

IN RE PETITION FOR ADOPTION OF NORA DIVINO AND AURORA PAULINO, BOTH SURNAMED BELEN, SOCORRO S. PAULINO, PETITIONER-APPELLANT, VS. NICASIO A. BELLEN AND WALFRIDO P. BELEN, OPPOS...

G.R. No. L-28863. January 30, 1971

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal by petitioner-appellant Socorro S. Paulino from the order of the Court of First Instance of Laguna, Branch III, San Pablo City, dated November 4, 1966 and entered in Special Proceeding No. 216 of said court, an appeal from a decision of the City Court of the same city dismissing her petition for adoption. The appealed order reads as follows:

"Acting on oppositors' motion to dismiss this appeal and considering that the case is for adoption over which the City Court of San Pablo City, has concurrent jurisdiction, and is co-equal, with this Court pursuant to Section 1(c) of Republic Act No. 644, and since Courts of First Instance have appellate jurisdiction only over cases that are decided by city and municipal courts in the exercise of their original exclusive jurisdiction, this Court be-lieves, and so holds, that it has no jurisdiction to entertain this case on appeal, and accordingly hereby dismisses the same.

"This renders unnecessary further consideration of petitioner's motion of October 28, 1966 to disallow or to disqualify oppositors from intervening in the action.

"SO ORDERED."

The appeal was originally made to the Court of Appeals. Thereat, after petitioner-appellant had filed her brief, oppositors-appellees, Nicasio A. Belen, et al. filed a manifestation to the effect that in said brief "no error whatsoever was assigned as having been commit-*ted* by the Court of First Instance or Laguna, Branch III, but the errors assigned were those allegedly committed by the City Court of San Pablo City in its decision", hence oppositors-appellees "respectfully submit(s) the case for decision." Whereupon, petitioner-appellant filed a counter-manifestation and motion stating that her real intention was to appeal from the decision of the city court on the merits and praying thus: "Wherefore, in the paramount interest of justice, and to avoid dupli-city of appeals and further considering the provision on the liberal construction of the Rules of Court and the fact that the oppositors-appellees will not in anyway be prejudiced if the present appeal will be considered as an appeal from the decision of the City Court of San Pablo City, your petitioner-appellant respectfully moves and prays this Honorable Court to consider the present appeal as an appeal directly from the decision dated November 18, 1965 of the City Court of San Pablo City to this Honorable Court". In a resolution dated November 22, 1967, the Court of Appeals resolved "to consider the oppositors-appellees' manifestation as a waiver to file (sic) appellees' brief" and to declare "this case (be) transferred to the Calendar and submitted for decision."

Subsequent to the release of this resolution but evidently before oppositors-appellees' receipt of copy thereof, the

Court of Appeals received belatedly from oppositors-appellees a "Reply to Counter-Manifestation and Motion" contending that the notice of appeal filed by petitioner-appellant, which referred to an appeal from the order of dismissal of the Court of First Instance and made no mention of the decision of the city court, "is conclusive upon petitioner-appellant" and, in any event, the said appellant could no longer convert the appeal to one from the city court "in view of the fact that the reglementary period within which such appeal should be made has been long past due". To this reply, petitioner-appellant made and filed a rejoinder pointing out that "contrary to the claim of appellees, the instant direct appeal was not filed out of time because your appellant's initial appeal to the Court of First Instance of Laguna (Branch III) was seasonably made and she filed the present brief in order to save time and to conform to the original theory of appellees that the Court of First Instance of Laguna has no appellate jurisdiction to try the instant case because according to Section 1 of R.A. No. 644 'Judges of Municipal and City Courts have concurrent jurisdiction with the Court of First Instance to try adoption cases' (Record on Appeal, p. 17). And since 'the first court that acquired jurisdiction acquires it to the exclusion of others' (Ibid), 'the case at bar having been properly decided by the City Court of San Pablo, in the exercise of its original and concurrent jurisdiction with Court of First Instance in adoption cases, the appeal should be made also either to the Court of Appeals or to the Supreme Court as the case may be' (Ibid, p. 18)." Without resolving the issues thus joined by the parties, in a resolution dated February 27, 1968, the Court of Appeals held:

"A perusal of the errors assigned by petitioner shows that they all involve questions of law only. Under Section 17 of Judiciary Act of 1948, the exclusive appellate jurisdiction over the case is vested in the Supreme Court. Pursuant to Section 31 of the same Act and Section 3 of Rule 50, the case should be forwarded to it.

"Let this case therefore be certified and elevated to the Supreme Court for its final determination."

