

CARLOS VILLAMOR, TERTULIANO D.VILLAMOR, LOLITA D. VILLAMOR, LEANDRA VILLAMOR CAPUNO AND NUNILA VILLAMOR ABELLAR, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS, TEOFILO D. VILL...

G.R. No. 136858. July 21, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before us is a petition for certiorari assailing the Resolution[1] dated August 26, 1998 of the Court of Appeals reinstating the appeal of the herein private respondents and its Resolution dated December 18, 1998 denying the motion for reconsideration thereof.

An action for partition and damages was filed with the Regional Trial Court of Danao City, Branch 25,[2] entitled “Teodulo D. Villamor, Teofilo D. Villamor and Nunila Villamor-Abellar, plaintiffs, vs. Carlos D. Villamor, Tertuliano D. Villamor, Lolita D. Villamor and Leandra Villamor-Capuno, defendants,” docketed as Civil Case No. DNA-401. The parties are brothers and sisters, and the sole and exclusive heirs of the late spouses Jose S. Villamor and Dolores I. De Dios.

The plaintiffs therein alleged, inter alia, that: they and their siblings had a family meeting on May 19, 1996 and had agreed that the estate of their parents comprising of four (4) parcels of land and a house of strong materials situated at Carmen, Cebu shall be divided equally among themselves, and a meeting on May 25, 1996 was set for the purpose of putting down into writing the terms of the partition; on said date, however, the defendants changed their minds and insisted that parcel no. 3 and the house were already donated to defendants Tertuliano and Lolita while parcel No. 4 had been donated to defendant Carlos; the rest of the properties were owned in common by the heirs; as gleaned from the tax declaration covering the properties, the same had an aggregate assessed value of P19,000.00.[3]

The plaintiffs prayed that judgment be rendered, as follows:

- Declaring the properties described in paragraph IV of this Complaint as belonging to the estate of the late Spouses Jose and Dolores Villamor, and therefore owned in common by the parties hereto;
- Ordering the partition of the aforesaid properties into seven (7) equal parts, one part for each of the seven children of the aforesaid late spouses, the parties to this case;
- Declaring as null and void any alleged donation to Carlos D. Villamor with reference to parcel No. 4, or to Tertuliano Villamor and Lolita Villamor with reference to parcel no. 3 and the house, the same being obviously illegal and/or total frauds (sic) and/or fabrications, and ordering the cancellation of any tax declarations that may have been issued pursuant thereto;
- Ordering the defendants to pay jointly and solidarily to the plaintiffs, moral damages in the sum of not less than P300,000.00, as well as exemplary damages in the amount of P100,000.00;

- Ordering the defendants to pay and/or reimburse jointly and solidarily to the plaintiffs, attorney's fees of at least P50,000.00 as well as costs of litigation in the sum of not less than P20,000.00.[4]

Before an Answer was filed, the plaintiffs filed an amended complaint in which they included a fifth parcel of land as subject matter thereof so that the aggregate assessed value of the property amounted to P33,950.00.

Notwithstanding the filing of the amended complaint, the defendants filed a motion to dismiss the amended complaint contending that it stated no cause of action against them and that the action was within the exclusive jurisdiction of the Municipal Trial Court since the aggregate value of the property subject of the action was less than P20,000.00.

On November 25, 1996, the trial court issued an Order denying the motion to dismiss of the defendants. They filed a motion for reconsideration of the order and on January 13, 1997, the trial court issued a Resolution, this time granting the motion, with the following dispositive portion:

WHEREFORE, Motion for Reconsideration is given due course, Case is hereby ordered dismissed, without prejudice to refiling the same in the proper Municipal Trial Court.[5]

The trial court ruled that the MTC had exclusive jurisdiction over the action under Republic Act No. 7691, the assessed value of the property subject of the action being less than P20,000.00. The plaintiffs moved to reconsider the order, alleging that under their amended complaint, the assessed value of the five parcels of land was P33,950.00. On February 11, 1997, the court issued an Order granting plaintiffs' motion for reconsideration declaring that it overlooked the amended complaint wherein a fifth parcel of land was included as subject matter of the complaint raising the aggregate value of the properties to P33,950.00; hence, the action was under the exclusive jurisdiction of the RTC under Republic Act No. 7691.

