

ALEGAR CORPORATION, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, VENANCIO JUAN-ERIO AND SEVERA RONTOS, RESPONDENTS.

G.R. No. L-29204. January 30, 1971

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Special civil action of certiorari and pro-hibition against a resolution of the Court of Appeals reinstating a dismissed appeal, as having been issued in excess of jurisdiction and with grave abuse of discretion.

Private respondents Venancio Juanerio and Severa Ron-tos, had through their counsel, Atty. Pablito M. Rojas, filed on April 7, 1967, their notice of appeal from an order of dis-missal, for being res judicata, of the complaint filed by them as plaintiffs against respondent as defendant issued by the Manila court of first instance.[1] The Manila court's dismissal order dated November 26, 1966 found that on December 3, 1964, judgment had been rendered also by the Manila court of first instance in a previous case (Civil Case No. 39380) between the same parties and involving ownership of the same land (co-vered by petitioner's T. C. T. No. 60920-Manila)"declaring (plaintiff) Alegar Corporation the owner and entitled to the pos-session of the land occupied by the defendants (spouses). From this decision, defendants appealed to the Court of Appeals but the same was dismissed on August 20, 1965." It therefore de-clared that the second case filed by respondents as plaintiffs against petitioner as defendant for a declaration of ownership over the same land "is now barred by prior judgment which has become final and executory, and, therefore, res judicata" and ordered the dismissal thereof.[2]

After the elevation of respondents' appeal from the dis-missal order to the appellate court, they failed to file within the reglementary sixty-day period after notice, which expired on November 15, 1967, their printed record on appeal.[3] In its resolution of December 20, 1966, received by respon-dents' counsel on January 3, 1968, the appellate court motu pro-prio accordingly dismissed the appeal.

On January 22, 1968, respondents' counsel filed a so-called urgent motion for reconsideration of the appellate court's dismiss-al of the appeal, alleging that lie had written on November 2, 1967, prior to the expiration of the sixty-day period a letter to respon-dents addressed to Venancio Juanerio informing them of the deadline and requesting them to provide the amount of P150.00 to cover the printing expenses of the record on appeal, but that the letter "was never received by him nor his wife, the other appellant, because in the meanwhile Mr. Venancio Juanerio had died and the post office employee charged with the custody of the letter would not give it to Mrs. Juanerio. Consequently, the letter was returned unclaimed." Counsel submitted respondent Severa Juanerio's affidavit of January 22, 1968, wherein she stated that she received in the first week of November, 1967 a registry notice of counsel's letter addressed to her late hus-band but tried to get the "registered letter" three times from the Manila post-office to no avail, and that shortly after Jan-uary 5, 1968 she was surprised to receive a letter from her counsel informing her of the dismissal of their appeal.[4]

The appellate court in its resolution of February 8, 1968, received by respondents' counsel on February 23, 1968, upheld petitioner's opposition and denied respondents' motion to reinstate the dismissed appeal, "it

appearing that the failure to file the printed record on appeal was apparently due to counsel's negli-gence. "

Under date of March 6, 1968, respondents' counsel on behalf of respondents filed a motion for reconsideration of the appellate court's denial of his motion to reinstate the appeal "on the ground that plaintiff-appellant, Venancio Juanerio, hav-ing died, the undersigned counsel had ceased to represent him in the case as of the time he died" and that "plaintiff-appellant, Venancio Juanerio, died around the latter part of September, 1967,"[5] prior to the deadline for filing the printed record on appeal on November 15, 1967, citing the provisions of Rule 3, section 17 on substitution of deceased parties.

