

HEIRS OF CLEMENTE CELESTINO, PETITIONERS, VS. HON. COURT OF APPEALS, ESTANISLAO PAGTAKHAN, CARMELITA PAGTAKHAN, HEIRS OF DIONISIO PAGTAKHAN AND BASILIO CELESTINO, RESPONDENTS.

G.R. No. L-38690. September 12, 1975

Ponente: AQUINO, J.

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AQUINO, J.:

The novel issue in this unprecedented certiorari and prohibition case is whether the Court of Appeals, after dismissing an appeal in its resolution of May 2, 1973, because of appellants' failure to file their brief, and after entry of judgment was made and the record was remanded on June 30, 1973 to the lower court, erred in cancelling on March 27, 1974 the entry of judgment, reinstating the appeal, requiring the lower court to return the record to the Court of Appeals and admitting appellants' brief on May 21, 1974 or more than one year after the dismissal of the appeal (CA-G.R. No. 50307-R). The antecedents of the case are as follows:

In Land Registration Case No. N-187 entitled "Clemente Celestino, applicant, versus Conrado Peredo et al., oppositors" the Court of First Instance of Cavite rendered a decision dated December 7, 1971 ordering the registration in the names of the heirs of Clemente Celestino of five lots with a total area of 1,563 square meters all located at Barrio Panapaan, Bacoor, Cavite.

The oppositors (their names were not specified in the notice of appeal) appealed and filed on August 12, 1972 in the Court of Appeals their printed record on appeal. On November 8, 1972 their lawyer, Julian T. Ocampo, received a notice to file their appellants' brief within the reglementary period. On January 2, 1973 Atty. Ocampo was given an extension of ninety days from December 23, 1972 within which to file the said brief "with the warning that no further extension will be allowed" (See Resolution of Court of Appeals dated March 23, 1971 re ninety-day extension. 67 O. G. 2578).

On March 22, 1973 Atty. Ocampo sent registered mail to the Appellate Court a motion for extension of time to file appellants' brief. He alleged that the deadline for filing it was the next day, March 23, and that he had been advised that no further extension would be allowed; that he had allegedly "already finished" said brief but he had not delivered it to the printer because "none of oppositors-appellants" had given him money to cover the cost of printing although they were "informed" of the deadline for filing it; that, not having been paid for his services in the case, he was hesitant to deliver the finished brief to the printer because he might become liable for the payment of the cost of printing, and that he needed an extension up to March 28, 1973 "in order to afford him an opportunity to determine his final course of action in the premises" (p. 42, Rollo of CA-G. R. No. 50307-R). That motion was received in, the Court of Appeals on April 2, 1973.

The Court of Appeals in its resolution on April 36, 1973 granted Atty. Ocampo an extension up to March 28, 1973 within which to file the brief. On April 2, 1973 the said lawyer sent by registered mail to the Court of Appeals a motion for a "last extension" often days beginning April 3, 1973 within which to file appellants' brief.

He alleged the last day for filing that brief was April 2, 1973 (a clearly erroneous allegation since the last day was March 28). That motion was received in the Court of Appeals on April 10. The Appellate Court denied it and, as already stated, dismissed the appeal in its resolution of May 2, 1973, a copy of which was served on Atty. Ocampo on May 10. (A motion to dismiss the appeal was filed by the applicants-appellees also on May 10. The Court did not take action on it anymore).

The dismissal became final on May 28, 1973. Entry of judgment was made on June 21, 1973. The record was remanded (remittitur) to the lower court on June 30, 1973. More than three months after that entry of judgment and return of the record to the lower court; Attys. Juan O. Reyes and David C. Cantaas lawyers of Estanislao Pagtakhan, Carmelita Pagtakhan, Basilio Celestino and the Heirs of Dionisio Pagtakhan, filed in the Court of Appeals a verified "urgent motion for cancellation of entry of judgment, for the recall of the records and for reinstatement of appeal and subsequently to allow movants to file an amended record on appeal."