The defendants filed a motion for the reconsideration of the February 11, 1997 Order of the court. On April 10, 1997, the trial court issued an order granting the motion and ordering the dismissal of the case. The court held that by filing the amended complaint to include therein a fifth parcel of land, and bringing the assessed value of the property to P33,950.00, the plaintiffs attempted to confer jurisdiction on the RTC over their action which is contrary to the principle that the jurisdiction of the court is conferred by the Constitution and the law and not by the plaintiffs.

The plaintiffs again moved to reconsider the April 10, 1997 Order of the Court. On June 30, 1997, the trial court denied the said motion. On July 1, 1997, the 1997 Rules of Civil Procedure took effect.

Undaunted, the plaintiffs filed a notice of appeal on July 11, 1997. The trial court gave due course to the appeal. However, the plaintiffs-appellants failed to pay the requisite appellate docket fee and other lawful fees, as required by Rule 41, Section 4[6] of the 1997 Rules of Civil Procedure. The defendants-appellees filed with the Court of Appeals a motion to dismiss[7] the appeal for failure of the plaintiffs-appellants to pay the requisite appellate docket fee within the period for appeal; and, as such, the appellate court had no jurisdiction over the appeal. On January 19, 1998, the Court of Appeals issued a resolution requiring the appellants to comment on the appellees' motion to dismiss. On February 17, 1998, the appellants filed a Manifestation and Motion, with the prayer that the Clerk of Court inform them of the requisite amount of appellate docket fee so that they can pay the same.

On February 27, 1998, plaintiff-appellant Nunila Villamor Abellar filed a Motion to Withdraw Appeal[8] as she did not want to aggravate the already heightened animosity among the brothers and sisters because of this court battle. On March 24, 1998, the plaintiffs-appellants paid the requisite appellate docket fee and other lawful fees in the Regional Trial Court.

On May 14, 1998, the Court of Appeals issued a Resolution dismissing the appeal for failure of the plaintiffs-appellants to perfect the appeal on time on account of their failure to pay the requisite appellate docket fees for their appeal within the period therefor. At the same time, the CA granted Nunila Villamor Abellar's withdrawal of appeal.[9]

Appellant Nunila Villamor Abellar's withdrawal of appeal is hereby granted pursuant to Sec. 3, Rule 50 of the 1997 Rules of Civil Procedure.

Considering that the notice of appeal was filed on July 11, 1997 after the 1997 Rules on Civil Procedure took effect and docket fees were only paid on March 24, 1998, the appeal is hereby dismissed for failure of the appellants Teofilo and Teodulo Villamor to perfect the appeal within the period provided.

On motion for reconsideration of the plaintiffs-appellants,[10] the Court of Appeals reconsidered its resolution of dismissal and reinstated the appeal of the plaintiffs-appellants. The Court of Appeals applied the 1997 Rules of Civil Procedure liberally in the interest of justice.

Hence, this petition filed by the herein petitioners, alleging that:

I.

THE RESPONDENT COURT OF APPEALS ACTED IN GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE RESOLUTIONS DATED AUGUST 26, 1998 AND DECEMBER 18, 1998.

II.

THE RESPONDENT COURT OF APPEALS ACTED IN GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR EXCESS OF JURISDICTION IN GIVING DUE COURSE TO THE APPEAL OF PRIVATE RESPONDENTS DESPITE THE LATE FILING OF APPEAL, THE LATE PAYMENT OF APPEAL DOCKET FEE AND NON-APPEALABILITY OF THE RESOLUTIONS OF THE TRIAL COURT.

