

HEIRS OF EDUARDO SULTAN REPRESENTED BY ERIC SULTAN AND HEIRS OF CLEMENTINA LUNA-LOMUARDO REPRESENTED BY ALBERTO LOMUARDO, PETITIONERS, VS. CONSTANCIA YBOA, RESPONDENT.

Ponente: LAGURA-YAP, J.

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LAGURA-YAP, J.:

This is a Petition for Review[1] under Rule 42 of the 1997 Rules of Court seeking to reverse and set aside the Decision[2] and the Order[3] of the Regional Trial Court (RTC), Branch 29, Catbalogan City, Samar in Civil Case No. 8211.

Here, petitioners filed Motion for Reconsideration[4] before the court a quo on September 2, 2014 and denied in the Order[5] dated October 31, 2014. The petition was received on December 18, 2014. Petitioner had fifteen (15) days from notice of the Order or until November 15, 2014, within which to file their petition. Petitioners alleged in their petition that they have fifteen (15) days or until December 3, 2014 within which to file their Petition for Review. Petitioners stated that they filed a Motion for Extension of Time to File Petition for Review on December 3, 2014. Even if they will file a Motion for Extension on December 3, 2014, still it is considered as filed out of time.

The right to appeal is neither a natural right nor is it a component of due process. It is a mere statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law. This being so, x x x an appealing party must strictly comply with the requisites laid down in the Rules of Court. Deviations from the Rules cannot be tolerated. The rationale for this strict attitude is not difficult to appreciate as the Rules are designed to facilitate the orderly disposition of appealed cases. In an age where courts are bedeviled by clogged dockets, the Rules need to be followed by appellants with greater fidelity. Their observance cannot be left to the whims and caprices of appellants. x x x[6]

Petitioners must strictly adhere the requirements laid down in Rule 42 of the Rules of Court:

Section 1. How appeal taken; time for filing.

A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, x x x. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration x x x. Upon proper motion x x x, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days. (emphasis supplied)

Petitioners also alleged in their petition that they paid the required docket fees in the amount of Four Thousand Six Hundred Eighty Pesos (P4, 680.00) attached to the Motion for Extension of Time to File Petition for Review.

However, upon verification, the Judicial Records Division (CA-JRD) made a report[7] that no Motion for Extension of Time to File Petition for Review and payment of P4,680.00 as docket and other legal fees had been filed and paid as per docket entry dated December 23, 2014.

In the case of Spouses Papa and Lolita Manalili, vs. Spouses Arsenio and Gliceria De Leon[8], the Supreme Court held that appeal is not a constitutional right but a mere statutory privilege. It must be exercised strictly in accordance with the provisions of the law and rules. Also, in the case of Gabriel Lazaro, et al, vs. Court of Appeals, et al[9], that failure to pay docket and other lawful fees within the prescribed period is a ground for the dismissal of an appeal. In the present case, petitioners have not given sufficient reason why they should be exempt from this stringent rule.

On the matter of non-payment in full of the docket fee, Section 4 of Rule 41 of the Rules of Court, as amended, provides that appellate court docket and other lawful fees should be paid within the period for taking an appeal, viz:

Sec. 4. Appellate court docket and other lawful fees. — Within the period for taking an appeal, the appellant shall pay to the clerk of the court which rendered the judgment or final order appealed from, the full amount of the appellate court docket and other lawful fees. Proof of payment of said fees shall be transmitted to the appellate court together with the original record or the record on appeal.

Payment in full of docket fees within the prescribed period is mandatory. Non-compliance therewith may cause the dismissal of the appeal pursuant to Sec. 1, Rule 50 of the Rules of Court, which reads:

Sec. 1. Grounds for dismissal of appeal. An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds . . . (c) Failure of the appellant to pay the docket and other lawful fees as provided in Section 5 of Rule 40 and Section 4 of Rule 41

A further perusal of the rollo, reveals that petitioner Eric Sultan failed to show and attach competent evidence of his identity (at least one current identification document issued by an official agency bearing the photograph and signature of the affiant), in violation of Section 6(a), Rule II, in relation to Section 12, of the Rules of Notarial Practice[10] (A.M. 02-8-13-SC).

With regards to petitioners' prayer for preliminary injunction, petitioners merely alleged that if not stopped or restrained, grave and irreparable damage shall be suffered by petitioners if the Decision of the Regional Trial Court will be executed. Petitioners did not even state any clear showing that a right exists that warrants the issuance of the preliminary injunction.

A preliminary injunction is an order granted at any stage of an action prior to the judgment or final order requiring a party or a court, agency or a person to refrain from a particular act or acts. It is the "strong arm of equity," an extraordinary peremptory remedy that must be used with extreme caution, affecting as it does the respective rights of the parties.[11]

Sections 3 and 5, Rule 58 of the 1997 Rules of Civil Procedure on preliminary injunction, provide the requirements for the issuance of a writ of preliminary injunction or a TRO:

SEC. 3. Grounds for issuance of preliminary injunction. - A preliminary injunction may be granted when it is established:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of

an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

SEC. 5. Preliminary injunction not granted without notice; exception. - No preliminary injunction shall be granted without hearing and prior notice to the party or persons sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue ex parte a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the twenty-day period, the court must order said party or person to show cause at a specified time and place, why the injunction should not be granted. The court shall also determine, within the same period, whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

Xxx xxx xxx

From the above foregoing provisions, it appears that before a writ of preliminary injunction may be issued, a clear showing must be made that there exists a right to be protected and that the acts against which the writ is to be directed are violative of an established right.

Here, petitioners' right to injunctive relief has not been clearly and unmistakably demonstrated to cause the issuance of the preliminary injunction. Thus, petitioners' prayer for preliminary injunction is hereby DENIED.

The foregoing procedural and substantial defects warrant an outright dismissal of the instant petition.

WHEREFORE, with all the above-noted infirmities, We DISMISS the Petition upon authority of Section 3, Rule 42 of the 1997 Rules of Civil Procedure.[12]

SO ORDERED.

Delos Santos, J., Chairperson, and Lopez, JJ., concur.

[1] Rollo, pages 3-25.

[2] Rollo, pages 108-117.

[3] Rollo, pages 42-44.

[4] Rollo, pages 118-128.

[5] Rollo, pages 129-132.

[6] Boardwalk Business Ventures, Inc. v. Elvira A. Villareal (deceased) substituted by Reynaldo P. Villareal, et. al., G.R. No.181182, April 10, 2013, citing Fenequito v. Vergara, Jr., G.R. No. 172829, July 18,2012,677 SCRA 113, 117.

[7] Rollo, dorsal portion of page 45.

[8] G.R. No. 140858, November 27, 2001.

[9] G.R. No. 137761, April 6, 2000

[10] 2004 Rules on Notarial Practice (A.M. No. 02-8-13-SC), effective Aug. 1, 2004, amended on Feb. 19, 2008. “Rule II, Sec. 6. Jurat.- “Jurat” refers to an act in which an individual on a single occasion: (a) appears in person before the notary public and presents an instrument or document;”

Sec. 13. Competent Evidence of Identity. - The phrase “competent evidence of identify” refers to the identification of an individual based on: (a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual; or (b) x x x.

[11] St. James College of Parañaque v. Equitable PCI Bank, G.R. No. 179441, August 9, 2010, 627 SCRA 328, 345.

[12] Regalado, Florenz D., REMEDIAL LAW COMPENDIUM, Vol. 1, Notes on the 1997 Rules of Court, Rule 42, p. 527.

Section 3. Effect of failure to comply with the requirements. - The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

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