

**ARSENIO P. REYES, JR., PETITIONER, VS. COURT OF APPEALS,
SPECIAL FOURTEENTH DIVISION, ARSENIO R. REYES, SR., AND
JUDGE EUDOXIA T. GUALBERTO, PRESIDING JUDGE, RTC, BR. 26,
MANILA...**

G.R. No. 136478. March 27, 2000

Ponente: PARDO, J.

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PARDO, J.:

What is before the Court is a petition for review on certiorari to reverse a resolution of the Court of Appeals dismissing the action for certiorari[1] assailing an order of the Regional Trial Court, Branch 28, Manila, allowing execution pending appeal of an order for summary judgment directing the Register of Deeds to issue second owner's duplicate copies of titles of real property purportedly lost.

The facts are as follows:

Petitioner Arsenio P. Reyes, Jr. and Rena, Rebecca, and Renato all surnamed Reyes are legitimate children of respondent Arsenio R. Reyes, Sr. by his marriage to Amparo Reyes. During their coveture, Arsenio and Amparo Reyes acquired several property which remained intact until respondent Arsenio R. Reyes, Sr. left his wife to live with his mistress, with whom he begot eight (8) children.

The legitimate children, discontented with the highly immoral and illicit acts of their father in getting a mistress, either left for abroad or got married. Petitioner Arsenio P. Reyes, Jr. was the only one left with his father Arsenio, Sr. and worked in the office of his father as clerk and errand boy. His service was not compensated regularly by his father. And because of the accumulated salaries that were unpaid by his father, the latter sold to him a property located at 60 Lourdes Castillo Street, Don Manuel, Quezon City the place where he was living.

After some time, petitioner discovered that his father conveyed several parcels of real property located in Nueva Ecija to his spurious children without the knowledge and consent of his legitimate children. When petitioner confronted his father about this, the latter got angry and drove him away from the office. Later, his father filed a complaint against petitioner with the City Prosecutor of Manila for theft and falsification, which, however, was dismissed for lack of evidence.

On January 2, 1997, Arsenio Reyes, Sr. filed with the Regional Trial Court, Manila a complaint for recovery of stolen titles[2] which was raffled to Branch 26, presided over by Judge Eudoxia T.Gualberto.

On November 24, 1997, before trial but after the parties had submitted their pre-trial briefs, Arsenio, Sr. filed a motion for summary judgment and the surrender of five (5) stolen titles. Petitioner Arsenio, Jr. opposed the motion. However, on January 16, 1998, the trial court issued an order directing the Register of Deeds of Manila to issue second owner's duplicate copies of TCT Nos. 28607 and 28608, and the Registry of Deeds of Nueva Ecija to issue second owner's duplicate copies of TCT No. 205272 and TCT No. 205273.[3]

On March 10, 1998 petitioner filed a motion for reconsideration.[4] However, the trial court denied the same.[5] On June 1, 1998 petitioner appealed to the Court of Appeals. Pending appeal, the trial court issued execution pending appeal, by an order[6] dated July 3, 1998.

On July 30, 1998 petitioner filed a motion for reconsideration but the court denied the same.[7] On September 14, 1998, petitioner filed with the Court of Appeals a petition for certiorari.[8] On September 23, 1998 the Court of Appeals promulgated its decision denying the petition, the dispositive portion of which reads:

"It appearing that the accompanying copy of the questioned orders of the Regional Trial Court of the National Capital Judicial Region, Branch 28, Manila, dated July 3, 1998 and August 10, 1998 in this petition for CERTIORARI with Prayer for a Temporary Restraining Order, is an UNSIGNED duplicate copy (Rollo, p. 10) not a clearly legible duplicate original, nor a certified true copy thereof, the instant PETITION is hereby ordered DISMISSED pursuant to Rule 65, Sec. 1, in conjunction with Rule 56, Section 2, and Rule 46, Section 3, of the 1997 Rules of Civil Procedure, as amended."[9]

Petitioner then filed with the Court of Appeals a motion for reconsideration but this was also denied.[10]

Hence, this petition.[11]

The Court of Appeals resolved the petition on a technicality; nonetheless, the parties had the opportunity to ventilate the issues fully, which in the main, are legal. The facts are clear and undisputed.

The Court of Appeals dismissed the petition based on Rule 46, Section 3 which provides that:

"Sec. 3. Contents and filing of petition; effect of non- compliance with requirements- The petition shall contain the full names and actual addresses of all petitioners and respondents, x x x and the grounds relied upon for the relief prayed for.

x x x x x x x

"It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof,

x x x x x x x

"The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition."