We do not believe we can entertain petitioner-appellant's appeal as an appeal on the merits of the decision of the City Court of San Pablo. Appellant must admit that in the light of the categorical statement in the notice of appeal filed with the Court of First Instance of Laguna after said court ordered the dismissal of her appeal from the decision of the city court for lack of appellate jurisdiction, over her objection based on the contention that the appeal was legally and appropriately in the said court, there can be no question that she intended to appeal to the Court of Appeals from the order of dismissal of the Court of First Instance and not from the decision of the city court. One has to be very naive to believe that counsel would have filed his notice of appeal with the C.F.I., if his intention were to appeal from the city court's decision. Besides, as pointed out by appellees, at the time said notice of appeal was filed, the time to appeal the city court decision had long expired. The truth is that counsel had already filed a notice of appeal from the decision of the city court and it was directed to the C.F.I., and it was precisely the appeal by virtue of said notice that was dismissed by the C.F.I. for lack of appellate jurisdiction. Furthermore, it is to be noted that no record on appeal as required by the Rules was ever filed with the city court within the reglementary period.

Fortunately for appellant, however, we are of the opinion and so hold that we can entertain her appeal from the order of the Court of First Instance. We gather from the record on appeal that in the appealed order, the Court of First Instance resolved a question of jurisdiction, more specifically, of appellate jurisdiction. Under the Constitution, read together with the Judiciary Act, an appeal against such an order belongs to the exclusive appellate jurisdiction of this Court. (Sec. 2, Art. VIII, Constitution of the Philippines; Sec. 17, No. 2(3), Judiciary Act of 1948, as amended.)

It is true that in her brief, appellant made no assignment of error regarding the trial court's refusal to exercise appellate jurisdiction, but Section 7 of Rule 51 explicitly exempts jurisdictional questions from the requirement that specific assignments of error must be made. Errors of jurisdiction may always be considered even if not stated in the assignment of errors nor properly argued in the brief. Said section provides:

"Sec. 7. Questions that may be decided.- No error which does not affect the jurisdiction over the subject matter will be considered unless stated in the assignment of errors and properly argued in the brief, save as the court, at its option, may notice plain errors not specified, and also clerical errors."

Withal, as can be seen, under this same provision, this Court has the option to consider "plain errors" it "may notice" even if not jurisdictional and "not specified". In this connection, it may be stated that in the instances in the past wherein We expressed reluctance to take up jurisdictional issues *motu proprio*, there was nothing in the record indicating that the question had ever been raised at all even in the courts below.

To be sure, then, We are giving due course to the certification of this appeal to this Court by the Court of Appeals not because We necessarily agree with the Court of Appeals that the errors assigned by appellant raise only questions of law, which point We believe does not have to be decided now, but for the reason that the only question that can in reality be raised in this appeal is one of jurisdiction.

Coming now to the main issue before Us, We hold that in adoption cases over which city and municipal courts have original jurisdiction concurrent with the corresponding Courts of First Instance, the appeal in cases filed originally with a city or municipal court is to the Court of First Instance and not directly to the Court of Appeals or to this Court.

Section 1(c) of Republic Act 644 confers upon inferior courts or municipal and city courts^[1] and courts of first instance concurrent original jurisdiction over adoption cases. Under Section 45 of the Judiciary Act, as amended by Republic Act 2613, "Courts of First Instance shall have appellate jurisdiction over all cases arising in municipal courts and justice of the peace courts,^[2] in their respective provinces, except over appeals from cases tried by justices of the peace of provincial capitals or municipal judges pursuant to the authority granted under the last paragraph of Section eighty-seven of this Act." The cited provision provides in turn: "All cases filed under the next preceding paragraph with Justices of the Peace of capitals and municipal court judges shall be tried and decided on the merits by the respective justices of the peace or municipal judges. Proceedings had shall be recorded and decisions therein shall be appealable direct to the Court of Appeals or the Supreme Court, as the case may be", and the "next preceding paragraph" referred to says: "Justices of the peace in the capitals of provinces and Judges of Municipal Courts shall have like jurisdiction as the Court of First Instance to try parties charged with an offense committed within the province in which the penalty provided by law does not exceed prison correctional or imprisonment for not more than six years or fine not exceeding three thousand pesos or both, and in the absence of the district judge, shall have like jurisdiction within the province as the Court of First Instance to hear application for bail."

It is thus clear that the only cases filed with, tried and decided by the inferior courts in the exercise of their original jurisdiction concurrent with the Courts of First Instance which were appealable directly to the Court of Appeals or to this Court at the time appellant appealed to the court *a quo* were those mentioned in the above-quoted penultimate paragraph of Section 87,^[3] all of which are criminal in nature. Surely, adoption cases are not among them. As a matter of fact, We have not found any provision of the Judiciary Act and its amendments or any other law, in force on November 4, 1966, the date of the order on appeal, allowing an appeal from a decision or order of an inferior court direct to the Court of Appeals or to this Court in civil cases within the concurrent original jurisdiction of the Courts of First Instance and the inferior courts.^[4]

