

EPIFANIO L. CASOLITA, SR., ARTHUR AQUINO, BENITO GATPATAN, JR., HENRY RELOSA, EDGAR LA TORRE, BERNARDO OCAG AND CECILIA VIERNES, PETITIONERS, VS. THE COURT OF APPEALS, THE REGIO...*G.R. No. 115703. July 08, 1997*

Ponente: FRANCISCO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-115703/>**FRANCISCO, J.:**

On March 28, 1990, private respondent ATROP, INC., a domestic corporation, filed a complaint against herein petitioners with the Regional Trial Court of Manila, for recovery of possession of a parcel of land located at #731 Magallanes cor. Victoria Street, Intramuros, Manila. ATROP, INC. claimed ownership, in fee simple, of said parcel of land under TCT No. 68927 of the Registry of Deeds of Manila.[1] In answer thereto, petitioner Casolita through his counsel, Atty. Jose L. Aguilar, alleged that he and his family had been in continuous possession of the land since 1953, having been designated as caretaker by the supposed “real owners” Ramon LeQuina and Portia Pueo. The other petitioners, represented by Atty. Benito Gatpatan, Jr. filed their answer unequivocally adopting and incorporating the allegations of Casolita in his answer to the complaint. They further asserted that they were not “squatters” on the land as they occupied the same in open, public, adverse and continuous possession for more than ten years invoking Article 1134 of the Civil Code in relation to the existing land reform code. Thereafter, trial ensued. On August 5, 1993, the lower court[2] rendered a decision[3] in favor of ATROP, INC., ordering the defendants to vacate the premises, to remove the structures they built, and to pay compensation for the use of the land, attorney’s fees and costs. Atty. Aguilar received a copy of the decision but failed to file a notice of appeal. On the other hand, Atty. Gatpatan Jr. filed a notice of appeal on August 23, 1993.

In its omnibus motion to dismiss the appeal and for the issuance of a writ of execution, dated September 29, 1993, ATROP INC., argued that as far as petitioner Casolita was concerned, the decision had become final and executory for his counsel, Atty. Aguilar, received a copy thereof without filing a notice of appeal. As to the other petitioners, ATROP INC., observed that while they timely filed the notice of appeal the notice was fatally defective for they did not serve the same to the counsel of ATROP, INC. In its October 18, 1993 Order, the lower court[4] granted the omnibus motion to dismiss and ordered the issuance of a writ of execution.[5]

Atty. Alfredo C. Baylon, Jr. thereafter filed a notice of appearance as “counsel for all the defendants”[6] and moved for reconsideration of the October 18, 1993 Order alleging that the dismissal of the notice of appeal and the issuance of the writ of execution “x x x is repugnant to the principle of due process” as it amounted to denial of justice, citing *Alonzo vs. Villamor*. [7] He contended that petitioners Casolita, et. al., were not properly notified of the August 5, 1993, decision since Atty. Aguilar had withdrawn as counsel “due to poor health”; hence, the decision had not become final and executory. As a last ditch effort, said counsel, for the first time, alleged that the issuance of the writ of execution “x x x would be violative of Article VII of the Urban Development and Housing Act of 1992, particularly Section 28, paragraph 2 thereof,” without, however, elaborating why. On November 10, 1993, the lower court denied the motion for reconsideration and the motion to admit appeal. Thus:

“There are two Notices of Appeal submitted by two different lawyers without particularizing which among the defendants they represent. The Notice submitted by Atty. Gatpatan, Jr. was received on August 23, 1993 and records show that Atty. Gatpatan, Jr. received the copy of the decision on August 17, 1993, hence, well within the period of fifteen-day to interpose an Appeal. Said lawyer represented at the trial the following defendants: himself, Arthur Aquino, Carlito Santosm, Henry Relosa, Edgar La Torre, Bernardo Ocas and Cecilia Viernes, leaving defendant Epifanio Casolita who was represented by Atty. Aguilar. Another Notice of Appeal was filed by a certain Atty. Alfredo C. Bayhon, Jr. [should be Baylon], who at the trial was not a counsel of records for any defendant. Atty. Bayhon, Jr. formally appeared only, per his appearance received by this Court on November 3, 1993, long after the lapse of fifteen-day period to Appeal, computed from the time Atty. Aguilar received a copy of the decision on August 25, 1993. This Court presupposes that Atty. Bayhyon, Jr. represents the defendant Casolita only. The records, however, does not show that Atty. Aguilar ever withdrew from the case, hence, the appearance of Atty. Bayhon, Jr. is improper and cannot be recognized by this Court, there being no showing that Atty. Aguilar withdrew from the case.

