

MANILA MEMORIAL PARK CEMETERY, INC., PETITIONER, VS. THE COURT OF APPEALS, BERNARDO, DOMINADOR, HERMOGENA LUCIA, AND MARIA GATCHALIAN, AND THE HEIRS OF GREGORIO GATCHALIAN: ROLA...

G.R. No. 137122. November 15, 2000

Ponente: VITUG, J.

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VITUG, J.:

In a decision, dated 18 May 1998, the Court of Appeals in C.A. G.R. No. 46385, entitled "Manila Memorial Park Cemetery, Inc., vs. the Honorable Luis R. Tongco, et.al.," dismissed a petition for certiorari and mandamus brought by petitioner against the Honorable Luis Tongco in his official capacity as the presiding judge of the Regional Trial Court, Branch 155, of Pasig City.

The factual and case antecedents were synthesized by the appellate court in its assailed decision.

On 04 June 1975, respondents filed an action for reconveyance and recovery of parcels of land against petitioner Manila Memorial Park Cemetery, Inc., and its co-defendants United Housing Corporation, Victorino Hernandez, heirs of Aurelio de Leon, and heirs of Nicolas Gatchalian.

After a protracted litigation, the trial court, through then Presiding Judge Efricio B. Acosta, dismissed the complaint in a decision, dated 17 June 1983, thusly:

"WHEREFORE, in view of the foregoing, the court hereby dismisses the complaint of the plaintiff for lack of merit and having been barred by the statute of limitations and by laches. The counterclaim of the defendants are likewise dismissed for lack of evidence."[1]

Respondents received a copy of the decision on 04 July 1983. On 19 July 1983, the last day of the prescribed fifteen-day period for appeal, private respondents filed a motion for new trial and/or reconsideration. The motion was denied by the trial court in its order of 03 October 1989. A copy of the order was received by respondents on 28 November 1989.

On 07 December 1989, respondents filed a notice of appeal and, on 11 December 1989, the trial court gave due course to the appeal and directed the transmittal of the records of the case to the Court of Appeals. The records of the case, however, were not transmitted to the appellate court due to missing transcript of stenographic notes. On 23 April 1996, the trial court required the parties to appear in conference. Almost a year had lapsed but the missing stenographic notes were still not submitted to the trial court.

On 28 February 1997, respondents filed a motion for new trial for the retaking and presentation of testimonial and documentary evidence on the ground that the reconstitution of the missing stenographic notes was no longer possible considering that the court stenographers who had transcribed the testimony of witnesses by then since retired from the service, their whereabouts unknown.

On 22 April 1997, petitioner filed a motion to dismiss the appeal and an opposition to the motion for new trial filed by respondents contending that the appeal was filed out of time and that the remedy for new trial could not be availed of since it was filed long after the reglementary period to appeal had lapsed.

The trial court, in its order of 16 July 1997 resolved the incidents in this wise; thus:

"WHEREFORE, premises considered, the Motion for New Trial prayed for by the plaintiffs being based on meritorious grounds is hereby GRANTED.

"Accordingly, the Motion to Dismiss Appeal filed by defendant Manila Memorial Park is hereby DENIED for being moot and academic and barred by laches.

"Further, considering that the Motion For New Trial filed by plaintiff has been favorably acted upon for the above reasons, the Notice of Appeal interposed by plaintiff on December 7, 1989 is hereby declared MOOTED."[2]

The trial court ratiocinated that the final resolution of the case could not be held in abeyance indefinitely nor could petitioner's motion to dismiss the appeal still be entertained after their having waited for eight years before raising the issue.

Petitioner moved to reconsider, but to no avail, the trial court's order of 16 July 1997. Dissatisfied, petitioner elevated the matter via a petition for certiorari to the Court of Appeals insisting that the trial court had acted capriciously and whimsically, as well as with grave abuse of discretion amounting to lack or excess of jurisdiction, in holding that it was barred from assailing the timeliness of the appeal and in granting respondent's motion for new trial long after the decision of the trial court had already become final and executory.

The Court of Appeals rendered its now assailed decision, dated 18 May 1998, dismissing the petition on the ground that petitioner was estopped by laches from assailing the notice of appeal which had meanwhile been given due course by the trial court. The appellate court explained:

"It is undisputed that petitioner filed the motion to dismiss appeal after almost eight years the respondent court gave due course to respondent's notice of appeal. Petitioner did not raise the issue of the timeliness of the appeal at the time the notice of appeal was filed by respondents on December 7, 1989. During the conference on April 23, 1996 for the completion of the record, petitioner remained silent on the issue. Instead, it voluntarily asked for time to locate the missing transcript of records to be submitted to respondent court, which petitioner never accomplished without explanation. It was only after respondents filed on February 28, 1997 a motion for new trial for the retaking or presentation of testimonial evidence that petitioner started questioning the appeal essayed by respondents.

"Obviously, petitioner is estopped by laches from assailing the notice of appeal which has long been given due course by respondent court. The motion to dismiss appeal was filed too late."[3]

In its instant petition, petitioner argues that -

"I.

