

AIDA P. BAÑEZ, PETITIONER, VS. GABRIEL B. BAÑEZ, RESPONDENT.

G.R. No. 132592. January 23, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

These two petitions stem from the decision[1] dated September 23, 1996 of the Regional Trial Court of Cebu, Branch 20, in Civil Case No. CEB-16765. The first[2] seeks the reversal of the Court of Appeals' decision dated March 21, 1997, setting aside the orders dated October 1 and November 22, 1996 of the Regional Trial Court. The second[3] prays for the reversal of the resolution dated February 10, 1998, of the Court of Appeals in CA-G.R. No. CV-56265, denying the motion to dismiss.

The antecedent facts, as gathered from the parties' pleadings, are as follows:

On September 23, 1996, the Regional Trial Court of Cebu, Branch 20, decided Civil Case No. CEB-16765, decreeing among others the legal separation between petitioner Aida Bañez and respondent Gabriel Bañez on the ground of the latter's sexual infidelity; the dissolution of their conjugal property relations and the division of the net conjugal assets; the forfeiture of respondent's one-half share in the net conjugal assets in favor of the common children; the payment to petitioner's counsel of the sum of P100,000 as attorney's fees to be taken from petitioner's share in the net assets; and the surrender by respondent of the use and possession of a Mazda motor vehicle and the smaller residential house located at Maria Luisa Estate Park Subdivision to petitioner and the common children within 15 days from receipt of the decision.

Thereafter, petitioner filed an urgent ex-parte motion to modify said decision, while respondent filed a Notice of Appeal.

The trial court granted petitioner Aida Banez' urgent ex-parte motion to modify the decision on October 1, 1996 by approving the Commitment of Fees dated December 22, 1994; obliging petitioner to pay as attorney's fees the equivalent of 5% of the total value of respondent's ideal share in the net conjugal assets; and ordering the administrator to pay petitioner's counsel, Atty. Adelino B. Sitoy, the sum of P100,000 as advance attorney's fees chargeable against the aforesaid 5%.[4]

In another motion to modify the decision, petitioner Aida Bañez sought moral and exemplary damages, as well as litigation expenses. On October 9, 1996, she filed a motion for execution pending appeal. Respondent Gabriel Bañez filed a consolidated written opposition to the two motions, and also prayed for the reconsideration of the October 1, 1996 order.

On November 22, 1996, the trial court denied Aida's motion for moral and exemplary damages and litigation expenses but gave due course to the execution pending appeal. Thus:

WHEREFORE, in view of all the foregoing premises, the petitioner's motion to modify decision is hereby ordered denied. But, petitioner's motion for execution of decision pending appeal is hereby granted. Consequently, let a writ of execution be issued in this case to enforce the decision for (1) respondent to vacate

the premises of the small residential house situated in Maria Luisa Estate Park Subdivision, Lahug, Cebu City and for (2) respondent to surrender the use and possession of said Mazda motor vehicle together with its keys and accessories thereof to petitioner.

Atty. Edgar Gica, the Special Administrator, appointed in this case, is hereby ordered to make the necessary computation of the value of the one-half (1/2) share of petitioner in the net remaining conjugal assets of the spouses within 10 days from receipt of this order.

The petitioner is hereby ordered to post a bond in the amount of P1,500,000.00 to answer for all the damages that respondent may suffer arising from the issuance of said writ of execution pending appeal and to further answer for all the advances that petitioner may have received from the Special Administrator in this case pending final termination of this present case.[5]

In turn, in a petition for certiorari, Gabriel Bañez elevated the case to the Court of Appeals. On March 21, 1997, the appellate court rendered its decision, thus:

WHEREFORE, the Order dated October 1, 1996 and the Omnibus Order dated November 22, 1996, insofar as (1) it authorized the release of the sum of P100,000.00 to private respondent's counsel as the advanced share of private respondent [Aida Bañez] in the net remaining conjugal assets, and (2) granted the motion for execution pending appeal by ordering petitioner [Gabriel Bañez] to vacate the premises of the small residential house situated in Maria Luisa Estate Park Subdivision, Lahug, Cebu City, and to surrender the use and possession of the Mazda Motor vehicle to private respondent are hereby SET ASIDE. The writ of execution dated December 2, 1996 and the Order dated December 10, 1996 granting the motion filed by the sheriff to make symbolic delivery of the subject house and motor vehicle to the administrator of the partnership are also SET ASIDE.