“When the plaintiff [herein private respondent] submitted a Motion to Dismiss Appeal and for Issuance of a Writ of Execution on the ground that the Notice of Appeal is defective not having been served either on plaintiff or its counsel, no opposition was filed. That was why the Court granted the motion and issued the Writ prayed for.

“The records show likewise, that Atty. Bayhon, Jr. submitted a Motion for Reconsideration of the Order of this Court dismissing the Appeal of Atty. Gatpatan, Jr., and granting execution. The motion for reconsideration deserves scant consideration, because the lawyer who filed it has no personality in the case. Moreover, the notice to the adverse counsel of the Notice of Appeal is a mandatory requirement for perfecting an Appeal.

“WHEREFORE, there being no merit to the motion, the same is hereby denied, and this denial is final.

“The Motion to Admit Appeal filed by Atty. Bayhon, Jr. is denied likewise.

“SO ORDERED.”[8] (Emphasis Added)

A notice to vacate the premises having been made, the petitioners through Atty. Baylon filed before respondent Court of Appeals a petition via Rule 65 of the Rules of Court and Section 9 of Batas Pambansa Blg. 129 seeking the annulment of the October 18, 1993 and November 10, 1993 Orders of the lower court.[9] On May 27, 1994, the Court of Appeals dismissed the petition. Hence, this petition. The Court gave due course to this petition and required the parties to submit their respective memoranda.

Petitioners contend that the Court of Appeals “committed grave abuse of discretion tantamount to lack of jurisdiction” in denying their petition for certiorari based on their failure to furnish private respondent with a copy of the notice of appeal. Such omission, they insist, was a mere technicality which should be cast aside to attain substantial justice. The contention lacks merit.

Under the previous rule, an appeal may be taken “by serving upon the adverse party and filing with the trial court within thirty (30) days from notice of order or judgment, a notice of appeal, an appeal bond, and a record on appeal”. This provision was amended by Batas Pambansa Blg. 129, particularly Section 39 thereof, by deleting the need to file an appeal bond and record on appeal, except in multiple appeals and in special proceedings, and by fixing the period of appeal to fifteen (15) days. The entire original record of the case instead is transmitted to the appellate court. Appeals from final judgments or orders of the Regional Trial Court are now taken to public respondent Court of Appeals by simply filing a notice of appeal.[10] The simplification of the procedure for elevating to a higher court final judgments or orders of the lower courts correspondingly underscored the importance of the notice of appeal. The adverse party may only be apprised initially of the pendency of an appeal by the notice of appeal. To deprive him of such notice is tantamount to depriving him of his right to be informed

that the judgment in his favor is being challenged. This requirement should be complied with so that he may be afforded the opportunity to register his opposition to the notice of appeal if he so desires.[11] And service of the notice of appeal upon him may not be dispensed with on the basis of the appellant's whims and caprices, as in this case. We quote with approval, in this connection, respondent court's ruling, thus:

"The judicial position on the requirement that a notice of appeal be served upon the adverse party is articulated in the early case of *Philippine Resources Development Corp. vs. Narvasa*, 4 SCRA 414 (1962), when the Supreme Court stated:

'Under Section 3, Rule 41, of the Rules of Court, an appeal may be taken by serving upon the adverse party and filing with the trial court within 30 days from notice of the judgment a notice of appeal, appeal bond, and a record on appeal. This section clearly requires that not only shall the three documents be filed with the court within the period of 30 days but that copies thereof shall be served upon the adverse party. This requirement is made in order that the adverse party may not only be notified of the intention of the appellant to take the case to the appellate court, but also to afford him an opportunity to register his opposition to any of them if he desires to do so.'

"As posited and as aptly argued in the private respondent's brief, the requirement is not a mere technicality but goes into procedural due process which, in the absence of opposition from the petitioners (Annex A, Petition), despite proper notice and opportunity to do so (Annexes "2" and "3" Comment), cannot be countenanced as basis for alleged grave abuse of discretion. Moreover, the motion to reconsider the order of dismissal was filed by counsel not of record, no proper substitution having been made." [12] (Emphasis supplied)

