

MELBA MONCAL ENRIQUEZ, PETITIONER, VS. HON. COURT OF APPEALS AND VICTORINA TIGLE, RESPONDENTS.

G.R. No. 140473. January 28, 2003

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is a petition to review the decision[1] of the Court of Appeals dated July 20, 1999, in CA-G.R. SP No. 50360, affirming the orders of the Regional Trial Court of Dumaguete City, Branch 31, in Civil Case No. 12044. In its order[2] dated October 6, 1998, the RTC dismissed herein petitioner's appeal from the decision of the Municipal Circuit Trial Court (MCTC) of Bayawan-Basay, Negros Oriental in Civil Case No. 1062 for ejectment, and denied petitioner's motion for reconsideration in its order[3] dated October 30, 1998. Petitioner also assails the resolution[4] of the appellate court dated September 24, 1999, denying her motion for reconsideration.

The factual antecedents of this petition are as follows:

On February 29, 1996, herein respondent Victorina Tigle filed an action for unlawful detainer against herein petitioner Melba Moncal Enriquez before the MCTC of Bayawan-Basay, Negros Oriental. Tigle's complaint, which was docketed as Civil Case No. 1062, alleged inter alia, that on December 14, 1994, she bought a parcel of land known as Lot No. 377, located at Tinego, Bayawan, Negros Oriental from Engracia Macaraya. Prior to the sale, Enriquez was staying at said lot by mere tolerance of Macaraya. Enriquez was given an option to buy said lot but she refused to exercise it. After the sale, Tigle then made demands on Enriquez to vacate the property, but Enriquez adamantly refused.

In her Answer with Counterclaim filed before the MCTC, Enriquez averred that the subject property is owned in common by the heirs of Felix Moncal and any sale by Macaraya (one of the heirs of Felix Moncal) could only refer to Macaraya's undivided 1/7 share of the lot. Since said 1/7 share of Macaraya is still unidentified, the same cannot be a subject of ejectment pursuant to Article 434[5] of the Civil Code.

In its decision dated June 2, 1997, the MCTC of Bayawan-Basay, decreed:

ACCORDINGLY, in the light of the foregoing considerations, this Court hereby renders judgment in favor of the plaintiff to be in physical, actual, and prior possession of the parcel of land described in Paragraph 3 of the Complaint unlawfully occupied by defendant MELBA MONCAL ENRIQUEZ, and plaintiff is entitled to the reliefs prayed for in the Complaint as follows:

- Declaring plaintiff VICTORINA TIGLE to be in actual, physical and prior possession of the premises of the parcel of land mentioned in Paragraph 3 of the Complaint consisting of ONE HUNDRED SEVENTY NINE (179) square meters, more or less, or SUB-LOT NO. 2-A, of LOT NO. 2, mentioned in Par. 5, Page 2 of EXH. "B";
- Ordering defendant MELBA MONCAL ENRIQUEZ, her agents, representatives, and all other persons acting in her behalf to immediately vacate the premises of the parcel of land mentioned in Par. 5, Page 2, EXH. "B", otherwise known as SUB-LOT NO. 2-A of LOT NO. 2;

- To remove and/or demolish all workings, constructions and improvements illegally built and/or constructed in the parcel of land mentioned in Par. 5, Page 2, of EXH. "B", otherwise known as SUB-LOT NO. 2-A of LOT NO.2;
- Ordering defendant MELBA MONCAL ENRIQUEZ to pay to plaintiff the sum of P3,000.00 by way of litigation expenses;
- Ordering the defendant MELBA MONCAL ENRIQUEZ to pay to plaintiff the sum of P10,000.00 by way of attorney's fees;
- However, for failure to allege and pray for reasonable compensation and fair rental value for the use and occupation of the premises of the parcel of land mentioned in land mentioned in Par. 5, Page 2, of EXH. "B", known as SUB-LOT NO. 2-A of LOT NO.2, the same is deemed waived;
- On the other hand, moral and exemplary damages are not allowed in ejectment cases;
- Any allegations by way of Counterclaim are dismissed for lack of sufficient basis.

SO ORDERED.[6]

Enriquez seasonably appealed to the RTC of Dumaguete City. In its order of February 16, 1998, the RTC directed respective counsel for the parties to "submit within fifteen (15) days from receipt of this order their respective memoranda and/or briefs." [7] The RTC stated that upon expiration of the period to submit memoranda, it "shall decide the case on the basis of the entire record of the proceedings in the court of origin and/or such brief(s) as may have been filed." [8]

The counsel for Enriquez failed to comply with the order to submit a memorandum. On October 6, 1998, the RTC issued the following order:

For failure of defendant-appellant to file and submit a memorandum within the reglementary period as required by Rule 40, Section 7 (b), [9] her appeal is dismissed.

Upon finality of this order, the Clerk of Court is hereby directed to remand the records of this case to the lower court for execution of judgment.

SO ORDERED.[10]

Enriquez then moved for reconsideration, manifesting that she was adopting her position paper in the MCTC as her memorandum.

On October 30, 1998, the RTC denied Enriquez's motion on the ground that "the records does (sic) not show of such manifestation." [11]

Enriquez then elevated the matter to the Court of Appeals, which docketed her petition as CA-G.R. SP No. 50360. The appellate court found the primary issue to be procedural in character, namely: the correctness of the order of the RTC dismissing herein petitioner's appeal for failure to file her memorandum on appeal.

On July 20, 1999, the appellate court decided CA-G.R. SP No. 50360 as follows:

WHEREFORE, premises considered, the instant petition is hereby DISMISSED for lack of merit.