Appellees' proposition that only cases within the exclusive original jurisdiction of the inferior courts were appealable to the Courts of First Instance is not correct. Above-quoted Section 45 of the Judiciary Act clearly provided that "Courts of First Instance shall have appellate jurisdiction over all cases arising in municipal and justice of the peace courts, etc.", without distinction as to whether these cases were of the exclusive or of the concurrent jurisdiction of said courts with the Courts of First Instance. The general rule cited by appellees to the

effect that where two courts have concurrent jurisdiction, the filing of a case with one of them exhausts the jurisdiction of the other, is not without exceptions. In fact, as aptly pointed out by appellant in her motions in the court below, in cases within the concurrent original jurisdiction of the Courts of First Instance and this Court, under Section 17 of the Judiciary Act, no one can doubt that should one such case be filed with the C.F.I., this Court would have appellate jurisdiction over the decision of the C.F.I. therein either directly or after the Court of Appeals as the case may be. Likewise, in special civil actions against C.F.I. in aid of the appellate jurisdiction of the Court of Appeals over which this Court has concurrent original jurisdiction with the Court of Appeals,[5] it is obvious that this Court has appellate jurisdiction over appeals from orders or decisions of the Court of Appeals therein.

As to the procedure for appealing from an inferior court to the Court of First Instance in an adoption case, all that need be recalled is that adoption is a special proceeding (sec. 1, Rule 72) and that under Sec. 2 of the same Rule, "in the absence of special provisions, the rules provided for in ordinary civil actions shall be, as far as practicable, applicable in special proceedings", and hence the rules governing appeals in ordinary civil actions from the inferior court to the Court of First Instance apply also in adoption cases filed with city courts. In any event, the rules for ordinary civil actions may be observed by virtue of Section 6 of Rule 135 which authorizes that "when by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode or proceeding may be adopted which appears conformable to the spirit of said law or rules."

Accordingly, in the case at bar, since it is not questioned that, procedurally speaking, petitioner-appellant's appeal was duly elevated to the court a quo, and it being Our ruling that said court had appellate jurisdiction over the appealed decision of the City Court of San Pablo City, it results that the court a quo erred in dismissing petitioner-appellant's appeal for lack of appellate jurisdiction. The fact that Republic Act 6031 quoted in footnote 3 hereof changed the rule of appellate jurisdiction in cases of this nature on August 4, 1969 did not affect the appellate jurisdiction already vested in the court a quo in 1966 under Republic Act 2613.

As to the possible suggestion that to expedite proceedings, this Court should already decide this case on the merits, suffice it to say that the record of the proceedings in the inferior court is not before Us. In fact, from what appears in the record before Us, it is not clear whether or not the inferior court acted as a court of record here. At any rate, We are confident that once the court a quo passes on the objections of appellees, there will be hardly any reason to further prolong this case, considering that it is elementary that a person may legally adopt two or more children and that if the children to be adopted are all of age, the consent of neither of their legitimate parents is necessary, all that is needed being their own consent.

WHEREFORE, the order of dismissal of the court a quo of November 4, 1966 as well as its order of December 1, 1966 denying appellant's motion for reconsideration are hereby reversed and this case is ordered returned to said court for appropriate proceedings consistent herewith, with costs against appellees.

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

[1] City Courts were then called municipal courts and the inferior courts in the municipalities were known as justice of the peace courts.

[2] See footnote 1.

[3] Section 45 of the Judiciary Act was amended by Section 1 of Republic Act 6031 on August 4, 1969 to read thus:

"SEC. 43. Appellate Jurisdiction.- Courts of First Instance shall have appellate jurisdiction over all cases arising in the city and municipal courts, in their respective provinces, except over appeals from cases tried by municipal judges of provincial capitals or city judges pursuant to the authority granted under the last paragraph of Section 87 of this Act.

Courts of First Instance shall decide such appealed cases on the basis of the evidence and records transmitted from the city or municipal courts: Provided, That the parties may submit memoranda and/or brief with oral argument if so requested: Provided, however, That if the case was tried in a city or municipal court before the latter became a court of record, then on appeal the case shall proceed by trial de novo.

In cases falling under the exclusive original jurisdiction of municipal and city courts which are appealed to the courts of first instance, the decision of the latter shall be final: Provided, That the findings of facts contained in said decision are supported by substantial evidence as basis thereof, and the conclusions are not clearly against the law and jurisprudence; in cases falling under the concurrent jurisdictions of the municipal and city courts with the courts of first instance, the appeal shall be made directly to the court of appeals whose decision shall be final: Provided, however, That the supreme court in its discretion may in any case involving a question of law, upon petition of the party aggrieved by the decision and under rules and conditions that it may prescribe, require by certiorari that the case be certified to it for review and determination, as if the case had been brought before it on appeal."

[4] See footnote 3.

[5] *Breslin vs. Luzon Stevedoring Co.*, 84 Phil. 618.

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