

CESAR T. ROSALES, ET. AL., PETITIONERS, VS. COURT OF APPEALS, ET. AL., RESPONDENTS.

G.R. No. L-25882. July 28, 1969

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Petition for review of the decision of the Court of Appeals (in CA-G. R. No. 35519-R) ordering the Court of First Instance of Quezon to approve the appeals in its Civil Case No. 5483 and Land Registration Case No. N-250 previously disallowed by the latter court; requiring the appellants Escuderos to post an additional appeal bond of P120.00 in 10 days; and suspending the effectivity of the pertinent decrees and titles (issued in connection with the land registration case) until the Escuderos' joint appeal has been finally resolved by the appellate court.

The basic facts, as found by the Court of Appeals, are not controverted:

"In Civil Case 5483, CFI Quezon Province, instituted on November 5, 1953, wherein the Rosaleses[1] are the plaintiffs and Arsenio Escudero, the defendant, involving a pacto de retro sale of P35,000.00 over four (4) parcels of land with a total area of 1,386 hectares, more or less, situated in the Municipality of Mulanay, Province of Quezon, the Lower Court rendered judgment on November 19, 1962 in favor of the Rosaleses and against Escudero declaring the pacto de retro sale and the affidavit of consolidation dated July 12, 1951 as null and void and without force and effect, absolving the Rosaleses from paying defendant Escudero the liability of P35,000.00, the consideration of the pacto de retro, without pronouncement as to costs (Record 68).

"On November 7, 1953, in Land Registration Case N-250, the Rosaleses filed an application for registration over 16 lots which included the lands subject of the pacto de retro sale, involved in Civil Case 5483 above cited. Spouses Arsenio Escudero and Rosario Adap filed an opposition upon the ground that the redemption period of the pacto de retro sale had already expired on October 31, 1947 without any repurchase having been made (Record 40).

"Upon the order of the Lower Court on March 1, 1954, the joint trial of Civil Case 5483 and Land Registration Case N-250 was decreed (Record 42). After a joint hearing of the two cases, the Lower Court rendered a separate judgment in Land Registration Case N-250, on November 21, 1962, adjudicating the pacto de retro properties in favor of the Rosaleses (Record 71)."

The records show that copies of the decisions in both the civil and land registration cases, mailed together in one envelope, were received by counsel for the Escuderos on January 28, 1963. On February 23, 1963, the Escuderos filed in the two cases a motion for new trial, which motion was denied on March 7, 1963. Notice of this denial order was received by Atty. Ruben Roxas, counsel for the Escuderos, on April 8, 1963.

On April 10, 1963, a messenger of Atty. Roxas filed in the Clerk's office (of the Court of First Instance of Quezon Province), for both cases, a notice of appeal and record on appeal. The notice of appeal, which was incorporated in the record on appeal, contained the following statement:

"Simultaneously with this Notice of Appeal, defendants in Civil Case No. 5483 and oppositors in L. R. C. Case

No. N-250 have deposited with the Clerk of Court of this Honorable Court the amount of P60.00 as the Escuderos' appeal bond as shown by O. R. No. H-3038791 dated April 10, 1963." (p. 174, Rollo)

As by order of January 26, 1965 the trial court disapproved their appeals for being out of time, the Escuderos resorted to the Court of Appeals in a petition for certiorari and mandamus. And, upon proper showing that during the pendency in the trial court of the motion for approval of the appeals the corresponding decrees and certificates of title over the properties subject of the proceeding were issued in favor of the Rosaleses, the Court of Appeals, at the instance of therein petitioners, directed the issuance of a writ of preliminary injunction restraining the exercise by the Rosaleses of any act of ownership of the same properties.

On October 15, 1965, the Court of Appeals rendered judgment, as stated at the beginning of this opinion. Motions for reconsideration of the decision were denied by resolutions of February 9 and March 16, 1966.