In that motion they alleged that they authorized Atty. Ocampo to appeal from the lower court's adverse decision; that they deposited PI20 as appeal bond, paid the docket fees and paid to Atty. Ocampo one thousand pesos for the printing of the record on appeal (which was in fact printed) and for miscellaneous expenses incident to the appeal.

Then, according to the movants, on September 10, 1973 Constancia Pagtakhan received a letter from appellees' counsel requesting her to vacate the lot occupied by her. The movants examined the record in the Court of Appeals and discovered that their appeal had been dismissed due to Atty. Ocampo's failure to file the brief.

The movants (now the respondents) further alleged in their motion that Atty. Ocampo did not include in the record on appeal the two oppositions which he had filed in the lower court in their behalf and did not present any memorandum in support of their opposition or claim for Lot 5. They concluded that they were the victims of fraud. They moved that they be allowed to file an amended record on appeal.

The motion was supported by the affidavit of Estanislao Pagtakhan who affirmed that the oppositors paid Atty. Ocampo PI,000 for the printing of the brief and for other miscellaneous expenses; that when he asked Atty. Ocampo why the brief was not filed, the latter said that the oppositors, Ligaya Eusebio and Conrado Peredo, did not give him the money for the printing of the brief; that he (Pagtakhan) reproached Atty. Ocampo for not having filed the brief and told him that what he had done to the oppositors was tantamount to killing them; that after repeatedly demanding from Atty. Ocampo the delivery of the records in his possession, the latter gave him a copy of the record on appeal and a few papers with the explanation that the other papers were in Cavite City; that his new lawyer, after verifying the record of the case, discovered that the oppositions of the Pagtakhans were deliberately not included in the record on appeal, that some pieces of documentary evidence were not presented to the court by Atty. Ocampo, and that he did not bother to file a memorandum for the oppositors.

The applicants-appellees (now the petitioners) opposed the motion for reconsideration on the ground that the oppositors-movants were bound by the acts and omissions of their counsel.

The Court of Appeals denied the motion in its resolution of November 8, 1973. The oppositors-appellants filed a motion for reconsideration which was opposed by the applicants-appellees. After the motion for reconsideration was heard and after memoranda had been submitted, the Court of Appeals in a resolution dated March 27, 1974 cancelled the entry of judgment, reinstated the appeal and ordered the lower court to elevate the record of the case together with all the oral and documentary evidence (Per Justice Andres Reyes, Pascual and Canco, JJ., concurring).

The Court of Appeals found that Atty. Ocampo's failure to file the brief constituted "gross negligence or even a

crime" and that he should have informed his clients of the dismissal of the appeal or moved for its reconsideration by attaching to his motion the alleged unprinted draft of the brief. The Court of Appeals concluded that the demands of substantial justice should prevail over mere lapses which could not be attributed to the party-litigants and that the rule that a client is bound by the acts of his counsel does not apply to this case. The Appellate Court suggested that the acts of Atty. Ocampo be brought to the attention of the Integrated Bar of the Philippines for appropriate action.

The applicants-appellees filed a motion for reconsideration which was opposed by the oppositors-movants. The Court of Appeals denied it in its resolution of April 25, 1974. On May 21, 1974 the Pagtakhans filed their appellants' brief wherein they included as annexes their two oppositions which were not included in the record on appeal.

On May 27, 1974 the applicants-appellees, the heirs of Clemente Celestino, filed in this Court the instant special civil action of certiorari and prohibition for the purpose of annulling the resolution of the Court of Appeals dated March 27, 1974.

Atty. Ocampo was ordered to comment on the imputations against him contained in the affidavit of Estanislao Pagtakhan, in private respondents' aforementioned motion for reconsideration and in the Appellate Court's resolution of March 27, 1974. In his comment he denied the allegations (a) that he had received one thousand pesos from the Pagtakhan to defray the expenses for printing their brief and that he did not utilize the amount for that purpose and (b) that he did not notify the Pagtakhans of the dismissal of their appeal and of motions for extension which he had filed.

