HEIRS OF THE LATE FLOR TUNGPALAN, NAMELY, LEONILA VDA. DE TUNGPALAN, EFREN G. TUNGPALAN, VIOLA G. TUNGPALAN, OFELIA TUNGPALAN DUENAS, LAURO G. TUNGPALAN, ROLANDO G. TUNGPALAN, A...

G.R. NO. 136207. June 21, 2005

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

The instant case stemmed from a complaint dated July 31, 1992 filed by the heirs of the late Flor Tungpalan with the Regional Trial Court of Davao City, Branch 14, against spouses Navarro G. Estaquio and Arabella K. Estaquio and the Register of Deeds, same city, for "Reformation, Reconveyance, Nullification of Title Issued in Breach of Agreement, Damages and Attorney's fees, with Prayer for Preliminary Injunction and Restraining Order, docketed thereat as Civil Case No. 21345-92.

After the respondents filed their answer to the complaint, the trial court set the case for pre-trial conference on various dates but was postponed five (5) times upon motion of the petitioners or of the respondents. Thus, they were twice warned that the postponement would be "for the last time." During the pre-trial conference on March 2, 1993, petitioner and their counsel failed to appear despite notice. On motion of respondents, the trial court issued an Order dated March 8, 1993 declaring petitioners non-suited. Both the complaint and the counterclaim were dismissed. The Order reads:

> "When called for pre-trial conference, defendants and counsel appeared and manifested that they are ready. On the other hand, neither the representative of the heirs of the late Flor Tungpalan nor their counsel, Atty. Ruben Abarquez, appeared despite the fact that they were duly notified of the notice of pre-trial as shown by the return indicating that they received copy of said notice as early as February 12, 1993.
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> On motion, therefore, of defendants' counsel, the plaintiffs are declared non-suited and their complaint is ordered DISMISSED. Likewise, the counterclaims interposed by the defendants in their answer are ordered DISMISSED for being compulsory in nature and therefore cannot be the subject of an independent adjudication.
>
> SO ORDERED."

One (1) year and seven (7) months later, or on October 6, 1994, petitioners filed a motion for reconsideration. It was later amended on October 14, 1994, accompanied by an affidavit of merit executed by one of the heirs. On November 15, 1994, the trial court issued an Order granting the motion "in the higher interest of justice" revoking its Order of March 8, 1993. The pre-trial conference was reset to December 19, 1994.

On December 8, 1994, respondents filed a motion for reconsideration of the Order of November 15, 1994 on the ground that the trial court has no more jurisdiction to issue the same. In an Order dated December 22, 1994, the trial court granted this motion and reinstated its Order of March 8, 1993 declaring petitioners non-suited and

dismissing the complaint and counterclaim.

Petitioners interposed an appeal with the Court of Appeals but it was initially dismissed for their failure to file brief. However, on their motion for reconsideration, the appeal was reinstated.

On July 6, 1998, the Appellate Court rendered its Decision affirming the trial court's Order dated December 22, 1994 resintating its Order dated March 8, 1993 declaring petitioners non-suited. Hence, the instant petition for review raising the following issues:

> I
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> THE PUBLIC RESPONDENT COURT SERIOUSLY ERRED IN NOT HOLDING THAT IT WAS EQUITABLY IMPROPER FOR THE LOWER COURT TO ISSUE THE ASSAILED ORDER (ANNEX S) DATED DECEMBER 22, 1994 REVOKING THE 15 NOVEMBER 1994 ORDER FOR ALLEGED LACK OF JURISDICTION.
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> II
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> THE PUBLIC RESPONDENT COURT SERIOUSLY ERRED IN NOT HOLDING THAT THE GROSS INEXCUSABLE NEGLIGENCE OF PETITIONERS' FORMER COUNSEL, ATTY. RUBEN V. ABARQUEZ DOES NOT BIND THE PETITIONERS, THEN PLAINTIFFS IN THE LOWER COURT IN CIVIL CASE NO. 21345-82.
>
> III
>
> THE PUBLIC RESPONDENT COURT ERRED IN NOT ORDERING THE LOWER COURT TO HEAR THE CASE ON THE MERITS.

In sum, the issue to be resolved is whether or not the Court of Appeals erred in affirming the trial court's Order dated December 22, 1994 reinstating its Order dated March 8, 1993 declaring the petitioners non-suited and dismissing their complaint.