"THE COURT OF APPEALS (HAS) ERRED IN DISREGARDING THE WELL-ENTRENCHED RULE IN THIS JURISDICTION THAT THE PERFECTION OF AN APPEAL WITHIN THE TIME PRESCRIBED BY LAW IS JURISDICTIONAL AND AS SUCH IT CAN BE ASSAILED AT ANYTIME.

"II.

"THE COURT OF APPEALS (HAS) ERRED IN HOLDING THAT THE PETITIONER IS ALREADY ESTOPPED BY LACHES FROM ASSAILING THE TIMELINESS OF THE APPEAL OF THE PRIVATE

RESPONDENTS.

"III.

"THE COURT OF APPEALS (HAS) ERRED IN SANCTIONING THE ORDER OF THE TRIAL COURT ALLOWING THE PRIVATE RESPONDENTS TO HAVE THE CASE TRIED ANEW ON THE MERITS CONSIDERING." [4]

Anent the first assigned error, petitioner maintains that compliance with the reglementary period for perfecting an appeal is not merely mandatory but jurisdictional, and it is thus never too late to assail the timeliness of an appeal. Respondents, upon the other hand, urges the Court to sustain the assailed decision asseverating that in view of the meritorious character of their appeal, a stringent application of the rules would defeat substantial justice.

The petitioner has it.

Concededly, respondents received on 04 July 1983 a copy of the decision of the trial court, dated 17 June 1983, dismissing its complaint. Conformably with Section 39 of B.P. 129, like Section 19(a) of the Interim Rules and Guidelines, respondents had up to 19 July 1983 within which to file an appeal. On said date, respondents, instead of filing their notice of appeal, moved for the reconsideration of the decision. The motion for reconsideration was denied by the trial court in its order of 03 October 1989, and a copy of the order was received by respondents on 28 November 1989. Respondents failed to file a notice of appeal until 07 December 1989.

In *Lacsamana vs. Intermediate Appellate Court*, [5] the Court has ruled that in an ordinary appeal from the final judgment or order of a metropolitan or municipal trial court to the regional trial court, and from the regional trial court to the Court of Appeals in actions or proceedings originally filed in the regional trial court, the fifteen-day period for appeal prescribed by Section 39 of B.P. 129 and Section 19(a) of the Interim Rules is interrupted or suspended by a motion for new trial or reconsideration duly filed. [6] If the motion for new trial or reconsideration is denied, the moving party has only the remaining period from notice of denial within which to file a notice of appeal. No motion for extension of time to file such a notice of appeal is neither required nor allowed. [7] This rule has been substantially reproduced in Section 3, Rule 41 of the 1997 Rules of Civil Procedure; thus:

"Sec. 3. Period of Ordinary Appeal - The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order.

"The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed."

Accordingly, when respondents filed their motion for reconsideration on the last day of the fifteen day prescribed period for taking an appeal, which motion was subsequently denied, they only had one (1) day from receipt of a copy of the order denying the motion for reconsideration, within which to perfect their appeal, i.e., excluding the day of receipt and including the next day. [8] Since respondents had received a copy of the order denying their motion for reconsideration on 28 November 1989, the filing of the notice of appeal on 07 December 1989 came much too late for by then the judgment had already become final and executory.

The perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional upon the court a quo, and the failure to perfect that appeal renders its judgment final and executory. [9] A fundamental precept is that the reglementary periods under the Rules are to be strictly observed for being considered indispensable interdictions against needless delays and an orderly discharge of judicial business. The strict compliance with such periods has more than once been held to be imperative, particularly and most significantly in respect to the perfection of appeals. [10] The finality of a judgment becomes a fact upon the

lapse of the reglementary period to appeal if no appeal is perfected,[11] and the court loses all jurisdiction over the case,[12] and it becomes the ministerial duty of the court concerned to order execution of the judgment.[13] After the judgment has become final and executory, vested rights are acquired by the winning party. Just as the losing party has the right to file an appeal within the prescribed period, so also the winning party has the correlative right to enjoy the finality of the resolution of the case.[14]

The Court is not unmindful of highly exceptional cases where it has allowed a relaxation of the rules on the application of the reglementary periods of appeal.

In *Ramos vs. Bagasao*,[15] the Court excused the delay of four days in the filing of the notice of appeal because the questioned decision of the trial court had been served upon appellant Ramos at a time when her counsel of record was already dead. The new counsel could only file the appeal four days after the prescribed reglementary period was over. In *Republic vs. Court of Appeals*,[16] the Court allowed the perfection of an appeal by the Republic despite the delay of six days to prevent a gross miscarriage of justice since the Republic stood to lose hundreds of hectares of land already titled in its name and had since then been devoted for public purposes. In *Olacao vs. National Labor Relations Commission*,[17] a tardy appeal was accepted considering that the subject matter in issue had theretofore been judicially settled with finality in another case, and a dismissal of the appeal would have had the effect of the appellant being ordered twice to make the same reparation to the appellee.[18] These instances indeed constituted exceptional circumstances that would hardly find parallel elsewhere.

