petition of the petitioners was returned unclaimed despite two notices sent to the counsel of the petitioners. The record is clear to the effect that the five-day period to claim the registered mail from receipt of notice had long expired. Consequently, service of the copy of the October 10, 1974 resolution of the Court of Appeals became effective. After the expiration of five days, the period to file a motion for reconsideration began to run. Since the petitioners did not file a motion for reconsideration within the reglementary period, the resolution became final and executory and the Court of Appeals was left no other recourse but to issue Entry of Judgment on the case.

With these findings, we find no need to discuss the other issues raised by the petitioners except that the memorandum for the respondents adequately refutes the petitioners' arguments. No considerations of substantial justice which, under extraordinary circumstances, may warrant the setting aside of pertinent rules have been presented by the petitioners to the satisfaction of this Court.

WHEREFORE, the instant petition is hereby DISMISSED for lack of merit. The questioned resolutions of the Court of Appeals are AFFIRMED.

SO ORDERED.

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

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