The petitioners assert that the CA committed a grave abuse of its discretion in reinstating the appeal of the private respondents despite the fact that they failed to perfect their appeal by remitting to the Clerk of Court of the trial court the appellate court docket fee and other legal fees. They contend that the Court of Appeals did not acquire any appellate jurisdiction over the assailed order which had become final and executory for their failure to perfect their appeal within the period and in the manner provided for in the Rules of Civil Procedure.

We are not persuaded.

Although the right to appeal is a statutory, not a natural right, it is an essential part of the judicial system and courts should proceed with caution so as not to deprive a party of this prerogative, but instead afford every party litigant the amplest opportunity for the proper and just disposition of his cause, freed from the constraints of technicalities.[11]

The failure of a party to perfect the appeal in the manner and within the period fixed by law carries with it the result that no court can exercise appellate jurisdiction over the case. A party's appeal by notice of appeal as in this case is perfected as to him upon the filing of the notice of appeal in due time.[12] Together with this notice of appeal is the payment of docket and other legal fees which should be paid within the prescribed period.[13] Such payment is mandatory and jurisdictional and the failure of the appellant to conform with the rules on appeal renders the judgment final and executory.[14]

However, in several cases, it has been held that the delay in the payment of the docket fees confers a

discretionary, and not mandatory, power to dismiss the proposed appeal.[15] In *Buenaflor vs. Court of Appeals*,[16] the Court had the occasion to explain that:

The established rule is that the payment in full of the docket fees within the prescribed period is mandatory. Nevertheless, this rule must be qualified, to wit: First, the failure to pay appellate court docket fees within the reglementary period allows only discretionary dismissal, not automatic dismissal, of the appeal; Second, such power should be used in the exercise of the Courts' sound discretion in accordance with the tenets of justice and fair play and with great deal of circumspection considering all attendant circumstances.

Admittedly, this Court has allowed the filing of an appeal in some cases where a stringent application of the rules would have denied it, only when to do so would serve the demands of justice and in the exercise of the Court's equity jurisdiction. This is based on the rule of liberality in the interpretation of the Rules to achieve substantial justice. It may be recalled that the general rule is that the Rules of Court are rules of procedure and whenever called for they should be construed as to give effect rather than defeat their essence.

In reinstating the appeal of the private respondents, the Court of Appeals ratiocinated as follows:

It appearing that the entire record of this case related to this appeal interposed by plaintiffs-appellants were transmitted to this Court on July 16, 1997 (Rollo, p. 4) which is five (5) days after the Notice of Appeal was filed on July 11, 1997 (Rollo, p. 11) despite the provision of Section 4, Rule 41 of the 1997 Rules of Civil Procedure which took effect on July 1, 1997, or ten (10) days from the filing of the Notice of Appeals, thus: "SEC. 4. APPELLATE COURT DOCKET AND OTHER LAWFUL FEES. – Within the period for taking an appeal, the appellant shall pay to the clerk of court which rendered the judgment or final order appealed from, the full amount of the appellate docket and other lawful fees. Proof of payment of the said fees shall be transmitted to the appellate court together with the original record or the record on appeal." (n): underscoring supplied.

which is a new provision under the said Rule; and it further appearing that the docket fees were already paid by the plaintiffs-appellants with proof of payment transmitted to this Court by the Clerk of Court of the Regional Trial Court of Danao City (Rollo, pp. 23-24, 27); and that the Brief for the appellants was already submitted to this Court attached to plaintiffs-appellants' "Manifestation and Motion" dated April 25, 1998, in the interest of substantial justice, the Motion for Reconsideration dated June 12, 1998 and the Motion dated April 25, 1998 are hereby GRANTED and Brief for the Appellants attached to the Manifestation and Motion of even date is hereby ADMITTED.[17]

We do not find any reversible error much less grave abuse of discretion on the part of the court in reinstating the appeal of the private respondents.

