

PROSPERO BALGAMI, FLORA BALAOS, LORENZA BALAOS DADOR, ANACLETO BALAOS, ADELFA BALAOS ELERIO, PABLITO APLOMINA, FLORITA ELERIO ARSENIO, LILIA ELERIO GUTIERREZ AND HALI ANDRES, PE...

G.R. No. 131287. December 09, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for certiorari and prohibition under Rule 65 of the Revised Rules of Court with a prayer for the issuance of a writ of preliminary injunction for the nullification of the Resolutions[1] of the Court of Appeals (CA), dated July 3, 1997[2] and September 18, 1997[3] in CA-G.R. CV No. 56891.

The Antecedents

On December 10, 1984, petitioners Prospero Balgami, Flora Balaos, Lorenza Balaos Dador, Anacleto Balaos, Adelfa Balaos Elerio, Pablito Aplomina, Florita Elerio, Arsenio, Lilia Elerio Gutierrez and Hali Andres, filed a Complaint against Edilberto dela Vega and respondent Francisco Aplomina in the Regional Trial Court (RTC) of Iloilo City, Branch 31, for partition, accounting and damages with a plea for a writ of preliminary injunction over a parcel of land identified as Lot No. 1827 of the cadastral survey of Iloilo, with an area of 102,692 square meters.

The petitioners alleged, inter alia, that Victoriano Velarde died intestate in 1937 and was survived by his three daughters, namely, Donesia, Felicidad and Jovita, all of whom are now deceased;[4] Donesia who was married to one Domingo Aplomina, was survived by her three children, Federico, Sotera and Francisco; Federico was survived by his only son, Pablito, while Sotera was succeeded by her three daughters, namely, Florita, Lilia and Melba; the latter died intestate and was survived by her sole heir, Andres;[5] Felicidad, who later married one Donesio Balgami, was survived by her two children, namely, Prospero and Angelina, all surnamed Balgami; when Angelina died, she was survived by her son, Edilberto dela Vega;[6] Jovita married Mateo Balaos Dador; the couple had two children, namely, Anacleto and Adelfa; upon the death of Jovita, her estate passed on to her children;[7] in 1975, upon discovering that Lot No. 1827 borders the provinces of Iloilo and Capiz, cousins petitioners Prospero Balgami and Francisco Aplomina, on behalf of their co-heirs, had the portion of the land bordering Iloilo surveyed by a private surveyor; however, unknown to all the heirs, the respondent had the entire lot resurveyed and a new Tax Declaration for Lot No. 1827 was issued under his name;[8] and in 1977, the respondent sold a portion of the property in favor of his nephew Edilberto dela Vega. The petitioners further alleged that when they came to know of the above-described circumstances, they demanded the partition of the property, but the respondent refused.[9]

The petitioners also alleged that their respective shares in the property had, at all times, been held in trust by Dela Vega and the respondent, and that they had been deprived of their respective shares through a simulated and fraudulent sale entered into by and between the two of them. They prayed for the partition of the property, the

annulment of the said sale and for an accounting of the fruits of their inheritance.[10]

In their answer with counterclaim,[11] the respondent and Dela Vega admitted that their deceased ancestor had left a parcel of land upon his demise, Lot No. 2772, not the lot described in the complaint. They averred that Lot No. 1827 was solely owned by respondent Aplomina and that what was left by Victoriano Velarde upon his death was Lot No. 2772, the one adjoining Lot No. 1827.[12]

During the trial, the respondent was represented by the J.T. Barrera & Associates. In the meantime, Atty. Joelito Barrera was suspended from the practice of law by the Court for one year, from January 1 to December 31, 1993. However, the counsel of the defendants therein did not notify the trial court and the petitioners' counsel.