The issue presented is whether the Court of Appeals committed grave abuse of discretion when it dismissed the petition for certiorari and denied the motion for reconsideration based on a technicality and error in the affidavit of non-forum shopping.

We find the petition impressed with merit.

The Court of Appeals paid obedience to the technical requirements of the rules of civil procedure rather than substantial justice. We have held in several cases that "the rules of procedure ought not to be applied in a very rigid technical sense, rules on procedure are used only to secure, not override substantial justice. If a technical and rigid enforcement of the rules is made, their aim would be defeated."[12] Also "dismissal of appeals purely on technical grounds is frowned upon where the policy of the courts is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense."[13]

"There is grave abuse of discretion when a court, board, tribunal official acts in a capricious, whimsical, arbitrary

or despotic manner in the exercise of judgment as to be equivalent to lack of jurisdiction." [14] The Court of Appeals acted with grave abuse of discretion in dismissing the petition based solely on technicality.

Another issue worthy of discussion is whether the trial court has jurisdiction to order the issuance of a new owner's duplicate certificate of title in the case below. The Court has held in *New Durawood Co., Inc. v. Court of Appeals* [15] citing *Serra v. Court of Appeals*, [16] that "if the certificate of title has not been lost but is in fact in the possession of another person, the reconstituted title is void and the court rendering the decision has not acquired jurisdiction."

The applicable law in case of loss of new owner's duplicate certificate of title is Section 109, Presidential Decree No. 1529, which provides that:

"Section 109. Notice and replacement of lost duplicate certificate. - In case of loss or theft of an owner's duplicate certificate of title, due notice under oath shall be sent by the owner or by someone in his behalf to the Register of Deeds of the province or city where the land lies as soon as the loss or theft is discovered. If a duplicate certificate is lost or destroyed, or cannot be produced by a person applying for the entry of a new certificate to him or for the registration of any instrument, a sworn statement of the fact of such loss or destruction may be filed by the registered owner or other person in interest and registered.

"Upon the petition of the registered owner or other person in interest, the court may, after notice and due hearing, direct the issuance of a new duplicate certificate, which shall contain a memorandum of the fact that it is issued in place of the lost duplicate certificate, but shall in all respects be entitled to like faith and credit as the original duplicate, and shall thereafter be regarded as such for all purposes of this decree."

In light of the foregoing, what Arsenio Reyes, Sr. should have done was to file a petition before the Regional Trial Court as a land registration court in the same proceedings as the titles involved, under Section 109 of P.D. No. 1508 to compel petitioner to surrender the certificates of title to the Register of Deeds.

IN VIEW WHEREOF, we grant the petition. We SET ASIDE the resolutions of the Court of Appeals dated September 23, 1998 and November 20, 1998, in CA-G. R. SP No. 48977, and NULLIFY the orders of the trial court in Civil Case No. 97-81388.

No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

[1] Under Rule 65, 1997 Rules of Civil Procedure, as amended.

[2] Docketed as Civil Case No. 97-81388.

[3] Petition, Annex "G", Rollo, pp. 25-26.

[4] Petition, Annex "H", Rollo, pp. 27-30.

[5] Petition, Annex "I", Rollo, p. 31.

[6] Petition, Annex "C", Rollo, pp. 17-18.

[7] Petition, Annex "D". Rollo, p. 19.

[8] Docketed as CA-G.R. SP No. 48977, Petition, Annex "N", Rollo, pp. 42-49.

[9] Petition, Annex "A", Rollo, p. 12.

[10] Petition, Annex "B", Rollo, pp. 14-15.

[11] Filed on December 23, 1998, Rollo, pp. 3-9.

[12] Salazar v. NLRC, 256 SCRA 273, 282 (1996) citing American Home Insurance Co. v. Court of Appeals, 109 SCRA 180; Cf. Visayan v. NLRC, 196 SCRA 410, 420 (1991)

[13] Supra, Visayan v. NLRC.

[14] Singa Ship Management Philippines, Inc. v. NLRC, 288 SCRA 692 (1998); Esguera v. Court of Appeals, 267 SCRA 380 (1997); Commissioner of Internal Revenue v. Court of Appeals, 257 SCRA 200 (1996)

[15] 253 SCRA 740, 747 (1996)

[16] 195 SCRA 482 (1991); Alipoon v. Court of Appeals, 305 SCRA 118, 125 (1999); Demetriou v. Court of Appeals, 238 SCRA 158 (1994)

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