

BERNARDO C. CARBONEL, PETITIONER, VS. HON. COURT OF APPEALS, FRANCISCA VDA. DE CARREON AND HEIRS OF SALUSTIANO CARREON, REPRESENTED BY FRANCISCA VDA. DE CARREON AND SOCORRO C. V...

G.R. Nos. L-40729-30. January 31, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari of the Decision of the Court of Appeals[1] dated January 7, 1975, in CA-G.R. Nos. 51274-75-R entitled "FRANCISCA A. VDA. DE CARREON, et al. vs. BERNARDO C. CARBONELL", and "BERNARDO C. CARBONEL vs. FRANCISCA A. VDA. DE CARREON, et al.", affirming in both cases the judgment of the trial court which reads:

"WHEREFORE, judgment is hereby rendered:

In Civil Case No. Br. II-795:

- (1) Ordering the defendant Bernardo Carbonel to vacate the premises and to respect the possession of the plaintiffs;
- (2) Ordering further the defendant to remove his improvements within thirty (30) days after this judgment becomes final;

With costs against the defendant.

In Land Registration Case No. Br. II-N-85:

- (1) Declaring Francisca Alingog widow, and the children of the late Salustiano Carreon, namely: Geronimo, Isabel, Virgilio, Jose and Liliosa all surnamed Carreon, Filipino citizens, of legal ages, and residents of Santiago, Isabela, the owners in fee simple of the eastern half of Lot No. 207 of the Santiago Cadastre;
- (2) Declaring Socorro C. Vda. de Agatep, widow of the late Martin Agatep, of legal age, Filipino, resident of Manila, the owner in fee simple of the western half of Lot No. 207 of the Santiago Cadastre;
- (3) Ordering the oppositors to file a subdivision plan of Lot 207 of the Santiago Cadastre, within thirty (30) days after this judgment becomes final.

SO ORDERED.

Cauayan, Isabela, January 15, 1972.

(S/T) ANDRES B. PLAN

District Judge"

(Record on Appeal, pp. 130-131; Rollo, p. 90)

with the modification in the ejectment case, that Carbonel should pay monthly rentals of P20.00 from September, 1964 until he finally vacates, and the removal of his improvement shall be executed at his expense.

The facts of this case are as follows:

On September 29, 1965, herein petitioner Carbonel commenced a Land Registration proceeding before the then Court of First Instance of Isabela, docketed as Land Registration Case No. Branch II-N-85, claiming ownership over Lot No. 207 of the Santiago Cadastre which he sought to register under Act. No. 496 or the Land Registration Act.

This was opposed by Spouses Salustiano Carreon and Francisca Alingog, who also claimed ownership over the one-half eastern portion of Lot 207 (Brief for Defendant and Applicant Appellant, Court of Appeals, pp. 4-5, Rollo, p. 91).

On June 22, 1966, the trial court issued its Order of default, except with respect to the Bureau of Lands which was granted a period to expire on July 18, 1966 within which to file its opposition, and the spouses Salustiano Carreon and Francisca Alingog who had already filed a formal opposition. Subsequently, however, the Provincial Fiscal in behalf of the Bureau of Lands filed a manifestation alleging that the Bureau of Lands would interpose no opposition to said registration.

On January 18, 1967, appellee Socorro C. Vda. de Agatep filed a motion to vacate the Order of Default and to admit her opposition, claiming to be the owner of the one-half western portion of Lot 207, which motion was granted by the trial court in its Order of April 21, 1967 lifting the order of Default insofar as Socorro C. Vda. de Agatep is concerned. (Rollo, p. 91; Brief for Defendant-Appellant, C.A., p. 6).

On December 7, 1966, oppositors spouses Salustiano Carreon and Francisca Alingog had instituted a civil suit before the trial court against the appellant Bernardo C. Carbonel for ejectment and damages with injunction, which was docketed as Civil Case No. Branch II-795, alleging in substance that the defendant Bernardo Carbonel verbally leased the eastern portion "B" of Lot No. 207 of the lot in question from the plaintiffs spouses Salustiano Carreon and Francisca Alingog sometime after April, 1954 in consideration of P20.00 per month which was allegedly religiously paid by appellant Bernardo Carbonel from 1954 to August, 1965. Sometime in August 1964, both of them allegedly agreed to increase the monthly rental to P30.00 as already stated but Carbonel refused to sign the written lease contract and further refused to vacate the premises despite demand to do so. (Ibid., pp.6-7)

Answering the complaint, appellant Bernardo Carbonel denied its material averments, more particularly, the existence of a landlord-tenant or lessor-lessee relationship between him and appellee Carreons, alleging that at the outset he leased the same from Amado Caunian, his predecessor-in-interest and from whom he bought later the lot in question, and that whatever right plaintiffs-appellees have in the property in question the same has already prescribed. (Ibid., pp. 4-7; CA Decision, Rollo, pp. 32-33)

The two cases were tried jointly, after which the trial court rendered the above-cited decision.

It appears that no motion for reconsideration of aforesaid decision was filed but Bernardo C. Carbonel, applicant in Land Registration Case No. Br. II-N-85, and defendant in Civil Case No. Br. II-N-795, appealed to the Court of

Appeals.

Francisca Vda. de Carreon, as plaintiff in the ejectment case, also appealed but on motion of defendant's counsel the same was dismissed for failure to file an appeal bond (Rollo, p. 40).

As above stated, the Court of Appeals affirmed the decision of the trial court in both cases with modification.

