

**JULIO SAPIDA, ANGELINA DEL ROSARIO, EUFROCINA SAPIDA,
DOMICIANO ILAWAN, MAGDALENA SAPIDA, ADOLFO LEVERIZA,
ANGELES SAPIDA, GABRIEL VELEZ, MARIETTA SAPIDA, AGUSTINA
SAPIDA (NOW D...**

G.R. No. L-27673. November 24, 1972

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Appeal by certiorari from the decision of respondent Court of Appeals granting herein respondents' petition for certiorari and mandamus and thereby setting aside the lower court's order declaring its adverse decision against respondents final and executory and instead commanding that their appeal as defendants from its adverse decision be given due course.

The factual background of the case at bar may be briefly narrated, as follows:

Petitioners Sapida as plaintiffs had filed with the court of first instance of Cavite a complaint against respondents Villanueva as defendants to quiet title over a parcel of land situated at Dasmariñas, Cavite.[1]

After trial, the lower court rendered its decision dated March 30, 1966 in favor of petitioners (plaintiffs) and against respondents (defendants) declaring "that the plaintiffs are the owners of the land in question known as Lot 3869-N-8, 11, 12 and 13 covered by their respective titles, thereby quieting their said titles to said Lot 3869-N, as shown in plan Rs-632-D; that the defendants herein have not any estate, right, title or interest whatsoever on the property in question and that they are thereby enjoined and debarred from asserting any claim whatever in and over said land adverse to the ownership of the herein plaintiffs, to pay the sum of Five Hundred (P500.00) pesos as attorney's fees and the costs of this suit."[2]

It is seen from the trial court's decision that both contending parties have torrens titles to their respective properties with duly approved plans, with respondents contending that there could not be an overlapping of their properties' respective boundaries since the actual dividing line between them is the Tagaytay-Manila national highway; and that petitioners presented only one witness, while respondents presented four witnesses, all of whose testimonies are summarized and discussed in the decision.

Copy of the trial court's decision was received by respondents through counsel on April 29, 1966. On the 27th day, i.e. on May 26, 1966, they filed a twenty-page motion for new trial and/or reconsideration, wherein inter alia they assailed the decision for having rejected or disregarded the approved verification survey made by the Bureau of Lands notwithstanding the parties' agreement for the execution of such survey plan and the trial court's order to that effect, for making a portion of the existing Tagaytay-Manila highway a part of the land of petitioners Sapida, and for amending or cancelling in effect a portion of the torrens title of respondents Villanueva and awarding the same without authority to petitioners on the sole testimony of petitioners' only witness, whose testimonial evidence allegedly identified merely their titles and tax receipts and could not justify the trial court's action.[3] In

due course, petitioners filed an extended (10-page) opposition thereto, respondents filed in turn a seven-page reply and supplemental motion for new trial and petitioners had the last word with their four-page rejoinder dated June 9, 1966.

On July 10, 1966, respondents further filed an urgent motion for preliminary injunction to restrain petitioners and their agents from entering upon their (respondents') land and harvesting the fruits thereon.

On July 27, 1966, the trial court issued its order denying respondents' motion for preliminary injunction.

About two weeks later on August 10, 1966, the trial court issued its order denying respondents' motion for reconsideration and new trial filed much earlier on May 26, 1966.

It is at this stage, to paraphrase respondent appellate court, that the "misunderstanding" arose on the vital question of when respondents' counsel received copy of the trial court's order of August 10, 1966 denying reconsideration, i.e. whether it was received on August 30, 1966 as claimed by petitioners with the consequence that the trial court's decision became final and executory three days thereafter on September 3, 1966, so that the perfection of their appeal on October 10, 1966 was 37 days late, as sustained by the trial court in its order of November 15, 1966 granting petitioners' motion for execution of the judgment as final and executory — or whether respondents' counsel received the trial court's said order of denial of reconsideration and new trial only much later on October 7, 1966, so that they duly perfected their appeal within the remaining 3-day period left to them when they duly filed their notice of appeal, appeal bond and record on appeal all by October 10, 1966, as upheld in turn by respondent court of appeals in its appealed decision of March 7, 1967, which granted respondents' petition for certiorari and mandamus and ordered the trial court to give due course to respondents' said appeal.[4]

It is not disputed by both parties that a registered mail matter was sent by the trial court's docket clerk on or about August 23, 1966 and that the envelope containing the same was in fact received by respondents' counsel on August 30, 1966.

