

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. HON. IRINEO V. MENDOZA, AS PRESIDING JUDGE OF BRANCH III, COURT OF FIRST INSTANCE OF MASBATE, THE LAND REGISTRATION COMMISSIONER, E...

G.R. No. L-49891. October 31, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for certiorari and mandamus to annul - (1) the order issued on January 17, 1979 by respondent Judge Irineo V. Mendoza of the Court of First Instance of Masbate, Branch III, dismissing the petitioner's appeal in LRC Case No. 301-III entitled Robert Arevalo, Applicant versus Republic of the Philippines, Oppositor, (2) the decree of registration issued by the respondent Land Registration Commissioner in the same case and (3) the Certificate of Title issued by the respondent Registrar of Deeds of Masbate pursuant to the decree of registration and to compel the respondent judge to give due course to petitioner's appeal in said LRC Case No. 301-III.

On January 28, 1978, private respondent Robert Arevalo filed with the Court of First Instance of Masbate an application for registration of title to six (6) parcels of land, designated as Lots Nos. 1 to 6 in Plan Psu-05-001980. The lots have an aggregate area of 121.5599 hectares.

On May 2, 1978, the Solicitor-General filed by mail his notice of appearance. Said notice of appearance reads:

"Greetings:

"Please enter the appearance of the Solicitor General as counsel for the Government in the above-entitled case, and cause all notices of hearings, orders, resolutions, decisions and other processes to be served upon him at the Office of the Solicitor General, Department of Justice, Manila.

"The Provincial Fiscal of Masbate has been authorized to appear in this case and therefore should also be furnished notices of hearings, orders, resolutions, decisions, processes. However, as the Solicitor General retains supervision and control of the representation in this case and has to approve withdrawal of the case, non-appeal, or other actions which appear to compromise the interests of the Government, only notices of orders, resolutions, and decisions served on him will bind the party represented.

"Adverse parties are likewise requested to furnish both the Solicitor General and the Fiscal with copies of their pleadings and motions." (Original Record, p. 38. Emphasis Supplied)

On July 5, 1978, the Director of Lands and the Director of the Bureau of Forest Development represented by the Solicitor General through the office of the Provincial Fiscal of Masbate filed by mail oppositions to the application for registration.

On July 20, 1978, a general order of default was declared by respondent judge against the whole world with the exception of the Director of Lands and the Director of the Bureau of Forest Development.

On September 4, 1978, the respondent judge rendered a decision confirming private respondent Robert Arevalo's imperfect title to the six parcels of land and ordering the registration thereof. The dispositive portion of the decision reads:

"WHEREFORE, a decision is hereby rendered that the parcels of land, Lots Nos. 1, 2, 3, 4, 5, and 6, described, bounded and plotted on Plan Psu-05-001980 (Exhibit 'F') and its accompanying technical descriptions (Exhibits 'G', 'G-1', 'G-2', 'G-3', 'G-4' and 'G-5'), respectively, be REGISTERED and the title CONFIRMED, pursuant to Section 38 of Act No. 496 in the name of the applicant, Robert Arevalo, of legal age, Filipino, married to Josephine Bayot and resident of 24 Alphine St., Merville Park, Parañaque, Metro Manila, subject to such encumbrances as are stated under Section 39 of the same Act as maybe subsisting and that should the need arises, the applicant shall cede in favor of the government so much portion as may be needed for a road right-of-way purposes."

On September 8, 1978, the Provincial Fiscal of Masbate received a copy of the decision but did not furnish a copy thereof to the Solicitor General. It was only on November 6, 1978 that the Solicitor General received a copy of the decision.

On October 13, 1978, private respondent Robert Arevalo filed a motion for the issuance of a decree on the ground that the decision had already become final and executory, thirty (30) days having elapsed from the service of the decision to the parties and no appeal having been interposed by any one. The motion was granted by the respondent judge on October 18, 1978.

On December 5, 1978, petitioner Republic of the Philippines, through the Solicitor General filed by mail its notice of appeal and record of appeal, setting the latter for hearing on December 15, 1978.

On January 9, 1979, private respondent Robert Arevalo filed a motion to dismiss appeal on the ground that the decision in this case has already become final and that said decision has already been executed with the issuance of the decree in favor of the applicant. Arevalo added that title was already issued in his name, and registered with the Registrar of Deeds of Masbate as of November 29, 1978.