As prayed for by petitioner, the Administrator of the conjugal partnership is hereby ordered to cause the reimbursement by counsel for the private respondent [Aida Bañez] of the amount of P100,000.00 released to him as advance payment of attorney's fees.

SO ORDERED.[6]

On February 10, 1998, the Court of Appeals denied Aida's motion for reconsideration. Hence, the petition in G.R. No. 132592, filed by herein petitioner.

In the meantime, the trial court gave due course to Gabriel's Notice of Appeal and elevated on April 15, 1997 the entire case records to the Court of Appeals. Aida filed with the Court of Appeals a motion to dismiss the appeal on the ground that Gabriel had failed to file with the appellate court a Record on Appeal. On February 10, 1998, the Court of Appeals decided the motion, thus:

WHEREFORE, premises considered, the petitioner-appellant's motion to dismiss filed on November 3, 1997 is hereby DENIED. The appointment of the petitioner-appellee as administratrix of the conjugal properties is hereby AFFIRMED.

In view of petitioner's Motion to Withdraw her own appeal filed on November 27, 1997, and for failing to pay the required docket fee within the prescribed period under Rule 41, Section 4 of the 1997 Rules of Civil Procedure, the appeal instituted by the petitioner Aida P. Bañez is hereby DISMISSED.

In continuance of the appeal of respondent-appellant [Gabriel Bañez], he is hereby ordered to file his brief with the court within 45 days from receipt of this resolution. The petitioner-appellee [Aida Bañez] shall file her own brief with the court within 45 days from receipt of the petitioner-appellant's [Gabriel Bañez] brief.

SO ORDERED.[7]

The appellate court also denied herein petitioner's motion for reconsideration, hence, the petition in G.R. No. 133628.

On January 19, 2000, we consolidated the two petitions. Petitioner Aida Bañez now avers that the Court of Appeals erred:

I. G.R. No. 132592

... IN SETTING ASIDE THE GRANT OF EXECUTION PENDING APPEAL BY THE TRIAL COURT OF THE PORTIONS OF ITS DECISION ORDERING RESPONDENT TO VACATE THE SMALLER RESIDENTIAL HOUSE LOCATED AT THE MARIA LUISA ESTATE PARK SUBDIVISION, CEBU CITY, AND TO PAY P100,000.00 TO PETITIONER'S COUNSEL AS ATTORNEY'S FEES TO BE TAKEN FROM HER SHARE IN THE NET CONJUGAL ASSETS.[8]

II. G.R. No. 133628:

... IN NOT GRANTING PETITIONER'S MOTION TO DISMISS RESPONDENT'S ORDINARY APPEAL AND/OR NOT RETURNING THE RECORDS OF CIVIL CASE NO. CEB-16765 TO THE REGIONAL TRIAL COURT OF CEBU.[9]

In G.R. No. 132592, petitioner manifested that she no longer questions the Court of Appeals' decision on the Mazda vehicle because respondent repossessed it. As to the residential house, she claimed that being conjugal in nature, justice requires that she and her children be allowed to occupy and enjoy the house considering that during the entire proceedings before the trial court, she did not have the chance to occupy it. Further, she posted a bond of P1,500,000 for the damages which respondent may suffer.[10] For these reasons, she asked for execution pending appeal. The amount of P100,000 as advance payment to her counsel was a "drop in the bucket" compared to the bond she posted, according to her. She also suggested as an alternative that she simply be required to put up an additional bond. She also agreed to submit to an accounting as regular administratrix and the advance attorney's fees be charged to her share in the net conjugal assets.