What is disputed are the contents of said envelope. The docket clerk, Erlinda C. Daof, through her affidavit of October 18, 1966 supported petitioners' contention that she personally mailed through said registered mail the "order of denial of defendants' motion for reconsideration and nothing else." [5]

Respondents' counsel in turn submitted the affidavit of October 6, 1966 of their secretary, Lourdes E. Dimapilis, in support of their contention that the only order contained in the said registered mail envelope received by them on August 30, 1966 was the order dated July 27, 1966 denying respondents' urgent motion for preliminary injunction and that the envelope "contained no other matter." [6]

This dispute between the parties was triggered by the motion for execution of judgment filed by petitioners on September 12, 1966 which was promptly and vigorously opposed by respondents per their written oppositions of September 22, 1966, October 18, 1966 and verified manifestation of November 7, 1966 of respondents' counsel, Atty. Jose G. Gatchalian, who under oath averred therein that as of said date, November 7, 1966, "(he) has up to the present never received, personally or by mail, a copy of the order dated August 10, 1966. He saw and came to know of said order dated August 10, 1966, for the first time on October 7, 1966 during the hearing on plaintiffs' Motion for Execution, so on the very same day he filed defendants' Notice of Appeal, paid the cash appeal bond, and filed a motion for extension of time to file the record on appeal. The record on appeal was actually filed on October 10, 1966." [7]

The trial court heard on October 7, 1966 the parties in oral argument on petitioners' motion for execution and thereafter sustained petitioners and granted execution as per its order of November 15, 1966, wherein it held as follows:

"Counsel for the defendants, however, claim that the reglementary period to appeal has not yet expired because he received the copy of the Order of the Court denying his 'Motion for New Trial and/or Reconsideration' dated May 26, 1966 only on October 7, 1966, and that on that same date he had filed with this Court his Notice of Appeal, which is still within the reglementary period of thirty (30) days to appeal. In other words, counsel for the defendants want the Court to believe that the registered mail which he had received on August 30, 1966 did not contain the Order dated August 10, 1966 of this Court denying his 'Motion for New Trial and/or Reconsideration' but another Order dated July 27, 1966 which denied his 'Motion for a Writ of Preliminary Injunction.' However, when this Court ordered the counsel for the defendants to submit to this Court the envelope and the copy of the Order denying his 'Motion for a Writ of Preliminary Injunction' dated July 27, 1966 contained therein which was sent to him by ordinary mail on August 1, 1966 he submitted a written manifestation to the Court to the effect that he did not receive such Order.

"x x x x x x x x

"It appearing that the above-mentioned Order dated July 27, 1966 which was sent to the counsel for the defendants by ordinary mail on August 1, 1966 has not been returned to this Court 'undelivered' by the Bureau of Posts up to this time, the presumption, therefore, is that he had received the said letter containing the said Order. Moreover, (a) public official or employee is presumed to have performed his duties in the regular course of official business. This Court, therefore, is inclined to give credence to the testimony of the Docket Clerk of this Court that she really sent the Order of this Court denying the 'Motion for a Writ of Preliminary Injunction' by ordinary mail on August 1, 1966 and the other Order denying the 'Motion for New Trial and/or Reconsideration' by registered mail on August 23, 1966, which registered mail was received by counsel for the defendants on August 30, 1966."[8]

Respondents then sought the prerogative writs of certiorari and mandamus from the Court of Appeals. As noted in respondent appellate court's decision of March 7, 1967 subject of the present appeal, "there was no other recourse left to petitioners to preserve their right of appeal except by the present remedy of certiorari and mandamus."

Respondent appellate court, in its decision penned by Justice Magno S. Gatmaitan, in turn set aside the trial court's order declaring that its decision against respondents had already become final and executory and instead ordered the trial court to give due course to respondents' appeal.