He asserted that he had repeatedly asked Estanislao Pagtakhan to give him the money to cover the cost of printing the brief. When he failed to do so, Atty. Ocampo allegedly "tore the dram of his brief into shreds" and later sent to Pagtakhan a copy of the resolution dismissing the appeal.

Atty. Ocampo did not deny the accusations in Estanislao Pagtakhan's affidavit (a) that the Pagtakhans were "deliberately omitted in the appeal, despite the fact that" they "have fully paid for such purpose" (sic); (b) that Atty. Ocampo did not submit certain pieces of documentary evidence, and (c) that he did not submit any memorandum for the Pagtakhan oppositors, "despite his commitment" to do so.

To comprehend those charges, it is necessary to state that in the trial court Atty. Ocampo filed three separate and distinct oppositions for the different oppositors: (1) in behalf of Estanislao Pagtakhan and Carmelita Pagtakhan, an apposition to the registration of Lot 1; (2) in behalf of Conrado Peredo, Juanita Peredo, Delfin Eusebio and Ligaya Eusebio, an opposition to the registration of Lots 2 and 4 and (3) in behalf of Carmelita Pagtakhan, Basilio Celestino and Heirs of Dionisio Pagtakhan, an opposition to the registration of Lot 5.

It is an incontrovertible fact that, while the record on appeal .submitted by Atty. Ocampo includes the opposition of the Peredos and the Eusebios (involving Lots 2 and 4), it does not include the two (2) oppositions of the Pagtakhans to the registration of Lots 1 and 5. The record on appeal includes the applicant's memorandum but it does not contain any oppositors memorandum. That omission implies that no memorandum was filed for them.

Because the oppositions of the Pagtakhans were excluded in the record of appeal, it would appear that they were not parties at all in the registration case and, hence, there would be no basis for Atty. Ocampo to file a brief for them.

The issue is whether the Court of Appeals acted correctly in reinstating the appeal of the Pagtakhans notwithstanding that the record had long been remanded to the lower court.

We are of the opinion that under the peculiar or singular factual situation in this case and to forestall a miscarriage of justice the resolution of the Court of Appeals reinstating the appeal should be upheld.

That Court dismissed the appeal of the Pagtakhs in the mistaken belief that they had abandoned it because they allegedly failed to give to their counsel the money needed for paying the cost of printing their brief.

But presumably the Appellate Court realized later that fraud might have been practiced on appellants Pagtakhs since their oppositions were not included in the record on appeal. It sensed that there was some irregularity in the actions of their lawyer and that Court itself had been misled into dismissing the appeal.

Counsel for the Pagtakhs could have furnished them with copies of his motions for extension of time to file brief so that they would have known that the Court of Appeals had been apprised of their alleged failure to defray the cost of printing their brief and they could have articulated their reaction directly to the Court. Counsel could have moved in the Appellate Court that he be allowed to withdraw from the case or that the Pagtakhs be required to manifest whether they were still desirous of prosecuting their appeal or wanted a mimeographed brief to be filed for them (See *People vs. Cawili*, L-30543, August 31, 1970, 34 SCRA 728). Since counsel did none of those things, his representation that the appellants had evinced lack of interest in pursuing their appeal is difficult to believe.

If the appellate court has not yet lost its jurisdiction, it may exercise its discretion in reinstating an appeal, having in mind the circumstances obtaining in each case and the demands of substantial justice (*Alquiza vs. Alquiza*, L-23342, February 10, 1968, 22 SCRA 494, 66 O.G. 276; *C. Vda. de Ordoveza vs. Raymundo*, 63 Phil. 275; *Chavez vs. Ganzon*, 108 Phil. 6).