On January 17, 1979, the respondent judge issued an order dismissing the Republic's appeal for having been filed out of time. The lower court stated that while it is true that the power and/or right to withdraw opposition, to appeal or not to appeal, and other actions which appear to compromise the interests of the government remained with the Solicitor General, yet the said right should be exercised within the period prescribed by law from the time the authorized representative received the order and/or decision being appealed.

The only issue before us is whether the thirty-day period to appeal should be counted from the service of the decision upon the fiscal or from the time it was received by the Solicitor General.

The petitioner relies on our ruling in *Republic v. Hon. Wenceslao M. Polo* (89 SCRA 33), where we held that the thirty-day appeal period should be counted from the time the Solicitor General received a copy of the decision because the service of the decision upon the City Fiscal did not operate as a service upon the Solicitor General.

On the other hand, the private respondent relies on our ruling in *Republic v. Director of Lands* (71 SCRA 426) where we held that service upon the provincial fiscal is binding upon the Republic.

We agree with the petitioner.

Republic v. Polo (89 SCRA 33) states categorically that the thirty-day period should be counted from the date the Solicitor General received a copy of the decision because the service of the decision upon the city fiscal did not operate as a service upon the Solicitor General. We stated:

"The issue is whether the thirty-day period should be reckoned from the service of the decision upon the fiscal or from the time it was served upon the Solicitor General.

"We hold that the thirty-day period should be counted from the date when the Solicitor General received a copy of the decision because the service of the decision upon the city fiscal did not operate as a service upon the Solicitor General.

"It should be clarified that, although the Solicitor General requested the city fiscal to represent him in the trial court, he, nevertheless, made his own separate appearance as counsel for the State. In that 'notice of appearance', he expressly requested that he should be served in Manila with all notices of hearings, orders, resolutions, decisions and other processes' and that such service is distinct from the service of notices and other papers on the city fiscal.

"The Solicitor General also indicated in his 'notice of appearance' that he 'retains supervision and control of the representation in this case and has to approve withdrawal of the case, non-appeal, or other actions which appear to compromise the interests of the Government' and that 'only notices of orders, resolutions and decisions served on him will bind' the Government.

"The Solicitor General in requesting the city fiscal to represent him at the hearings called the attention of that official to Circular No. 41 of the Secretary of Justice dated November 28, 1973 wherein provincial and city fiscals were advised that, in cases where they represent the Solicitor General, 'service on the Solicitor General shall be the basis' 'for the purpose of finality of the decision'.

"In this case, it is obvious that, strictly speaking, the city fiscal did not directly represent the Government. He was merely a surrogate of the Solicitor General whose office, 'as the law office of the Government of the Republic of the Philippines', is the entity that is empowered to 'represent the Government in all land registration and related proceedings' (Sec. 1[e], Presidential Decree No. 478).

"The trial court in disallowing the Government's appeal relied on the ruling that the service of the decision in a land registration case on the fiscal is necessarily a service on the Solicitor General (*Republic v. Reyes*, L-35545, June 18, 1976, 71 SCRA 426, 436-437).

"That ruling is not applicable to this case because in the *Reyes* case the fiscal, as representative of the Solicitor General, was authorized not only to attend hearings but also to file pleadings for the Government. In the instant case, the city fiscal's authority was confined to attending the hearings. The Office of the Solicitor General was the one that filed the pleadings and motions in the lower court.

"The Solicitor General in his petition herein observed that it was the ruling in the *Reyes* case that prompted his office 'to revise completely the letter of authority to fiscals representing' him by making it clear that it is the service of the decision on the Solicitor General that would bind the Government."

The *Reyes* case is no longer the law on the issue before us apart from the fact that it is not applicable to the instant petition because it has a different factual setting. The appeal was perfected on time and should be given due course.

WHEREFORE, the trial court's order disallowing the petitioner's appeal is reversed and set aside. The respondent court is directed to certify the appeal and transmit the records to the appellate court (the record on appeal having been eliminated under Section 18 of the Court's Interim Rules And Guidelines dated January 11, 1983). The decree of registration and the certificate of title issued in this case are ordered cancelled for having been prematurely issued. No costs.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, and Relova, JJ., concur.

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