While recognizing that generally in certiorari proceedings the conclusions of fact of the trial court based on its determination of the respective credibility's and weight of evidence to be accorded to each of two contradictory witnesses conformably to the rules "cannot be overruled by the appellate court" since the case is not on regular appeal, respondent appellate court found that the trial court in giving credence to the affidavit of the court employee as against the contradictory affidavit of respondents' counsel's secretary, without hearing both of them on the witness stand and subjecting them to cross-examination, had "no basis to make its findings of fact."

Thus, the appellate court observed correctly that "while the order complained of states that the employee, Erlinda C. Daof, had given her testimony, that testimony is not at all reproduced in the records; the conclusion must have to be that the examination made by the Trial Judge of this employee assuming it had been made in open court if it had been made in open court, had not been taken under oath and reproduced by the stenographer and surely she was not subjected to cross-examination; this must mean that against her version stated in her affidavit to the effect that what she mailed by registered mail or caused to be mailed by registered mail within that registered letter No. 203 and contained in the envelope, Exhibit V, was exactly the copy of the order denying the motion for new trial * * * is pitted the contrary affidavit of the secretary of Atty. Gatchalian appearing on page 285 of the expediente that what (that) registered envelope contained was a copy of the order of 27 July, 1966 denying the motion for preliminary injunction and no other matter."

Under such circumstances, the appellate court held that the trial court practically had no basis to make its findings

of fact, without first taking the prudent course of hearing the two affiants and subjecting them to cross-examination so that he could properly make up his mind on whom of them to believe, thus: "in the face of these contradictory affidavits, both ex-parte, neither subjected to cross-examination, while it is true that under the Rules, a Court may hear motions solely upon affidavits and counter-affidavits, Rule 134 Sec. 7, Revised, if the affidavits contradict each other on matters of fact, a Court practically can have no basis to make its findings of fact; but here what trial judge did was to totally ignore the affidavit of Lourdes E. Dimapilis without giving any reason for so doing; there is no question that he had the right to disbelieve, but he should have given his reasons."

Respondent appellate court made the telling point that "so far as the record is concerned, there is no way to find out that she (the court employee) was really lying, for the reason that neither the envelope, Exh. V, nor the return card on page 272 of the expediente contained the annotations on what had truly been the contents of that (envelope)."

Hence, the appellate court was but upholding respondents' right to due process in ruling that "if truly, under the authorities, a trial judge is free to give more weight to that affidavit which he believes to be more probably true, and grant or deny as the case may be, the point before trial judge being of so vital importance, concerning as it did the finality of his decision, whether it could still be appealed or not, for him to have been able to approximate the truth, the more prudent perhaps the only prudent course would have been to hear the two affiants and subject them to cross-examination, cf. 42 C.J. 509; in connection with Rule 133, Sec. 7 of the Revised Rules." [9]

The appellate court further cited specific "dubious" and "peculiar facts" of record, in addition to that above stated of the lack of proper annotation on the envelope nor on the return card that "what had been inside Was the fatal order of denial of the motion for new trial," showing that the trial court had grossly disregarded such matters of record and had gravely abused its discretion in arbitrarily giving credence to the court employee's affidavit and ordering execution of its judgment as final, as follows:

- (a) It is "seen in the face of the record that her annotation that she had sent copy of the order denying the preliminary injunction by ordinary mail contains some superimpositions in ink as to the month, the handwritten word 'Sept.' apparently having been first written and over it the correct month of 'August'";
- (b) The peculiar fact that it was only this order (of denial of injunction) that apparently she had according to her, sent by ordinary mail, contrary in fact to Rule 13, sec. 5 of the Revised Rules, all the others appearing in the expediente, see pages 29, 30, 61, 62, 91, 136, 149, 152, 216, attaching the return cards, were sent by registered (mail);" and
- (c) The trial court could not under such facts and circumstances whimsically "place reliance on the presumption of regularity which itself had been already opposed by the affidavit of (respondents') affiant," which the trial court "totally ignored * * * without giving (its) reasons."