But even if it has already lost jurisdiction over the appeal by reason of the remand of the record to the lower court, it, nevertheless, has the inherent right to recall the remittitur or the remand of the record to the lower court if it had rendered a decision or issued a resolution which was induced by fraud practiced upon it. Such a right is not affected by the statutory provision that after the record has been remanded, the appellate-court has no further jurisdiction over the appeal (5 Am Jur 2nd 433 citing *Lovett vs. State*, 29 Fla. 384, 11 So. 176; 84 ALR 595; *State vs. Ramirez*, 34 Idaho 623, 203 Pac. 279).

Where the remand was secured by fraud or imposition or where the appellate court was led to decide the case under a misapprehension of the true facts, the remand may be recalled (*McClearen vs. Superior Court of Tulare County*, 291 Pac. 2d. 449, 45 Cal. 2d. 852).

The rule that a remand may be recalled if it was the result of fraud[*] mistake or unavoidable casualty was applied in *Simmons vs. Harris*, 235 Pac. 508, 108 Okla. 189. In that case A.M. Fowler, the lawyer of W.H. Simmons in the lower court, caused the appeal to be filed but refused to prepare the briefs. The case was therefore dismissed for want of prosecution, Simmons moved to reinstate his appeal. The same was granted.

It appears from the affidavit of Fowler himself that he gave no notice to Simmons that the case would not be prepared for presentation to the court. It was held that his conduct could not be condoned as mere negligence. An attorney grossly violates his duty to his client and to the court when, after entering into a contract for representation and after filing an appeal and receiving money for printing briefs, he withdraws from the case without notice to his client and permits the case to be dismissed for want of prosecution. A dismissal resulting from such withdrawal without notice constitutes an unavoidable casualty for which the court will give relief.

The ruling in the Simmons case applies to the instant case. (In one instance notice to an irresponsible lawyer was not regarded as a notice to the client. *People's Homesite and Housing Corporation vs. Tiongco*, L-18891, November 28, 1964, 12SCRA 471).

WHEREFORE, the resolution of the Court of Appeals, reinstating the appeal of the private respondents, is affirmed. The petition for certiorari and prohibition is denied with costs against the petitioners.

SO ORDERED.

Makalintal, C.J., Fernando, Barredo, and Martin, JJ., concur.

Barredo, J., concurs; since it appears to him that respondents have been betrayed by their counsel.

Antonio and Concepcion Jr., JJ., are on leave.

Martin, J., was designated to sit in the Second Division.

[*] The fraud must be extrinsic or collateral as distinguished from intrinsic fraud. There may be extrinsic fraud when a party was prevented from having presented all of his case to the court as when his lawyer connives at his defeat or corruptly sells out his client's interest (46 Am Jur 2nd 983; 49 C.J.S. 860, Note 95; Varela vs. Villanueva, 95 Phil. 248; Palanca vs. American Food Manufacturing Co., L-22822, August 30, 1968, 24 SCRA 819; Libudan vs. Palma Gil, L-25495, May 17, 1972, 45 SCRA 17; McKechney vs. City of Chicago, 1st Dist., No. 19, 879, 194 111. App. 539 cited in 15A Words and Phrases Judicially Defined, p. 736). Kquity abhors fraud (Anuran vs. Aquino and Ortiz, 38 Phil. 29).

Extrinsic fraud will authorize vacation by the court of its former judgment. By that is meant fraud by the other party to the suit which has prevented the losing party either from knowing about his rights or defense, or from having a fair opportunity of presenting them upon the trial. Such, for instance, as where he has been misled by his adversary by fraud or deception, did not know of the suit, or was betrayed by his attorney. In other words, fraud which denied him the opportunity to fully litigate upon the trial all the rights or defenses he was entitled to assert. (Crouch vs. McGaw, 138 S. W. 2d 94 134 Tex. 633. 15A Words and Phrases Judicially Defined, pp. 732-733).

Atty. Ocampo alleged that he became the lawyer of the Pagtakhans upon the suggestion of Atty. Hscolastico C. Cuevas. The private respondents on page 5 of their memorandum alleged that Atty. Cuevas is related to the petitioners.

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