On June 14, 1993, after a full-blown trial, the trial court rendered judgment in favor of the petitioners and ordered the partition of the property but was silent on the prayer for accounting. The fallo of the decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered ordering: (1) The property in question, Lot No. 1827 situated in Carles, Iloilo, be partitioned into three (3) equal portions, and one share each shall go to the surviving heirs of Donesia Velarde Aplomina, Felicidad Velarde Balgami and Jovita Velarde Balaos; (2) The sale in favor of defendant Dela Vega shall be maintained in so far as it does not exceed the portion pertaining to the vendor defendant Aplomina; (3) The expenses for the partition shall be in proportion of the respective shares in the land in question which shall be borne by the respective heirs; and (4) Without pronouncement as to cost.

SO ORDERED.[13]

Unaware of the decision of the trial court, the respondent filed a Motion[14] dated June 28, 1993 praying for the rendition of the decision as soon as possible.

A copy of the decision was duly served on the J.T. Barrera & Associates, counsel of the respondent,[15] by registered mail on July 1, 1993, as evidenced by the certification of the postmaster. However, no notice of appeal of the decision was filed by the respondent.

Upon motion of the petitioners,[16] the trial court issued a writ of execution[17] on December 3, 1993.

On December 21, 1993, the respondent, acting on his own, filed a notice of appeal,[18] alleging that he learned of the trial court's decision only recently, after he was told that his counsel of record, Atty. Barrera, had been suspended from the practice of law by the Court. He further alleged that he was still looking for a new lawyer to handle his case on appeal.

The respondent's appeal was opposed by the petitioners on the ground that the appeal was filed out of time.[19]

On August 3, 1994, the trial court issued an Order[20] denying the notice of appeal of the respondent for having been filed out of time and affirming the writ of execution earlier issued by it.

The respondent, this time, through Atty. Barrera who had already served his one-year suspension, filed a motion for reconsideration[21] of the order. The respondent claimed that although his counsel Atty. Barrera had been going to office during his one-year suspension, he could not then sign any pleadings in his (respondent's) behalf; neither could Atty. Barrera's associates prepare and sign pleadings in his behalf without his (respondent's) approval. The petitioners opposed the motion, contending that Atty. Douglas Venus, one of the assistants of the J. T. Barrera & Associates had been handling the case for the respondent and could have filed the latter's notice of appeal within the period therefor.

On September 14, 1995, the trial court issued an Order[22] granting the motion for reconsideration of the respondent and gave due course to his notice of appeal. The trial court ratiocinated as follows:

A reexamination of the antecedent circumstances, however, prior to his filing of such Notice of Appeal would reveal the unfortunate situation the defendant was in. His counsel of record, Atty. J.T. Barrera, was still under suspension from the practice of law at the time such Notice of Appeal was filed. While it is true that a certification by the Postmaster on October 1, 1993 was issued certifying that on July 1, 1993 the Office of Atty. J. T. Barrera thru Secretary Susan de los Santos had received a copy of the decision, yet there is no showing that such copy of the decision was, in fact, given to and actually received by Atty. J.T. Barrera himself. At that time, Atty. J.T. Barrera was still under suspension from the practice of law.

The initiative taken by defendant Francisco Aplomina in the absence of his counsel, as shown by his having filed personally an “Ex Parte Motion to Resolve” and the Notice of Appeal, are more than enough to sustain his claim in the exercise of his substantive right to appeal.[23]

The trial court thus elevated the records to the CA, where the respondent’s appeal was docketed as CA-G.R. CV No. 56891.

The petitioners filed a motion to strike off appeal[24] in the CA on January 8, 1997, alleging that the trial court erred in giving due course to the appeal of the respondent, it being clear that the same was filed out of time.[25] The petitioners alleged that the respondent’s counsel of record in the trial court was the J.T. Barrera & Associates and not Atty. Joelito Barrera; hence, the latter’s suspension from the practice of law did not bar his associates from filing pleadings and appearing for the respondent.

On July 3, 1997, the CA issued a Resolution denying the motion of the petitioners, thus:

The Motion to Strike Off Appeal is DENIED. The lower court has given due course to the notice of appeal filed by appellant Aplomina, and we find no error therein. Indeed, justice would be better served if the appeal is allowed and the case reviewed on the merits.