The dispositive portion of the aforementioned decision reads:

"IN VIEW WHEREOF, in the land registration case, judgment will have to be as it is hereby affirmed: in the ejectment case, judgment is also affirmed, with the modification that Carbonel should also pay P20.00 a month from September, 1964 until he finally vacates, and the decree of removal of his improvement shall be executed at his expense; costs against Carbonel.

SO ORDERED.

(SGD.) MAGNO C. GATMAITAN

Associate Justice"

(Ibid., p. 38)

Bernardo C. Carbonel moved for the reconsideration of said decision (ANNEX D, Rollo, pp. 42-85) but for lack of sufficient merit the same was denied on May 8, 1975 (Rollo, p. 88).

Hence, this petition.

Without giving due course to the petition, respondents were required to comment (Rollo, p. 94) which Comment was filed on August 12, 1975 (Rollo, pp. 99-110).

Thereafter, on September 22, 1975, the First Division of this Court resolved:

"L-40729-30 (Bernardo C. Carbonel v. Francisca A. Vda. de Carreon, et al.) — Upon consideration of the allegations of the petition and respondent's comment thereon, the Court Resolved to give LIMITED DUE COURSE to the petition only insofar as the petition alleges that respondent Court of Appeals committed an error of law in modifying the judgment of the trial court in favor of respondents (as plaintiffs-appellees) by granting damages at P20.00 a month from September, 1964 until vacation of the property in the ejectment case notwithstanding that respondents' proposed appeal from the said judgment had been dismissed by the very Court of Appeals itself as per its resolution of October 8, 1973 which dismissal was duly entered per entry of final judgment dated November 5, 1973. x x x.

"The petition is denied in all other respects. Accordingly, the decision of the Court of Appeals affirming the judgment in the land registration case in favor of respondents (as oppositors-appellees) and likewise affirming the judgment in the ejectment case ordering petitioner to vacate the property and the removal of his improvement at his expense, with costs, stands. Execution for the enforcement of the judgment in favor of respondents including the ejectment of petitioner from the property and the removal of his improvement shall issue upon entry of this resolution by way of entry of judgment and only the sole question of whether petitioner shall pay respondents P20.00 a month from September 1964 until he finally vacates as per the modification of judgment in the ejectment case made by respondent Court of Appeals shall await the decision of this Court in

accordance with the limited due course given the petition by this Court." (Rollo, p. 112)

Petitioner's motion for reconsideration of this Resolution (Rollo, pp. 127-137) was denied, and the denial is Final (Rollo, p. 139).

Consequently, partial judgment was duly entered per entry of final judgment dated November 16, 1975 (Rollo, p. 164).

The Brief for Petitioner was filed on December 15, 1975 (Rollo, p. 147) while that of respondent's was submitted on January 19, 1976 (Rollo, p. 154).

After failure of petitioner to file reply brief, the case was declared submitted for decision without the said reply brief (Rollo, p. 161).

The issue of whether or not the respondent Court of Appeals committed an error of law in modifying the judgment of the trial court in favor of respondents notwithstanding the dismissal of respondents' proposed appeal from said judgment should be answered in the affirmative.

To perfect an appeal, under Rule 41, Sec. 3 of the Rules of Court, the notice of appeal (the appeal bond and the record on appeal having been filed) must be served (together with copy of the record on appeal) upon the adverse party and filed with the trial court within thirty (30) days from notice of the order or judgment appealed from. As held in *Garcia v. Echiverri*, these requirements, are not only mandatory but also jurisdictional in nature and must be complied with within the 30-day reglementary period (132 SCRA 631 [1984]).

In the case at bar the proposed appeal of private respondents to the Court of Appeals was dismissed for failure to file an appeal bond (Rollo, p. 40).

Thus the appeal not having been perfected, the order of dismissal was valid. (*Medran v. CA*, 83 Phil. 164; *Vda. de Crisologo v. CA*, 137 SCRA 231 [1985]). The questioned decision is final and executory and deprives the appellate court of jurisdiction to alter the final judgment of the trial court (*Garcia v. Echiverri*; *Vda. de Crisologo v. CA*, supra). Exceptions to the general rule of allowing the perfection of an appeal outside the reglementary period cannot likewise be availed of in the case at bar, as such liberality was held not warranted, where the decision of the lower court is satisfactorily supported by the records. (*Vda. de Crisologo v. CA*, supra)

However, respondents insist, that notwithstanding the dismissal of the appeal of private respondents as plaintiffs in the ejectment case, they still retain their standing in court not as appellants but as plaintiffs-appellees and as such they are not precluded from making assignment of errors which they did and which was taken cognizance of by the respondent Court of Appeals (Respondent's Brief, pp. 7-8).

The contention has no merit.

In the case of *Bunge Corp. and Universal Comm. Agencies v. Elena Camenforte & Company*, 91 Phil. 861, it was held that appellee, who is not also an appellant, may also assign errors in his brief where his purpose is to maintain the judgment on other grounds, but he may not do so if his purpose is to have the judgment modified or reversed, for, in such case, he must appeal. On failure of herein respondents to perfect their appeal, the judgment of the trial court in the ejectment case became final and executory and a modification of such judgment by the appellate court cannot be allowed (*Phil. Engineering Corp. v. Ceniza*, 6 SCRA 194).

PREMISES CONSIDERED, the decision of the Court of Appeals is hereby modified by the deletion of the amendment interposed therein and the decision of the trial court is hereby REINSTATED and AFFIRMED in toto.

SO ORDERED.

Fernan, (Chairman), Alampay, Gutierrez, Jr., Padilla, and Bidin, JJ., concur.

[1] The Justices were Gatmaitan, Reyes and Plana.

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