Petitioners additionally aver that respondent court also "abused its discretion amounting to lack of jurisdiction" when it held that Atty. Baylon had no personality in this case despite his formal appearance as counsel for petitioner Casolita. We hold, however, that respondent court neither committed an error nor abused its discretion in upholding the lower court's denial of Casolita's motion for reconsideration, motion to admit appeal and notice of appeal on the ground that Atty. Baylon was not Casolita's counsel of record. The records show that Atty. Aguilar was petitioner Casolita's counsel of record. Even Atty. Gatpatan Jr. impliedly recognized his separate representation when he adopted the allegations in the answer filed for said petitioner by Atty. Aguilar. That Atty. Aguilar was the counsel of petitioner Casolita was noted by the lower court in its Order of November 10, 1993. This was buttressed by the fact that Casolita was furnished a copy of the decision through said counsel of record. The failure of Atty. Aguilar to file a notice of appeal binds Casolita which failure the latter can not now disown on the basis of his bare allegation and self-serving pronouncement that the former was ill. A client is bound by his counsel's mistakes and negligence.[13] And neither may Atty. Baylon's unsupported claim that petitioner Casolita was in Cavite at the time the decision of the lower court can be given credence. Indeed, the un rebutted observation of private respondent cast serious doubt over Atty. Baylon's unsubstantiated claims. Thus:

"It is noteworthy that the "Motion for Reconsideration", (wherein this alleged withdrawal of Aguilar, etc., are raised for the first time by Baylon) is not verified (under oath) by either Casolita or Aguilar.

"More, it is difficult to conceive that Casolita, did not learn of the adverse judgment, when copy thereof was received by Gatpatan. Gatpatan has been collaborating with Aguilar, in the instant case, and is a personal friend of Casolita. In fact, Gatpatan is a neighbor of Casolita. In fact, Gatpatan, Aguilar, and Casolita had been acting in unison, all throughout the lengthy trial of the instant case.

"How can Casolita claim that he was unaware of the adverse decision, until October 23, 1993 (when Gatpatan received [the] same, as early as August 19, 1993?) "[14]

It is a settled rule that a lawyer may not simply withdraw his appearance in a case without a formal petition filed in the case. Substitution of counsel must be made in accordance with Rule 138 of the Rules of Court, to wit:

“Sec. 26. Change of Attorneys. - An attorney may retire at any time from any action or special proceeding, by the written consent of his client filed in court. He may also retire at any time from an action or special proceeding, without the consent of the client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire. In case of substitution, the name of the attorney newly employed shall be entered on the docket of the court in place of the former one, and written notice of the change shall be given to the adverse party. x x x “.

There having no proper substitution of counsel, Atty. Baylon, as correctly noted by the lower court, has no personality in the case.

“Procedural rules, we reiterate, are tools designed to facilitate the adjudication of cases. While the Court, in some instances, allows a relaxation in the application of the rules, this, we stress, was never intended to forge a bastion for erring litigants to violate the rules with impunity. The liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice. The instant case is no exception to this rule.”[15]

As regards petitioner’s residual contention that the decision of the lower court and the notice to vacate contravened the provisions of Republic Act No. 7279, otherwise known as the Urban Development and Housing Act of 1992, which petitioners addressed for the first time in their memorandum, the same does not deserve serious consideration. It is a rule that issues not properly brought and ventilated below may not be raised for the first time on appeal,[16] save in exceptional circumstances none of which, however, obtain in this case.

WHEREFORE, the instant petition is hereby DENIED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Panganiban, JJ., concur.

[1] The land has an area of 765,50 s.m. (Rollo, p. 53).

[2] Presided by Judge Cesar V. Alejandria.

[3] Rollo, pp. 62-66.

[4] Thru Judge Concepcion Alarcon-Vergara.

[5] Order, dated Oct. 18, 1993; Rollo, p. 42.

[6] Appearance As Counsel, Nov. 3, 1993; Rollo, p. 72.

[7] 16 Phil. 315, 322 (1910).

[8] Rollo pp. 43-44.

[9] Rollo, pp. 27-41.

[10] *Echaus v. Court of Appeals*, 187 SCRA 672; *Lacsamana v. Second Special Cases Division of the Intermediate Appellate Court*, 143 SCRA 643-648.

[11] *Id.*

[12] Decision of the Court of Appeals, p. 4; Rollo, p. 24.

[13] See: *People v. Salido, et. al.*, G.R. No. 116208, July 5, 1996.

[14] Memorandum, pp.13-14; Rollo, pp. 161-162.

[15] Garbo vs. Court of Appeals, et. al., G.R. No. 107698, July 5, 1996.

[16] Gevero vs. Intermediate Appellate Court, 189 SCRA 201; People v. Leoparte, 187 SCRA 190.

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