SO ORDERED.[26]

The petitioners moved for reconsideration[27] of the resolution, but the same was denied by the appellate court.[28]

Hence, the present petition.

The petitioners contend that, in issuing the questioned Resolutions dated July 3, 1997[29] and September 18, 1997,[30] the CA gravely abused its discretion when it accepted the appeal despite the respondent’s failure to file it on time.

The Ruling of the Court

The petition is meritorious.

It is obvious that no appeal was perfected from the decision of the trial court within the reglementary period, for which reason the decision sought to be appealed to the CA had become final and executory and, therefore, immutable. Thus, the CA was without jurisdiction to review the same.[31] Otherwise stated, beyond the period to appeal, a judgment is no longer within the scope of the power of review of any court.[32]

It is not disputed that the Decision of the trial court dated June 14, 1993 was received by Susan de los Santos, a secretary in the J.T. Barrera & Associates, at its given address on July 1, 1993. The rule is that when a party is represented by a counsel in an action in court, notices of all kinds, including motions and pleadings of all parties and all orders of the court, must be served on his counsel.[33] Notice to counsel is notice to the client.[34]

The failure of De los Santos to deliver to Atty. Barrera the copy of the decision of the court which she received is

not a valid justification for giving due course to the appeal of the respondent therein. The negligence of De los Santos to deliver the said decision to Atty. Barrera, or to any of his associates, including Atty. Douglas Venus, who actually tried the case of the respondent, is inexcusable. The law office is mandated to adopt and arrange matters in order to ensure that official or judicial communications sent by mail would reach the lawyer assigned to the case. The Court has time and again emphasized that the negligence of the clerks, which adversely affect the cases handled by lawyers, is binding upon the latter.[35] The doctrinal rule is that the negligence of counsel binds the client because, otherwise, there would never be an end to a suit so long as new counsel could be employed who could allege and show that prior counsel had not been sufficiently diligent, or experienced, or learned.[36]

The bare fact that Atty. Barrera was already under suspension when De los Santos received the decision of the trial court did not relieve her of the duty to hand over the decision to any of the associates in the law office. It bears stressing that the respondent was represented by the J.T. Barrera & Associates, and not by Atty. Joelito Barrera alone. The attorney-client relationship between J.T. Barrera & Associates and the respondent was not thereby severed upon the one-year suspension of Atty. Barrera from the practice of law. The law firm continued to be the counsel of record of the respondent. Any member of the law firm could appear for trial and sign pleadings for the firm as the respondent's counsel in the trial court. As the Court ruled in one case, "[w]hen a client employs the services of a law firm, he does not employ the services of the lawyer who is assigned to personally handle the case. Rather, he employs the entire law firm. In the event that the counsel appearing for the client resigns, the firm is bound to provide a replacement." [37] We see no reason why the same principle should not apply to a case where a partner or associate is suspended from the practice of law, as in this case.

The respondent's contention, in his comment on the petition, that it was Atty. Joelito Barrera who exclusively represented him, and that the associates and other lawyers of the J.T. Barrera & Associates practiced law independently of the others, deserve scant consideration.[38] The respondent never made the same claim in the trial court and in the CA. Besides being self-serving, the respondent's contention is merely an afterthought to relieve himself of his and his counsel's negligence. The fact of the matter is that the lawyer who appeared in the trial court for the respondent did so for and in behalf of the J.T. Barrera & Associates, the respondent's counsel of record.

The respondent was mandated to inquire from his counsel about the status and progress of his case from time to time. He failed to do so. If he had only done so, he would have known that the trial court had already rendered a decision adverse to him on June 14, 1993. The bare fact that the respondent resided 135 kilometers from Iloilo City [39] is not an excuse. It has been held that litigants represented by counsel should not expect that all they need to do is sit back, relax and await the outcome of their case.[40]

This Court has invariably ruled that perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. The right to appeal is not a natural right nor a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail of the same must comply with the requirement of the rules. Failing to do so, the right to appeal is lost.[41]

The Court's pronouncement in *Producers' Bank of the Philippines v. Court of Appeals* [42] applies in this case. Thus –

The Court has had several occasions to hold that rules of procedure, especially those prescribing the time within which certain acts must be done, have oft been held as absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of business. The reason for rules of this nature is because the dispatch of business by courts would be impossible, and intolerable delays would result, without

rules governing practice.