The parties herein are agreed that the filing by the Escuderos on April 10, 1963 of the notice of appeal and record on appeal was on time. The present petition against the ruling of the Court of Appeals approving the appeals, however, was based mainly on two grounds: (1) the alleged failure of the Escuderos to furnish herein petitioners with copy of the appeal bond; and (2) the invalidity of the deposit of the appeal bond for P60.00, petitioners claiming that said bond was not only inadequate^[2] but also that it was deposited with the Provincial Treasurer of Quezon and not with the Clerk of Court, contrary to the requirement of Section 3, Rule 41, of the old Rules of Court ^[3] which is applicable to the case.

We find no error in the Court of Appeals' overruling of the allegation of lack of service of the appeal bond upon the petitioners. As appeal bond in the two cases, the Escuderos made a cash deposit of P60.00 on April 10, 1963. This was specifically alleged in the record on appeal, of which the Rosaleses were duly served with copy. The inclusion of the statement in the record on appeal, which put petitioners on notice of the amount and date of filing of the appeal bond, constitutes sufficient compliance with the rules. For it may be observed that Section 3 of the old Rule 41 simply required that said party be furnished with the notice of appeal, appeal bond, and record on appeal, and did not prescribe any particular mode or manner in which the adverse party is to be informed of the filing of the necessary papers. The rules could not have confined compliance therewith to the service of separate or individual copies of the notices, but should have contemplated also of notices placed together in a single pleading or instrument. In fact, judicial cognizance may be taken of the practice of incorporating the notice of appeal in the record on appeal as part of said record, in which practice we see nothing objectionable. Indeed, no practical benefit would be attained in requiring individual and separate service to the adverse party of the notice of appeal and the record on appeal. As this Court had previously ruled, the act of filing a record on appeal is by itself eloquent indication of the party's intention to appeal; thus, although there was no proof that a notice of appeal had been filed, the appeal was nevertheless allowed, upon proper showing that there was a record on appeal already submitted to the court for approval.^[4] It is true that in this case the statement or certification re-garding the appeal bond was not entirely accurate as to the office where the bond was filed. Nonetheless, it cannot be denied that the notification made in the record on appeal was adequate enough to satisfy the purpose of the requirement, which is to inform and enable the adverse party to object to the amount of the deposited bond and accordingly guide the court into deciding whether or not the appeal is to be allowed.^[5]

The primary issue in this case actually lies on the effect of the deposit of P60.00, intended as appeal bond, with the Provincial Treasurer of Quezon, petitioners claiming that the deposit was irregular and defective and did not result in the perfection of the appeals. Respondents Escuderos, on the other hand, argue (a) that the deposit with the Provincial Treasurer is equivalent to the filing of the appeal bond with the Clerk of Court, since the Provincial Treasurer is the representative of the National Treasurer to whom the Clerk of Court anyway would ultimately deliver the funds he has collected; and (b) that the collection by the Provincial Treasurer of only P60.00 as appeal

bond for the two cases, instead of P120.00, was an innocent mistake that should not bar the appeal.

There is evidence on record that on April 10, 1963, or prior to the expiration of the period to appeal, which was April 12, 1963, a messenger of Atty. Roxas, carrying with him the sum of P120.00, travelled from Manila to Quezon province to file the appeal with the trial court. For one reason or another, while he was able to file the record on appeal in the Clerk's office, he was not able to deposit the appeal bond and was directed instead by somebody in the said office to make the payment to the Provincial Treasurer. The Deputy Provincial Treasurer accepted the payment, but only in the sum of P60.00, specifying in the corresponding receipt issued to the payee (O. R. H-3038791) that it was "for appeal bond deposit on Civil Case 5483 & Land Reg. Case No. N-250". The receipt number, date of payment, and amount of deposit was not only annotated on the court's copy of the notice of appeal but also, appeared in the record on appeal filed with the Clerk of Court and furnished to the adverse party. In the circumstances, we hold that the appeal in the two cases should have been allowed.

