

SPOUSES BONIFACIO MAQUIRATO AND APOLINARIA MAQUIRATO, PETITIONERS, VS. HRS. TEOFILO MASINDO, RESPONDENT.

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

In this Court's Minute Resolution[1] dated March 28, 2014, petitioners-appellants were directed to rectify the infirmities observed in their petition and accordingly, private respondents were directed to file their Comment on the petition and to pay the required mediation fee within ten (10) days from notice and for petitioners to file a Reply, if desired, within five (5) days from receipt of Comment.

On January 2, 2014, petitioners submitted their Compliance[2] to Our earlier Resolution directing them to rectify the infirmities observed in their Petition. Thereafter, private respondent Teofilo Masindo, through counsel, filed their Comments of (sic) Petitioners' Petition for Review with Motion to Defer the Payment of Mediation Fee[3] on January 7, 2014 assailing the defectiveness of the instant Petition, to wit:

a. failure to serve a copy of the petition to the court that rendered the assailed decision, in violation of Section 11, Rule 13 of the Rule 3 of the Rules of Court:

- service of the copy of the instant Petition to the Regional Trial Court, Branch 39, Sogod, Southern Leyte as it was done not by personal service despite its proximity to the office of the petitioners' counsel but by registered mail on September 26, 2013, the deadline of the finality of the assailed Decision; and

b. failure to state the full names of the parties to the case, in violation of Section 2(a), Rule 42 of the Rules of Court:

- the identities of the persons of the respondents were unknown or unclear because the petitioners only impleaded as respondents in their Petition the "Heirs of Teofilo Masindo" but their full names, identities and respective addresses were not stated in the Petition.

Considering that the identities of the respondents are not yet known, counsel of respondent Teofilo Masindo moved to defer the imposition/payment of the required mediation fee.

This Court notes that the petitioners' Compliance failed to substantially cure the infirmities previously observed. Out of all the infirmities concerned, the following still remained to be uncorrected or not rectified, despite being directed to do so:

1. petitioners failed to append an Affidavit of Service, in violation of Section 13, Rule 13 of the Rules of Court;

- petitioners merely alleged that a proof of service was indicated in page 11 of the Petition, hence, the same would suffice.

2. petitioners failed to attach some of the relevant pleadings which are necessary for a better understanding and resolution of the instant petition, except for a copy of the Complaint filed by them before the MCTC;

- the relevant pleadings which were not attached by petitioners were:

- a. Answers to the aforesaid Complaint;
- b. Appeal Briefs or Appeal Memorandum filed by the parties before the RTC;
- c. Motion for Reconsideration of the assailed RTC Decision

IN VIEW OF THE FOREGOING, We NOTE the petitioners' Compliance and the respondent's Comments of (sic) Petitioners' Petition for Review with Motion to Defer the Payment of Mediation Fee.

And pursuant to Section 3, Rule 42[4] and Section 1(h), Rule 50[5] of the Rules of Court, the instant Petition is hereby DISMISSED and deemed withdrawn from the dockets of this Court.

SO ORDERED.

Ingles,[*] and Azcarraga-Jacob, JJ., concur.

[*] Acting Chairperson in lieu of J. Ramon Paul L. Hernando, per Office Order No. 19-14-GTI dated July 7, 2014.

[1] Rollo, pages 45-46.

[2] Rollo, pages 54-58.

[3] Rollo, pages 71-77.

[4] Section 3, Rule 42 of the 1997 Rules of Civil Procedure reads as follows:

Effect of failure to comply with requirements. — The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof..

[5] Sec. 1. Grounds for dismissal of appeal. — An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

xxx xxx xxx

(h) Failure of the appellant xxx or to comply with orders, circulars, or directives of the court without justifiable cause.

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