In its opposition, petitioner expressly charged that these allegations of respondents' counsel were "misleading and fabri-cations" and submitted to the appellate court, copy of said coun-sel's pleading entitled "Manifestation and Motion" dated Jan-uary 26, 1967 filed in the case with the lower court, wherein counsel expressly informed said court that "on January 3, 1967, Venancio Juanerio, one of the plaintiffs . . . died at the Veterans Memorial Hospital; he is survived by his wife, Severa Rontos Juanerio who is also a party-plaintiff in this case, and a son, Leonardo," and asked the lower court for a ten-day extension to file a motion for reconsideration of the lower court's order of dismissal of the case. Petitioner further stated that such fact of death of Venancio as early as January 3, 1967 indicated the lack of merit and factual basis of respondents' first motion, for counsel would not be addressing a letter to Venancio "knowing him to be dead already. "[6]

The appellate court nevertheless summarily ordered the reinstatement of the appeal in its resolution of March 15, 1968. On petitioner's motion for reconsideration of April 4, 1968, urging that it had "through misrepresentations and fabrications .. (been) misled into reconsidering the dismissal of the appeal and reinstating the same", it issued its resolution of April 17, 1968, requiring the appellants to furnish this court within 10 days from notice hereof and in the meanwhile the motion for reconsideration is held in abeyance until the submission of the required death certificate."

Respondents' counsel submitted on May 10, 1968, the required death certificate which in fact showed that Venancio had actually died on January 3, 1967, as well as his opposition to the petitioner's motion for reconsideration wherein he dis-claimed any misrepresentation and fabrication" and attributed the discrepancy in his representations to "human limitations" as "due to pressure and volume of work, one is left with no suf-ficient time to scrutinize voluminous records", and asserted that "the fact of death, and not the date thereof, is the principal issue involved in the reinstatement of the appeal" since such death terminated his authority to represent the deceased.

The appellate court in its resolution of June 5, 1968 denied petitioner's motion for reconsideration. Hence, this petition.

The Court finds that the above facts fully justify petitioner's contention that respondents' counsel committed gross misrepre-sentations in seeking the reinstatement of their appeal. In their first motion for reconsideration of January 22, 1968, counsel and respondent Severa Rontos, contrary to the actual fact of Venancio's death since the year before on January 3, 1967 sought to have the appellate court understand that Venancio had but re-cently died "in the meanwhile" that counsel had written his alleged letter of November 2, 1967 addressed to the deceased Venancio. In their second motion for reconsideration of March 6, 1968, res-pondents' counsel went further and flatly misstated to the appel-late court that Venancio "died around the latter part of September, 1967". The other ground for setting aside the dismissal order alleged by respondents' counsel that Venancio's death terminated his authority to represent the deceased as counsel is likewise shown by the record itself to be untenable, since soon after the death of Venancio on January 3, 1967, counsel continued to be authorized to represent the deceased - more accurately, the deceased's heirs[7] - as well as the co-plaintiff spouse, as counsel did in fact represent them, both in the case in the lower court as well as in all the proceedings in the appeal. Counsel's failure to ask for the formal substitution of the heirs of the de-ceased in his place, and counsel's continuing the case in the name of the deceased as party plaintiff does not serve as a valid ground for the setting aside of the dismissal order, issued by the appellate court on the basis of counsel's

negligence.

Since both grounds on which the appellate court could have conceivably based its order reinstating the appeal are shown by the record to be palpably untrue, the Court is constrained to order the setting aside of such reinstatement order as having been issued with grave abuse of discretion amounting to excess of jurisdiction. The Court, in reaching this conclusion, examined the merits of respondents' appeal on the basis of the pleadings of the parties in the lower court and duly noted that no tenable ground was submitted by respondents to show error in the lower court's ruling that their action is barred by res judicata.

ACCORDINGLY, the writ of certiorari prayed for is granted. The appellate court's resolution dated March 15, 1968 reinstating the appeal is set aside and the writ of preliminary injunction issued by the Court on August 31, 1968 is made permanent. No pronouncement as to costs, none having been prayed for in the petition.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Barredo, Villamor, and Makasias, JJ., concur.

[1] The case was docketed as Civil Case No. 64836, en-titled "Venancio Juanerio and his wife Severa Rontos, plaintiffs, vs. Alegar Corporation, defendant. "

[2] Rollo, pp. 12-14.

[3] Rule 46, section 5 and Rule 50, section 1.

[4] Rollo, pp. 17-21; emphasis furnished.

[5] Rollo, p. 26, emphasis furnished.

[6] Rollo, p. 32, *idem*.

[7] See Rule 3, section 17.

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