Considering that under the Judiciary Act -

"All moneys accruing to the Government, in the Supreme Court, in the Court of Appeals, and in the Courts of First Instance, including fees, fines, forfeitures, costs; or other miscellaneous receipts, and all trust or depository funds paid into the courts shall be received by the corresponding clerk of court and in the absence of special provision, shall be paid by him into the National Treasury to the credit of the proper account or fund and under such regulations as shall be prescribed, by the Auditor General" (Sec. 6, Republic Act 296; underlining supplied);

considering further that an appeal bond is one such trust or depository fund that has to be transmitted to the National Treasury; that the Provincial Treasurer is a person authorized to receive payments; and that there is no showing that the deposit so made has not been actually remitted to the National Treasury and credited to the proper account or fund therefor, the deposit in question, made within the reglementary period and duly annotated on the records, can be considered in substantial compliance with Section 3 of Rule 41.

Of course, it is true that for the two cases the appeal bond should be P120.00. The objection, however, to the allowance of the appeals on ground of insufficiency of the bond could be met by the pronouncement of this Court in the case of *Aquino vs. De Guzman*, 93 Phil. 824. In that case, a civil case and a land registration case, involving the same parties represented by the same attorneys, were tried jointly. Judgment in both cases having been rendered, counsel for the losing party presented a notice of appeal, a joint record on appeal, and an appeal bond for P60.00, which was deposited in the civil case. The bond in the registration case was filed about two months thereafter. Granting certiorari against the trial court's order allowing only the appeal in the civil case, this Court said:

"But while we hold that there is no error of law committed by the court a quo in dismissing the appeal in the registration case, there are potent reasons why, in the exercise of its discretion, it should have decreed otherwise. One is the fact that the civil case is entirely dependent upon the registration case; no recovery of possession can be decreed in favor of, and no damages can accrue to, the plaintiff unless he is declared the owner of the property subject of both cases. When defendant, therefore, questioned plaintiff's right to the possession and to damages, he must have meant to question plaintiff's title to the property. The other reason is the fact that as the two cases were so inextricably related to each other, and they were tried jointly, and only one joint record on appeal presented, appellant's attorney or his client or both may have overlooked the need of filing two bonds, or thought that one was sufficient without the other. This constitutes an excusable oversight.

Petitioners belabor the point that, unlike in the case cited above, there were two separate decisions of the trial court involved herein, and that there were parties in the land registration proceeding who were not included in the civil case. We find no significance in the distinction: precisely, it was held in the *Aquino* case that the rendition of

a single decision did not alter the fact that there were actually two cases therein involved; and the opposition of the Escuderos in the land registration case was based on the pacto de retro contract and their consolidation of ownership of the disputed lots, and the validity of these acts were exactly the subject of the civil case. In short, between the petitioners and the Escuderos, the controversial issues in both the civil and land registration cases are, if not the same, at least inextricably related to each other. We have here the situation that brought about the ruling in the Aquino case.

Needless to state, there being a finding of excusable oversight in the deposit of only P60.00 as appeal bond in the two cases, the Court of Appeals' order to the Escuderos to pay an additional bond for P60.00 (not P120.00), is in order.

WHEREFORE, the decision of the Court of Appeals under review is affirmed, with costs against the petitioners.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

[1] Cesar T. Rosales, Leon T. Rosales, Rizalina R. Samson, Lolita T. Rosales, Filipina R. Cayabyab, Petria R. Moorehouse and Manuel T. Rosales, brothers and sisters, and children of the deceased Atanacio Rosales and Fidela Tesalona, original owners of the properties in question.

[2] For two cases, appeal bond for P120.00 was necessary (Section 5, old Rule 41).

[3] "SEC. 3. How appeal is taken. - Appeal may be taken by serving upon the adverse party and filing with the trial court within thirty days from notice of order or judgment a notice of appeal, an appeal bond, and a record on appeal. The time during which a motion to set aside has been pending shall be deducted." (Rule 41, old Rules of Court; underlining ours)

[4] Lopez vs. Lopez, 77 Phil. 133; Pablo vs. Enage, 53 Phil. 328; Luengo vs. Herrero, 17 Phil. 29.

[5] Price Stabilization Corp. vs. Castelo, 87 Phil. 714; also Phil. Resources Development Corp. vs. Narvasa, L-12803, February 27, 1962, 4 SCRA 414; Alkuino vs. Arrieta, L-21538-40, October 31, 1963, 9 SCRA 458.

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