

**ANDRES ABAN AND DOLORES GALOPE, PETITIONERS, VS.
HONORABLE MANUEL L. ENAGE, AS DISTRICT JUDGE OF THE
COURT OF FIRST IN-STANCE OF AGUSAN, BRANCH II, HEIRS OF
ELEUTERIO CUENCA, AN...**

G.R. No. L-30666. September 28, 1984

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MAKASIAR, J., Chairman:

On February 25, 1983, We rendered a decision in this case dismissing the petition filed therein and affirming the order of the Court of First In-stance, Branch II, dated July 29, 1968 in Civil Case No. 1005 which cancelled TCT No. RT-1693 in the names of herein petitioners covering Lot No. 427C-1 and lifting the temporary restraining order issued by this Court on July 9, 1969.

Petitioners, in their motion for reconsideration filed on April 8, 1983, now seek to have the aforesaid decision reconsidered on the basis of these grounds:

1. This Court erred in upholding the challenged order despite the fact that the proceedings conducted before the lower court partake of the nature of a hearing under Sec. 112 of Act 496, instead of an ordinary civil action; and
2. The cancellation of the Transfer Certificate of Title No. RT-1693 in the name of herein petitioners deprived them, in the ultimate analysis, of their property rights without due process of law (p. 631, Vol. II, rec.).

Petitioners thus pray for reconsideration of the aforesaid decision and the rendition of another one which would declare the proceedings in the lower court void (p. 648, Vol. II, rec.).

On May 30, 1983, private respondents, thru Senecio Cuenca as heir and representative of the heirs of Eleuterio Cuenca, filed their comments on the motion for reconsideration. In opposition to the said motion, private respondents allege that:

1. The motion failed to show when the petitioners received notice of the decision sought to be reconsidered to enable the Supreme Court to determine whether or not it was filed on time;
2. The grounds or assignment of errors raised by petitioners in their motion were already fully and intelligently discussed, with all supporting authorities, unanimously concurred in by all the members of the Second Division; and
3. Anent the second assignment of error, it can be fairly and justly stated that petitioners were not deprived of their property rights without due process of law, for they were given by the lower court an opportunity to be heard and submit evidence and were re-presented by counsel. They should be bound by the failure of their counsel to protect their interests and claim (pp. 657, 659, Vol. II, rec.).

On June 6, 1983, petitioners filed their manifestation or motion to allow them to submit transcripts of records of proceedings in the lower court two weeks from date of filing of their manifestation (p. 662, Vol. II, rec.).

In its resolution of June 20, 1983, this Court granted the aforesaid manifestation to allow petitioners to submit the transcripts of records (p. 666, Vol. II, rec.).

Respondents heirs of Eleuterio Cuenca filed a motion to dismiss on February 1, 1984 praying for the denial of aforesaid manifestation/motion and the termination of herein case for petitioners' failure to submit the transcript of records within the time requested for and their lack of interest to prosecute their cause after a lapse of over six months from June 20, 1983 (p. 667, Vol. II, rec.).

WE do not find merit in petitioners' motion for reconsideration. WE have thoroughly considered petitioners' assigned errors and have resolved the same with finality, thus:

"For even assuming that the motion to cancel filed by private respondents in the court below is a separate, distinct, and independent action by itself, as argued by the petitioners, nevertheless, by the service of summons upon herein petitioners, and by their act of filing an opposition to the motion as well as their voluntary appearance in court when the motion was set for hearing, together with the submission of their memorandum (pp. 168-177, rec.), the petitioners are deemed to have submitted themselves to the jurisdiction of the court, and, consequently, they are bound by the legal implications of the order of the court a quo.

"Moreover, the filing of petitioners' three motions for reconsideration is a further submission on their part to the jurisdiction of the court, and the denial of such motions was binding on petitioners herein (Soriano vs. Palacio, et al., 12 SCRA 447, 449).

"It cannot be said that the petitioners were denied their day in court. Neither can it be said that the petitioners' substantial rights were prejudiced thereby. The petitioners have had the fullest opportunity to lay before the court the merits of their claim when they, as stated heretofore, voluntarily submitted themselves to the jurisdiction of the court a quo.

"To assert that the court had no jurisdiction because petitioner Andres Aban was not a party in Civil Case No. 1005 would appear therefore to be a mere technicality that would not serve the interest of the administration of justice" (Torres vs. Caluag, et al., 17 SCRA 808, 811). Besides, petitioner Andres Aban's not being a party in Civil Case No. 1005 was of his own making. By not joining as party-plain-tiff in Civil Case No. 1005, and, at the same time, asking the court to drop him as party-defendant (he was sued as one of the parties-defendants when his consent to have him joined as one of the parties-plaintiffs could not be secured) in the same case, which the court a quo granted in an order dated September 17, 1964, petitioner Andres Aban virtually toyed with his right to enforce and protect his claim over a portion of Lot No. 427 of Butuan Cadastre. There is no plausible reason for petitioner Andres Aban to assume that the lot he claims (Lot No. 427-C-1) is not involved in Civil Case No. 1005 because what is precisely under litigation in said case is Lot No. 427 as a whole, of which Lot No. 427-C-1 is part and parcel" (120 SCRA 796, 797).

Again, petitioners defaulted in their bid to be heard by this Court which, in two instances, were afforded them. It must be noted that their motion for reconsideration was taken note of and thereafter, their manifestation/motion to allow them two weeks to submit transcripts of proceedings in the lower court was granted in the Court resolution dated June 20, 1983. It has been more than one year now since June 20, 1983 when petitioners were allowed time (which they themselves requested for) to submit transcripts of the lower court proceedings and yet, they have not produced said transcripts nor have they submitted any explanation. This Court has waited for more than a year and It cannot waste its time waiting for parties like petitioners herein whose irresponsibility and apathy caused undue delay in the dispensation of justice and grave prejudice to the herein respondents.

WHEREFORE, PETITIONERS' MOTION FOR RECONSIDERATION DATED MARCH 29, 1983 IS HEREBY DENIED FOR LACK OF MERIT AND THE DECISION OF THIS COURT DATED FEBRUARY

25, 1983 IS HEREBY DECLARED FINAL AND EXECUTORY.

SO ORDERED.

Abad Santos, Escolin, and Cuevas, JJ., concur.

Aquino, J., in the result.

Concepcion, Jr., and Guerrero, JJ., on leave.

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