It bears stressing that under Rule 46, Section 5 of the Rules of Court, the appellant was mandated to pay the fee for the docketing of the appeal within fifteen days from date of notice of the receipt by the Clerk of Court of the Court of Appeals of the record on appeal from the trial court.

Sec. 5. Duty of appellant upon receipt of notice.— It shall be the duty of the appellant, within fifteen (15) days from the date of the notice referred to in the preceding section, to pay to the clerk of the Court of Appeals the fee for the docketing of the appeal, and within sixty (60) days from such notice to submit to the court forty (40) printed copies of the record on appeal, together with the proof of service of fifteen (15) printed copies thereof upon the appellee.

However, the rule was amended by Section 4, Rule 41 of the 1997 Rules of Civil Procedure, which provides that the appellant is mandated to pay to the appellate court the appellate docket fee and other lawful fees with the Clerk of Court of the trial court within the period for taking the appeal. When the petitioners filed their notice of appeal in the trial court, on July 11, 1997, the 1997 Rules of Civil Procedure was in effect for only ten days. It

appears that the counsel of the private respondents had yet to familiarize himself with the 1997 Rules of Civil Procedure and consequently the petitioners failed to pay the requisite appellate court docket fee and other lawful fees with the Clerk of Court of the trial court within the period for appeal. It was only when the private respondents were required by the Court of Appeals to comment on the motion to dismiss appeal filed by the petitioners on the ground that the private respondents failed to pay the required appellate docket fee did the private respondents realize their lapse and forthwith paid the requisite amount due. There is no showing in the record that the private respondents deliberately refused to pay the requisite fee within the period therefor and abandon their appeal.

Not to be forgotten is the fact that the trial court dismissed the case solely because of its perception that, by amending their complaint, the private respondents thereby conferred jurisdiction to the trial court over the subject matter of their action. It is imperative for the appellate court to review the ruling of the trial court to avoid a miscarriage of justice.

Under the circumstances obtaining in the case at bar, we see no cogent reason to reverse the resolutions of the respondent court. It is the policy of the court to encourage hearing of appeals on their merits. To resort to technicalities which the petitioner capitalizes on in the instant petition would only tend to frustrate rather than promote substantial justice.[18]

IN LIGHT OF THE FOREGOING, the petition is DENIED DUE COURSE for lack of merit. The respondent court is directed to continue with the proceedings before it with dispatch.

SO ORDERED.

Puno, (Chairman), Tinga, and Chico-Nazario, JJ., concur.
Austria-Martinez, J., no part.

[1] Penned by Associate Justice Adefuin-de la Cruz, with Associate Justices Austria-Martinez and Velasco, concurring.

[2] Presided by Judge Esperidion C. Rival

[3] Rollo, pp. 38-44.

[4] Id. at 43-44.

[5] Id. at 48.

[6] SEC. 4. Appellate court docket and other lawful fees. – Within the period for taking an appeal, the appellant shall pay to the clerk of court which rendered the judgment or final order appealed from, the full amount of the appellate court docket and other lawful fees. Proof of payment of said fees shall be transmitted to the appellate court together with the original record or the record on appeal.

[7] CA Rollo, p. 5.

[8] Id. at 12.

[9] Rollo, p. 36.

[10] CA Rollo, p. 86

[11] Moslares v. Court of Appeals, 291 SCRA 440 (1998).

[12] Rule 41, Section 9.

[13] Rule 41, Section 4.

[14] Manalili v. De Leon, 370 SCRA 625 (2001).

[15] Fajardo v. Court of Appeals, 354 SCRA 736 (2001); Martinez v. Court of Appeals, 358 SCRA 38 (2001)

[16] 346 SCRA 563 (2000).

[17] CA Rollo, pp. 92-93.

[18] Cusi-Hernandez vs. Diaz, 336 SCRA 113 (2000).

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