

**BENJAMIN S. LAZA, DIONISIO S. LAZA, FILOMENA S. LAZA,
MILAGROS S. LAZA AND JOSE S. LAZA, PETITIONERS, VS. COURT OF
APPEALS, ELENA G. GOMEZ, ANA G GOMEZ, CARMEN G. GOMEZ,
AGUSTIN...**

G.R. No. 122427. March 13, 1997

Ponente: HERMOSISIMA, JR., J.

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HERMOSISIMA, JR., J.:

This petition for review on certiorari seeks to set aside the respondent Court of Appeals' decision dated October 20, 1994 which reversed the judgment rendered by the Regional Trial Court, Branch 56 of San Carlos City (Pangasinan) in favor of the petitioners.

Two basic issues are presented by this petition, to wit: (1) whether or not respondent Court of Appeals erred in simply noting the petitioners' motion for reconsideration because the motion had been belatedly filed, an Entry of Judgment having been effected on January 24, 1995; and (2) whether or not respondent Court of Appeals erred in ruling that the subject property rightfully belonged to private respondent Porfirio D. Sison to whom attorney's fees in the amount of P50,000.00 were awarded in the concept of damages and expenses of litigation.

This case arose out of an action for conveyance with damages[1] filed by the petitioners to annul the title of private respondent Sison over Cadastral Lot 10-A or 215 located in Barrio Poponto, Bayambang, Pangasinan and covered by TCT No. 167909 ; in Sison's name.

The antecedent facts as recounted by the trial court and adopted by the respondent Court of Appeals are not in dispute:

"On April 26, 1976, the heirs of the late Agustin Gomez, namely: Elena, Imelda, Agustin, Jr., Nora, Ana and Carmen, surnamed Gomez, executed a deed settling and partitioning the estate of their father which consisted of a portion of that parcel of land with an area of 46,801 square meters (Exhibit B), described ; in Plan H-63699 and covered by Transfer Certificate of Title No. 25809. On the same date, they also executed another deed selling their aforesated share to Venustiano Tan for a consideration of P8,000.00 (Exhibit C), who also sold the same and the rest of the property to plaintiffs on March 8, 1980 for consideration of P46,845.00 (Exhibit D). Both deeds were registered so that on June 7, 1984, plaintiffs were issued Transfer Certificate of Title No. 150270 (Exhibit B).

On November 16, 1987, the above-named heirs of the late Agustin Gomez executed another deed settling and partitioning other properties of their father, one of which was a certain Lot 10-A or 215 covered by Transfer Certificate of Title No. 159347, which appeared to be located in Barangay Poponto, Bayambang, Pangasinan (Exhibit F). In that same deed, the said heirs conveyed this particular lot to defendant Porfirio V. Sison as payment for professional services rendered by the latter to them (Exhibit F-2). The deed of extra-judicial partition was fully registered so that the parties, including defendant Porfirio V. Sison, were issued their respective certificates of title, one of which was Transfer Certificate of Title No. 167909 (Exhibit G) in the name of the latter.

When plaintiffs discovered this transaction between the heirs of Agustin Gomez and their co-defendant Porfirio V. Sison, they filed this suit claiming to be the owner of this parcel of land conveyed to the latter by virtue of Exhibit 'F'. Defendant had countered that the property acquired by plaintiffs by virtue of Exhibit 'C' is not the same property conveyed to him, a fact easily discernible on the face of their respective titles showing different boundaries, area and location. Whereas the property claimed by plaintiffs is located in Barrio Buayaan, Bayambang, Pangasinan, defendants claim that the property conveyed by virtue of Exhibit 'F' is located in Barrio Poponto, Bayambang, Pangasinan. Therefore, these are separate properties (pp. 1-2 of the RTC Decision; pp. 360-361, Record)."[2]

After a summary proceeding based solely on documents and affidavits, the[3] lower court,[4] on October 23, 1990 declared, among others, Lot 10-A or 215 as the same property sold to Venustiano Tan by virtue of Exhibit "C." Thus, TCT No. 167909 in the name of private respondent Sison was ordered cancelled and said respondent was further ordered to respect the title, ownership and possession of the petitioners in the subject property.[5] The full text of the dispositive portion of the lower court's decision reads:

"WHEREFORE, judgment is hereby rendered:

1. Declaring Lot 10-A or Lot 215 as the same property sold to Venustiano Tan by virtue of Exhibit 'C';
2. Declaring the sale, evidenced by Exhibit 'C,' to have precedence over Exhibit 'F,' which is hereby voided in so far as it concerns Lot 10-A or Lot 215;
3. Cancelling Transfer Certificate of Title No. 167909 (Exhibit G);
4. Ordering the Register of Deeds to issue a new Certificate of Title in favor of plaintiffs as replacement for Transfer Certificate of Title No. 167909 (Exhibit G) upon payment of all lawful fees, charges and taxes;
5. Ordering the Register of Deeds to annotate the Decision in CA-G.R. No. 46237-R, entitled: Agustin Gomez vs. Jose Tan, et al., dated December 15, 1972, on Transfer Certificate of Title No. 150270 (Exhibit E) for the purpose of showing that the property in question is not covered by the above-stated certificate of title issued by virtue of a homestead patent, but by a certificate of title issued by virtue of a cadastral proceedings originally adjudicated in favor of the late Agustin Gomez;
6. And ordering defendants to respect the title, ownership and possession of plaintiffs in the property in question.

There is no pronouncement as to damages, costs and attorney's fees.

SO ORDERED."[6]

On appeal,[7] the public respondent[8] reversed and set aside the trial court's judgment and a new judgment was rendered, viz:

"WHEREFORE, in view of all the foregoing, judgment is hereby rendered giving due course to the appeal. The decision of the Regional Trial Court dated October 23, 1990 is REVERSED and SET ASIDE. A new judgment is hereby rendered as follows:

1. Declaring Porfirio V. Sison as the owner of Lot 10-A (now 215) located at Barrio Poponto, Municipality of Bayambang, Province of Pangasinan, covered by TCT No. 167909;
2. Ordering the Register of Deeds of Pangasinan to annotate this decision at the back of TCT No. 167909;
3. Ordering plaintiffs-appellees to respect the title, ownership and possession of defendant-appellant Porfirio Sison over the property in question;

4. Ordering plaintiffs-appellees to pay defendant-appellant Sison the amount of P50,000.00 as attorney's fees in the concept of damages and expenses of litigation.

No pronouncement as to costs.

SO ORDERED."[9]

On December 29, 1994, the respondent Court of Appeals' decision became final and executory. As a consequence, on January 24, 1995, an entry of judgment was effected.[10]

Meanwhile, on January 11, 1995, petitioners filed a motion for reconsideration of the aforesaid Court of Appeals' decision reiterating therein that the land being claimed by private respondent Sison was the same land embraced in their title. The petitioners also maintained that Sison is not entitled to attorney's fees in the concept of damages and litigation expenses.[11]

On February 9, 1995, the Court of Appeals resolved to note petitioners' motion for reconsideration for having been filed thirteen (13) days late[12]

On March 27, 1995, respondent Court of Appeals received, through registered mail, petitioners' Motion to Set Aside Entry of Judgment and to Order the Clerk of Court of San Carlos City to Return the Records of the Case on the ground that their copy of the lower court's decision was received by one Leticia Ramos on December 13, 1994 who, in turn, gave the envelope containing said copy to Judison P. Laza, the 11-year old son of petitioner Benjamin Laza. The petitioners alleged that Judison kept the copy in a cabinet and gave it to his parents only on January 2, 1995 when he heard the latter talking about the case.[13]

On June 22, 1995, the respondent Court of Appeals denied the above motion and found petitioners' excuse "narrow and unrealistic." It also ruled that "to grant the present motion to admit motion for reconsideration is virtually to admit a prohibited second motion for reconsideration and (in effect extend) the mandatory period within which to file the same which is likewise not allowed by law." [14]

Hence, on November 9, 1995, this petition was filed presenting the following arguments:

1) That petitioners were denied due process when Court of Appeals failed to nullify or set aside the Entry of Judgment it made considering that there was misdelivery of the mail regarding their copy of the lower court's decision dated October 23, 1990 to Leticia Ramos who was not an agent or authorized representative of petitioner Benjamin Laza to receive mails for him; Judison to whom Leticia handed over the copy for the petitioner was of tender age and insufficient discretion, thus, neither could a valid delivery of the registered mail for petitioners be made through him;[15]

2) That respondent Court of Appeals erroneously concluded that respondent Sison was deemed a buyer in good faith inasmuch as there was no delivery of the land to him as manifested in Sison's admission that the petitioners have been in actual physical possession of the subject property, hence, the need to require them to vacate the same through a letter by respondent Elena Gomez addressed to petitioners' father; the fact remains that the land previously and presently held by petitioners is one and the same land being claimed by respondent Sison which was conveyed to him as payment for professional services;[16] and

3) that the award of attorney's fees was improper since no malice or bad faith could be attributed to the petitioners in having filed the action for reconveyance to protest and assert their propriety rights over the subject property.[17]

The petition is not impressed with merit.

All that the rules of procedure require in regard to service by registered mail is to have the postmaster deliver the

same to the addressee himself or to a person of sufficient discretion to receive the same.[18]

The petitioners insist that the eleven-year old Judison did not possess sufficient discretion to receive the copy of the lower court's decision sent by registered mail at Benjamin Laza's residence. As to Leticia Ramos who had signed for the receipt of the said copy caused to be delivered by the Postmaster at Benjamin's given address, there was no showing, at all, from the records of the case, that Leticia was not a person of sufficient discretion to receive the mail at the proper address appearing on the envelope which contained the registered mail. Petitioners' claim was that she was not Benjamin's agent or authorized representative to receive mails in his belief. To follow petitioners stand would render nugatory the provisions on service by registered mail. Every house maid or house boy or any other person other than the addressee of registered mail would have to have a special power-of-attorney to receive such mail in behalf of the addressee. We agree with the respondent Court of Appeals' finding that petitioners' excuse for the late filing of their motion for reconsideration was rather flimsy and unrealistic.

At this juncture, it is important to note that after the respondent Court of Appeals' Entry of Judgment in January 24, 1994, the Regional Trial Court, Branch 56 of San Carlos City (Pangasinan), on November 8, 1995 granted private respondents' motion for execution and ordered the issuance of the corresponding writ of execution.[19]

No temporary restraining order having been obtained despite the filing of the present petition, a Writ of Execution was issued on January 11, 1996.[20] Consequently, a Notice of Levy was registered with the Register of Deeds of Lingayen, Pangasinan affecting the rights and participation of the petitioners in the real properties covered by TCT Nos. 139794 and 148799.[21]

On February 16, 1996, the Sheriff's Return of the Writ of Execution dated January 11, 1996 was submitted in court "FULLY SATISFIED as to par. 1 and 2. With respect to pars. 3 and 4, (petitioners) refused to comply, hence, their titles were levied upon and the Writ of Execution duly annotated on the back of the titles concerned." [22]

On January 17, 1996, a motion to quash the writ of execution was filed by the petitioners but the lower court, on March 1, 1996, denied the same.[23]

In view of the foregoing incidents relative to the case at bar and considering that we find proper the respondent Court of Appeals' ruling that the petitioners' motion for reconsideration was not seasonably filed, there is no doubt that the petitioners have lost their right to appeal through this petition. We have consistently held that the perfection of an appeal within the period and in the manner prescribed by law is jurisdictional and non-compliance with such legal requirements is fatal and has the effect of rendering the judgment final and executory.[24]

Moreover, it is an axiomatic rule that in petitions for review on certiorari as a mode of appeal under Rule 45 of the Rules of Court, only questions of law may be raised. Our pronouncement in the case of *Cormero vs. Court of Appeals*[25] bears reiteration:

"At the outset, it is evident from the errors assigned that the petition is anchored on a plea to review the factual conclusion reached by the respondent court. Such task however is foreclosed by the rule that in petitions for certiorari as a mode of appeal, like this one, only questions of law distinctly set forth may be raised. These questions have been defined as those that do not call for any examination of the probative value of the evidence presented by the parties. (*Uniland Resources vs. Development Bank of the Philippines*, 200 SCRA 751[1991] citing *Goduco vs. Court of Appeals, et. al.*, 119 Phil. 531; *Hernandez vs. Court of Appeals*, 149 SCRA 67). And when this court is asked to go over the proofs presented by the parties, and analyze, assess and weigh them to ascertain if the trial court and the appellate court were correct in according superior credit to this

or that piece of evidence and eventually, to the totality of the evidence of one party or the other, the court cannot and will not do the same. (Elayda vs. Court of Appeals, 199 SCRA 349 [1991]). Thus in the absence of any showing that the findings complained of are totally devoid of support in the record, or that they are so glaringly erroneous as to constitute serious abuse of discretion, such findings must stand, for this court is not expected or required to examine or contrast the oral and documentary evidence submitted by the parties. (Morales vs. Court of Appeals, 197 SCRA 391 [1991] citing Santa Ana vs. Hernandez, 18 SCRA 973 [1966])." (Emphasis supplied).

The respondent Court of Appeals in the assailed decision had already passed upon the ultimate issue involved in this case, i.e., whether or not the property being claimed by the petitioners is the same land that was conveyed to private respondent Sison. Inasmuch as the respondent Court of Appeals had thoroughly reviewed the records of this case and had correctly pointed out clear errors of facts and law in the lower court's decision, we are constrained to deny this petition in the absence of any reversible error attributable to the public respondent.

WHEREFORE, premises considered, the instant Petition is hereby DENIED. The Decision of the Court of Appeals dated October 20, 1994 is affirmed in toto.

SO ORDERED.

Padilla, (Chairman), Bellosillo, Vitug, and Kapunan, JJ., concur.

[1] Docketed as Civil Case No SCC-1432.

[2] CA, Decision, pp. 2-3; Rollo, pp. 38-39.

[3] CA Decision, p. 8; Rollo p.44.

[4] RTC Decision penned by Judge Victor T. Llamas, Jr.

[5] RTC Decision, p. 6; Rollo, p. 53.

[6] Rollo, pp. 52-53.

[7] Docketed as CA- G.R. No. 30240.

[8] CA Decision penned by Associate Justice Asaali S. Isnani and concurred in by Associate Justices Eubulo G. Verzola and Conrado M. Vasquez, Jr. of the Special Sixteenth Division.

[9] CA Decision, pp. 8-9; Rollo, pp. 44-45.

[10] Rollo, p. 35.

[11] Rollo, pp. 31-34.

[12] Rollo, p. 30.

[13] Rollo, p. 23.

[14] Rollo, pp. 23-24; CA Resolution penned by Associate Justice Conrado M. Vasquez, Jr. and concurred in by Presiding Justice Nathaniel P. De Pano, Jr. and Associate Justice Eubulo G. Verzola of the Former Special Sixteenth Division.

[15] Petition, pp. 9-10; Rollo, pp. 11-12.

[16] Petition, p. 11-14; Rollo, pp. 13-16.

[17] Petition, p.14; Rollo, p. 16.

[18] Rule 13, sections 4, 5, 7, 8, and 10.

[19] Rollo, p 86, RTC Order signed by Acting Presiding Judge Bienvenido R. Estrada.

[20] Rollo, p. 97.

[21] Rollo, p. 95.

[22] Rollo, p. 94.

[23] Rollo, p. 109.

[24] Cabalan Pastulan Negrito Labor Association vs. NLRC, 241 SCRA 643 [1995]; Periquet vs. NLRC, 186 SCRA 724 [1990]; Alto Sales Corp. vs. IAC, 197 SCRA 618 [1991]; Chong Guan Trading vs. NLRC, 172 SCRA 831 [1989]; Andaya vs. NLRC, 188 SCRA 253 [1990]

[25] 247 SCRA 291, 296 [1995].

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