Such rules are a necessary incident to the proper, efficient and orderly discharge of judicial functions. Thus, we have held that the failure to perfect an appeal within the prescribed reglementary period is not a mere technicality, but jurisdictional.

Neither could petitioner plead leniency in the application of the rules considering that the period to appeal is prescribed not only by the Rules of Court but also by statute, particularly Sec. 39 of Batas Pambansa Blg. 129 which provides –

Sec. 39. Appeals. – The period for appeal from final orders, resolutions, awards, judgments, or decisions of any court in all cases shall be fifteen (15) days counted from the notice of the final order, resolution, award, judgment, or decision appealed from: Provided, however, That habeas corpus, the period for appeal shall be forty-eight (48) hours from the notice of the judgment appealed from ...

Clearly, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional, and failure to perfect an appeal has the effect of rendering the judgment final and executory. Public policy and sound practice demand that judgments of courts should become final and irrevocable at some definite date fixed by law.

WHEREFORE, the petition is GRANTED. The assailed Resolutions dated July 3, 1997 and September 18, 1997, of the Court of Appeals, are SET ASIDE. The Court of Appeals is DIRECTED to dismiss the appeal of respondent Francisco Aplomina in CA-G.R. CV No. 56891.[43]

No costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Eubulo G. Verzola, with Associate Justices Minerva P. Gonzaga-Reyes (retired Associate Justice of the Supreme Court) and Hilarion L. Aquino (retired), concurring.

[2] Rollo, p. 81.

[3] Id. at 97.

[4] Id. at 17.

[5] Id.

[6] Id.

[7] Id.

[8] Id. at 31.

[9] Id. at 32.

[10] Id. at 19-21.

[11] Id. at 24.

[12] Id. at 25.

[13] Id. at 47.

[14] Id. at 55.

[15] On September 6, 1988, J. T. Barrera & Associates withdrew as counsel for Edilberto dela Vega.

[16] Rollo, p. 48.

[17] Id. at 49.

[18] Id. at 50.

[19] Id. at 51.

[20] Id. at 52.

[21] Id. at 54.

[22] Id. at 62.

[23] Id. at 61.

[24] Id. at 63.

[25] Id. at 63-65.

[26] Id. at 81.

[27] Id. at 83.

[28] Id. at 97.

[29] Id. at 81.

[30] Id. at 97.

[31] Ramirez v. Bleza, 106 SCRA 187 (1981); Abad v. Court of Appeals, 179 SCRA 817 (1987).

[32] Rizo v. Solano, 197 SCRA 711 (1991), citing Pan Realty Corp. v. Court of Appeals, 167 SCRA 564 (1988).

[33] Cubar v. Mendoza, 120 SCRA 768 (1983); Ruiz v. Court of Appeals, 201 SCRA 577 (1991).

[34] Palanca v. The American Food Mfg. Co., 24 SCRA 819 (1968); Lincoln Gerard, Inc. v. NLRC, 187 SCRA 701 (1990).

[35] Negros Stevedoring Co., Inc. v. Court of Appeals, 162 SCRA 371 (1988).

[36] Heirs of Spouses Dela Cruz v. Heirs of Quintos, Sr., 434 Phil. 708 (2002).

[37] Rilloraza, Africa, De Ocampo and Africa v. Eastern Telecommunications, Inc., 309 SCRA 566 (1999).

[38] Rollo, p. 142.

[39] Ibid.

[40] Salonga v. Court of Appeals, 269 SCRA 534 (1997).

[41] Supra, note 30.

[42] 381 SCRA 185 (2002).

[43] See Rollo, p. 167.

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