The Court, therefore, finds that no error, much less abuse of discretion, was committed by respondent appellate court in its conclusions and findings "that the Rules cannot sustain the order complained of; for the fulfillment of the burden to demonstrate that judgment was already final had suffered from substantial procedural wrong with the result that the record, standing as it does, does not present a case of a lapsed appeal; and as in such a situation, no other remedy was left to petitioners to preserve their right to that except by present petition in certiorari and mandamus."

It need only be stressed that in mandamus proceedings to give due course to an appeal which the lower court has ruled to have been filed out of time, the reviewing court, in this case, the Court of Appeals, must necessarily review the facts and data in the record; and where it finds on review that the lower court's conclusion of late filing of appeal is not borne out and justified by the record, such a ruling may as in the case at bar be set aside on

certiorari and mandamus issue to give due course to the appeal.

To contend, as petitioners, that the reviewing Court is foreclosed by the trial court's finding that the appeal is filed out of time even though the record shows otherwise and that it may not review the facts and data of record regarding the timeliness of the appeal would lead to the untenable conclusion that any dictamen of the trial court that the appeal is filed out of time is final and conclusive, and beyond correction by superior courts through the prerogative writs of certiorari and mandamus.[10]

Paraphrasing the analogous case of Cayetano vs. Ceguerra,[11] the Court cannot in the case at bar justly attribute upon respondents actual knowledge of the order of denial of their motion for new trial through the registered mail received by their counsel on August 30, 1966, because there is no showing that the registry notice itself or the envelope or the return card for that matter contained any indication or annotation that the registered matter was indeed and in fact a copy of the said order. Under the circumstances, it is keeping with the best interests of justice to afford the respondents the opportunity to pursue their appeal on what appear to be substantial issues from the trial court's adverse decision.

ACCORDINGLY , the decision appealed from is hereby affirmed, with costs against petitioners.

Concepcion, C.J., Zaldivar, Fernando, Barredo, and Makasiar, JJ., concur.

Castro, Antonio, and Esguerra, JJ., did not take part.

Makalintal, J., is on leave.

[1] Docketed as Civil Case No. TG-6 of Branch IV of the Cavite court of first instance at Tagaytay City then presided by Hon. Alfonso P. Donesa.

[2] Annex D, petition.

[3] Annex E, petition and Respondents' brief, pp. 2-6.

[4] Respondents' petition of January 24, 1967 in the appellate court was docketed as CA-GR No. 38803-R, entitled "Mercedes Aspillera de Villanueva, et al. vs. Hon. Alfonso P. Donesa, etc., et al."

[5] The pertinent portions of her affidavit read:

"4. That said order was mailed by me personally through registered mail and I am certain that it is the order of denial of defendant's Motion for Reconsideration and nothing else because on the date, I had to pay the stamps for mailing with my own money upon instruction of the Acting Clerk of Court, ROLANDO D. DIAZ, who told me that such orders should be mailed by registered mail, and although this office is always plagued with shortage of stamps, as the period for the finality is always counted from the date such order is received by registered mail and to avoid any question arising from irregularity of mailing, the mail should be registered, moreover, as I can recall that the order, although dated August 10, was only mailed on that date because the plaintiff came over to inquire as to the status of the case and I personally handed the plaintiff, Mr. Julio Sapida, a copy of the order of denial, so much so, that I could not have mailed any other order as the counsel for the defendant claims;

"5. Furthermore, the order claimed by counsel for the defendant to have been received which is a denial of his Motion for the Issuance of a Writ of Injunction had already been mailed through ordinary mail as may be claimed from the records and there is no other copy left on hand."

[6] Petitioners' brief, Appendix B.

[7] Rollo, pp. 91-94, 95-96, and 99-101.

[8] *Idem*, at pp. 104-105.

[9] The cited rule of evidence provides:

"SEC. 7. Evidence on motion. — When a motion is based on facts not appearing of record the court may hear the matter on affidavits or depositions presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions." (Rule 133)

[10] *Cf.* *Lucas vs. Mariano*, 44 SCRA 501, 512, et seq. (April 27, 1972).

[11] 13 SCRA 73 (1965).

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