Not being a natural right or a part of due process, but merely a statutory privilege, the right to appeal may be exercised only in the manner and in accordance with rules provided therefor.[19] A failure to perfect an appeal within the prescribed period has the effect of rendering final the judgment of a court, and an appellee's failure to file a motion for dismissal of appeal in the court of origin before the transmittal of the record to the appellate court does not constitute a waiver on his part to interpose such objection.[20]

Should petitioner be now held estopped from assailing the timeliness of the appeal after the lapse of almost eight years from the time the notice of appeal was approved by the trial court on 11 December 1989? Citing *Dequito vs. Lopez*[21] and *Carillo vs. Allied Workers' Association of the Philippines*,[22] respondents would contend in the affirmative.

The cases invoked are not squarely applicable.

In *Dequito*, defendant-appellees moved to dismiss the appeal after plaintiff-appellant *Dequito* had filed his appeal brief with the appellate court and solely on the ground that the record on appeal did not disclose on its face that the appeal was timely perfected. Similarly, in *Carillo*, petitioners had already submitted their brief when the respondents tried to question the timeliness of the appeal, and there was no showing that the appeal was interposed beyond the reglementary period for its filing. In the instant case, respondents had not once denied that their appeal was, in fact, interposed beyond the prescribed period.

The doctrine of estoppel is predicated on, and has its origin in equity which, broadly defined, is justice according to natural law and right. It is a principle intended to avoid a clear case of injustice. The term is hardly distinguishable from a waiver of right. Estoppel, like its counterpart, must be unequivocal and intentional for, when misapplied, it can easily become a convenient and effective means of injustice. Estoppel is not understood to be a principle that, as a rule, should prevalently apply but, as it concededly is, a mere exception from the standard legal norms of general application that can be invoked only in highly exceptional and justifiable cases.[23]

Petitioner could not be faulted for its failure to move for the dismissal of the appeal at an earlier time acting upon

the assumption, albeit erroneously, that the appeal was filed on time relying on the order, dated 11 December 1989, of the trial court declaring that the notice of appeal had been filed within the reglementary period. Neither can the conduct of petitioner's counsel during the conference called by and held before the trial court be regarded as a waiver of its right to contest the seasonableness of the appeal. A motion contesting a late appeal may be filed before the appellate court even after the transmittal of the records therein.[24] The legality of the appeal may be raised at any stage of the proceedings in the appellate court, and the latter is not precluded from dismissing the petition on the ground of its being out of time. A recognition of the merit of the petition does not necessarily carry with it any assumption or conclusion that it has been timely filed.[25] Strangely, respondents did not attempt to explain the reason for the delay and would, instead, lay the blame on petitioner for its failure to assail the timeliness of the appeal.

It may here be worthwhile to reiterate the pronouncement in *Galima vs. Court of Appeals*[26] that an error by counsel in ascertaining the appeal period will not arrest the finality of the judgment.

Given the foregoing, the Court sees no further need to resolve the other issues raised in the petition.

WHEREFORE, the instant petition is GRANTED, and the assailed decision of the Court of Appeals is SET ASIDE.

SO ORDERED.

Melo, (Chairman), Panganiban, and Gonzaga-Reyes, JJ., concur.

[1] Rollo, p. 106.

[2] Rollo, p. 92.

[3] Rollo, pp. 15-16.

[4] Rollo, p. 34.

[5] 143 SCRA 643.

[6] The motion must satisfy the requirements of Rule 37 (Section 3, of Rule 41).

[7] See also *Philippine Commercial and Industrial Bank vs. Ortiz*, 150 SCRA 380.

[8] *BPI Data Systems Corporation vs. Court of Appeals*, 254 SCRA 56.

[9] *Bank of America, NT & SA vs. Gerochi, Jr.*, 230 SCRA 9; *Alto Sales Corp. vs. IAC*, 197 SCRA 618; *Filcon Mfg. Corp. vs. NLRC*, 199 SCRA 814; *Kabushi Kaisha Isetan vs. IAC*, 203 SCRA 583.

[10] *Bank of America, NT & SA vs. Gerochi, Jr.*, 230 SCRA 9.

[11] *Amarante vs. Court of Appeals*, 232 SCRA 104; *Acena vs. Civil Service Commission*, 193 SCRA 623.

[12] *Ditching vs. Court of Appeals*, 263 SCRA 343.

[13] *Collector of Customs vs. Court of Appeals*, 158 SCRA 293.

[14] *Fortich vs. Corona*, 298 SCRA 678.

[15] 96 SCRA 395.

[16] 83 SCRA 453.

[17] 177 SCRA 38.

[18] Bank of America, NT & SA vs. Gerochi, Jr., supra.

[19] Ortiz vs. Court of Appeals, 299 SCRA 708.

[20] Miranda vs. Guanzon, 92 Phil. 168.

[21] 22 SCRA 1352.

[22] 24 SCRA 566.

[23] La Naval Drug Corporation vs. Court of Appeals, 236 SCRA 78.

[24] Section 1, Rule 50, 1997 Rules of Civil Procedure.

[25] Ditching vs. Court of Appeals, 263 SCRA 343.

[26] 16 SCRA 140.

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