In his comment, respondent denied petitioner's allegation that she did not have the chance to occupy the residential house. He averred that she could have, had she chosen to. According to him, as the inventory of the couple's properties showed, petitioner owned two houses and lots and two motor vehicles in the United States, where she is a permanent resident. Respondent contended that there was no compelling reason for petitioner to have the judgment executed pending appeal.

Essentially, the core issue in G.R. No. 132592 is whether execution of judgment pending appeal was justified.

As held in *Echaus vs. Court of Appeals*, 199 SCRA 381, 386 (1991), execution pending appeal is allowed when superior circumstances demanding urgency outweigh the damages that may result from the issuance of the writ. Otherwise, instead of being an instrument of solicitude and justice, the writ may well become a tool of oppression and inequity.[11]

In this case, considering the reasons cited by petitioner, we are of the view that there is no superior or urgent circumstance that outweighs the damage which respondent would suffer if he were ordered to vacate the house. We note that petitioner did not refute respondent's allegations that she did not intend to use said house, and that she has two (2) other houses in the United States where she is a permanent resident, while he had none at all. Merely putting up a bond is not sufficient reason to justify her plea for execution pending appeal. To do so would make execution routinary, the rule rather than the exception.[12]

Similarly, we are not persuaded that the P100,000 advance payment to petitioner's counsel was properly granted. We see no justification to pre-empt the judgment by the Court of Appeals concerning said amount of P100,000 at

the time that the trial court's judgment was already on appeal.

In G.R. No. 133628, petitioner Aida Bañez contends that an action for legal separation is among the cases where multiple appeals may be taken. According to her, the filing of a record on appeal, pursuant to Section 2(a), Rule 41 of the Rules of Court,[13] is required in this case. She concludes that respondent's appeal should have been dismissed for his failure to file the record on appeal within the reglementary period, as provided under Section 1-b, Rule 50 of the Rules of Court.[14]

Petitioner likewise prays that, in the event that we do not dismiss Gabriel Bañez' appeal, we should direct the appellate court to return the records of the case to the RTC of Cebu. Thereafter, according to her, respondent should file his record on appeal for approval and transmittal to the Court of Appeals. In the alternative, she prays that the appellate court retain only the pleadings and evidence necessary to resolve respondent's appeal pursuant to Section 6, Rule 44[15] and Section 6, Rule 135[16] of the Rules of Court, and return the rest of the case records to the RTC.

In turn, respondent argues that Section 39 of B.P. 129[17] expressly abolished the requirement of a record on appeal, except in appeals in special proceedings in accordance with Rule 109,[18] and other cases wherein multiple appeals are allowed. An action for legal separation, he avers, is neither a special proceeding nor one where multiple appeals are allowed.

Now, is an action for legal separation one where multiple appeals are allowed? We do not think so.

In *Roman Catholic Archbishop of Manila v. Court of Appeals*, 258 SCRA 186, 194 (1996), this Court held:

xxx Multiple appeals are allowed in special proceedings, in actions for recovery of property with accounting, in actions for partition of property with accounting, in the special civil actions of eminent domain and foreclosure of mortgage. The rationale behind allowing more than one appeal in the same case is to enable the rest of the case to proceed in the event that a separate and distinct issue is resolved by the court and held to be final.

In said case, the two issues raised by therein petitioner that may allegedly be the subject of multiple appeals arose from the same cause of action, and the subject matter pertains to the same lessor-lessee relationship between the parties. Hence, splitting the appeals in that case would only be violative of the rule against multiplicity of appeals.

The same holds true in an action for legal separation. The issues involved in the case will necessarily relate to the same marital relationship between the parties. The effects of legal separation, such as entitlement to live separately, dissolution and liquidation of the absolute community or conjugal partnership, and custody of the minor children, follow from the decree of legal separation.[19] They are not separate or distinct matters that may be resolved by the court and become final prior to or apart from the decree of legal separation. Rather, they are mere incidents of legal separation.[20] Thus, they may not be subject to multiple appeals.