It is undisputed that petitioners filed their motion for reconsideration of the Order of March 8, 1993, after one (1) year and seven (7) months from its finality. Thus, the trial court correctly redeemed itself when it revoked its Order of November 15, 1994 and issued the Order of December 22, 1994, holding that:

> "Plaintiffs, as well as their counsel, received separate copies of the Order dated March 8, 1993 on May 14, 1993. The period to appeal said Order, therefore, expired on May 29, 1993. As no appeal was filed by the plaintiffs, consequently, the Order of March 8, 1993 became final on May 29, 1993. This has already been clarified in the case of Munez vs. CA, L-46010, July 23, 1987, wherein it was held:
> 'Finality of judgment, for purposes of appeal or execution, takes place by operation of law by the lapse of the 15 days or 30 days period as the case may be.'

Since the Order of this Court dated March 8, 1993 dismissing the case was received by the counsel for the plaintiffs and the period to appeal or file a motion for reconsideration has already lapsed, this Court, therefore, as correctly pointed out by the defendants, had no more jurisdiction to issue the Order dated November 15, 1994. To hold otherwise might open the door for administrative sanctions against the Presiding Judge of this Court.

In view of the foregoing, the Order of this Court dated November 15, 1994 revoking the Order dated March 8, 1993 is hereby set aside, with finality."

Failure to interpose an appeal within the reglementary period renders an order or decision final and executory unless a party files a motion for reconsideration within the 15-day reglementary period. The law grants an aggrieved party a period of fifteen (15) days from his receipt of the court's decision or order disposing of the

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action or proceeding to appeal or move to reconsider the same. After the lapse of the fifteen-day period, an order becomes final and executory and is beyond the power or jurisdiction of the court which rendered it to further amend or revoke.[1] The court loses jurisdiction over the case and not even an appellate court would have the power to review a judgment that has acquired finality.[2] Otherwise, there would be no end to litigation and would set to naught the main role of courts of justice which is to assist in the enforcement of the rule of law and the maintenance of peace and order by setting justiciable controversies with finality.[3]

Petitioners lay the blame for the circumstance they are in on their counsel's negligence. We disagree. Records show that each time the pre-trial conference of the case was set, separate notices were sent to them and their counsel. They separately received a copy of the Order of March 8, 1993 on May 14, 1993. The least that petitioners could have done was to coordinate with their counsel but they chose to do nothing after receiving the Order. Their failure to take any step for one (1) year and seven (7) months shows their lack of interest and that they themselves do not believe in their cause of action. We have held that a party cannot blame his counsel when he himself was guilty of neglect;[4] and that the laws aid the vigilant, not those who slumber on their rights. Vigilantibus sed non dormientibus jura subveniunt.[5]

It bears stressing that petitioners' complaint had been dismissed twice. They first instituted Civil Case No. 12877 on March 11, 1980 before the Regional Trial Court of Davao City, Branch 3. It was dismissed after nine (9) years or on January 11, 1989 for their failure to prosecute. On May 25, 1992, they filed the present complaint (docketed as Civil Case No. 21345-92) against the same respondents, alleging the same cause of action and praying for reliefs exactly the same as those stated in their first complaint. As stated earlier, the trial court declared them non-suited and dismissed their complaint.

A dismissal of an action for failure to prosecute operates as a judgment on the merit. This is expressly provided for under Section 3, Rule 17 of the 1997 Rules of Court, as amended, which provides:

> "Failure to prosecute – If plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any other order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by the court."
> The Order of March 8, 1993 does not state that the dismissal of the complaint is without prejudice. Hence, such dismissal operates as a bar to the filing of another action alleging the same cause of action.

WHEREFORE, the instant petition is DENIED for lack of merit. The challenged Decision of the Court of Appeals is AFFIRMED. Costs against petitioners.

SO ORDERED.

Panganiban, (Chairman), Corona, Carpio-Morales, and Garcia, JJ., concur.

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[1] Bañares II vs. Balising, G.R. No. 132624, March 13, 2000, 328 SCRA 36.

[2] Seven Brothers Shipping Corporation vs. Oriental Assurance Corporation, G.R. No. 140613, October 15, 2002, 391 SCRA 67.

[3] Jose Clavano, Inc. vs. Housing and Land Use Regulatory Board, G.R. No. 143781, February 27, 2002, 378 SCRA 172.

[4] Villanueva vs. People, G.R. No. 135098, April 12, 2000, 330 SCRA 695.

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[5] Mendoza vs. Cayas, 98 Phil. 111.

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