Petitioner's alternative prayers that in case we do not dismiss the appeal, we return the records to the trial court and require respondent to file a record on appeal, or we return the records to the trial court and retain only the pleadings and orders relevant to the appeal, are untenable. If we grant the first, we are effectively saying that the instant case is one involving multiple appeals, which it is not. If we allow the second, we are effectively applying by analogy, Section 6, Rule 44 and Section 6, Rule 135 of the Rules of Court, without petitioner showing support therefor in law or jurisprudence.[21]

WHEREFORE, the instant petitions are DENIED for lack of merit. The decision and resolution of the Court of Appeals in CA-G.R. SP No. 42663 and CA-G.R. No. CV-56265, respectively, are hereby AFFIRMED, so that the Order dated October 1, 1996, of the Regional Trial Court authorizing the release of P100,000 to petitioner's

counsel; the Omnibus Order dated November 22, 1996 granting the motion pending appeal; the writ of execution dated December 2, 1996; and the Order dated December 10, 1996 granting the motion by the sheriff to make symbolic delivery of the house and vehicle are SET ASIDE. Further, the Administrator of the conjugal partnership is ORDERED to cause the reimbursement by petitioner's counsel of the released amount of P100,000. The Court of Appeals is hereby DIRECTED to give due course to respondent's appeal, and the Division Clerk of Court of this Court is likewise DIRECTED to promptly remand the record of these cases to the Court of Appeals.

Costs against petitioner.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] CA Rollo, pp. 58-92.

[2] Rollo, G.R. No. 132592, pp. 31-44.

[3] Rollo, G.R. No. 133628, pp. 17-24.

[4] CA Rollo, p. 24.

[5] CA Rollo, pp. 122-123.

[6] Rollo, G.R. No. 132592, pp. 17-18.

[7] Rollo, G.R. No. 133628, p. 10.

[8] Rollo, G.R. No. 132592, p. 66.

[9] Rollo, G.R. No. 133628, p. 20.

[10] Rollo, G.R. No. 132592, p. 37.

[11] Valencia vs. CA, G.R. No. 89431, 184 SCRA 561, 567 (1990).

[12] Ibid.

[13] Sec. 2. Modes of Appeal. -

(a) Ordinary appeal- The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

[14] Section 1, Rule 50, Rules of Court. 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 b) Failure to file the notice of appeal or the record on appeal within the period prescribed by these Rules.

[15] Section 6, Rule 44, Rules of Court. Dispensing with complete record. - Where the completion of the record could not be accomplished within a sufficient period allotted for said purpose due to insuperable or extremely difficult causes, the court, on its own motion or on motion of any of the parties, may declare that the record and its accompanying transcripts and exhibits so far available are sufficient to decide the issues raised in the appeal, and

shall issue an order explaining the reasons for such declaration.

[16] Section 6, Rule 135, Rules of Court. Means to carry jurisdiction into effect. - When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears conformable to the spirit of said law or rules.

[17] Section 39, BP 129. 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 in habeas corpus cases, the period for appeal shall be forty-eight (48) hours from the notice of the judgment appealed from.

No record on appeal shall be required to take an appeal. In lieu thereof, the entire record shall be transmitted with all the pages prominently numbered consecutively, together with an index of the contents thereof.

This section shall not apply in appeals in special proceedings and in other cases wherein multiple appeals are allowed under applicable provisions of the Rules of Court.

[18] Appeals in Special Proceedings.

[19] CIVIL CODE OF THE PHILIPPINES, Article 63.

[20] See, e.g., A.M. TOLENTINO, I CIVIL CODE OF THE PHILIPPINES 333 (1990 ED.), on division of properties.

[21] Supra, notes 15 and 16.

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