SO ORDERED.[12]

The appellate court held that "under Section 7, Rule 40 of the 1997 Rules of Civil Procedure (the filing of a memorandum) is a mandatory obligation on the part of the appellant, such that, the failure to do so warrants a concomitant dismissal of the appeal." [13]

Enriquez moved for reconsideration of the appellate court's decision, but this was denied by the Court of Appeals in its order of September 24, 1999.[14]

Hence, the instant petition before us. Petitioner raises the following issues:

- HAS THE HONORABLE COURT OF APPELAS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION OR ARE ITS DECISION (ANNEX "N") AND RESOLUTION (ANNEX "P") APPEALED FROM NOT IN ACCORD WITH THE RULES AND APPLICABLE DECISIONS OF THIS HONORABLE SUPREME COURT?
- AND, THAT IN ORDER TO SERVE THE ENDS OF JUSTICE AND PREVENT MISCARRIAGE OF JUSTICE, SHOULD THE ORDER DATED OCTOBER 6, 1998 (ANNEX "I"); ORDER DATED OCTOBER 30, 1998 (ANNEX "K"); THE DECISION (ANNEX "N") AND RESOLUTION (ANNEX "P"), BE ALL PLEASE SET ASIDE AND THE COMPLAINT FILED IN THE MCTC OF BAYAWAN-BASAY (ANNEXES "C" TO "C-3") BE PLEASE ORDERED TERSELY DISMISSED WITH COSTS AGAINST THE RESPONDENT AND THE RESPONDENT BE ORDERED TO PAY TO THE PETITIONER THE MONETARY COUNTERCLAIMS INTERPOSED IN THE ANSWER WITH COUNTERCLAIM (ANNEXES "D" TO "D-7")?[15]

Stated simply, the sole issue for our resolution is: Did the Court of Appeals commit a reversible error in sustaining the order of the RTC which dismissed petitioner's appeal for failure to file memorandum on appeal?

Petitioner faults the appellate court with grave error of law when it failed to rule that the RTC should have decided her appeal before it in accordance with Rule 40, Section 7 (c)[16] of the 1997 Rules of Civil Procedure. She avers that the appellate court erred when it did not rule that the RTC should have decided the case, based on the record of the MCTC proceedings, instead of sustaining the order to dismiss for failure to file memorandum.

Private respondent counters that an appellant's failure to file the memorandum required under Rule 40, Section 7, compelled the RTC to dismiss the case. She points out that an appealed case cannot be decided on the merits without an appellant's memorandum, as the assignment of errors by the appellant is vital to the decision of the case. This is different from the situation where it is the appellee who fails to file his memorandum, as in this instance, the RTC may decide the case based on the records of the proceedings in the court of origin and the appellant's memorandum. Moreover, the failure to file a memorandum by the appellant manifests lack of interest to pursue her appeal.

Rule 40, Section 7 of the 1997 Rules of Civil Procedure is a new provision. Said section is based on Section 21 (c) and (d) [17] of the Interim Rules Relative to the Implementation of the Judiciary Reorganization Act of 1980 (B.P. Blg. 129) with modifications. These include the following changes: (a) the appellant is required to submit a memorandum discussing the errors imputed to the lower court within fifteen (15) days from notice, and the appellee is given the same period counted from receipt of the appellant's memorandum to file his memorandum; (b) the failure of the appellant to file a memorandum is a ground for the dismissal of the appeal.[18]

Rule 40, Section 7 (b) provides that, "it shall be the duty of the appellant to submit a memorandum" and failure to do so "shall be a ground for dismissal of the appeal." The use of the word "shall" in a statute or rule expresses what is mandatory and compulsory.[19] Further, the Rule imposes upon an appellant the "duty" to submit his memorandum. A duty is a "legal or moral obligation, mandatory act, responsibility, charge, requirement, trust, chore, function, commission, debt, liability, assignment, role, pledge, dictate, office, (and) engagement."[20] Thus, under the express mandate of said Rule, the appellant is duty-bound to submit his memorandum on appeal. Such submission is not a matter of discretion on his part. His failure to comply with this mandate or to perform said duty will compel the RTC to dismiss his appeal.

In rules of procedure, an act which is jurisdictional, or of the essence of the proceedings, or is prescribed for the protection or benefit of the party affected is mandatory.[21] As private respondent points out, in appeals from inferior courts to the RTC, the appellant's brief is mandatory for the assignment of errors is vital to the decision of the appeal on the merits. This is because on appeal only errors specifically assigned and properly argued in the brief or memorandum will be considered, except those affecting jurisdiction over the subject matter as well as plain and clerical errors.[22] Otherwise stated, an appellate court has no power to resolve an unassigned error, which does not affect the court's jurisdiction over the subject matter, save for a plain or clerical error.[23]

It is true that the Rules should be interpreted so as to give litigants ample opportunity to prove their respective claims and that a possible denial of substantial justice due to legal technicalities should be avoided.[24] But it is equally true that an appeal being a purely statutory right, an appealing party must strictly comply with the requisites laid down in the Rules of Court.[25] In other words, he who seeks to avail of the right to appeal must play by the rules.[26] This the petitioner failed to do when she did not submit her memorandum of appeal in Civil Case No. 12044 as required by Rule 40, Section 7 of the 1997 Rules of Civil Procedure. That she lost her case is not the trial court's fault but her own.

In sum, we find that the Court of Appeals committed no reversible error of law when it upheld (a) the order of the RTC dismissing herein petitioner's appeal in Civil Case No. 12044, and (b) its order denying reconsideration.

WHEREFORE, the instant petition is DENIED, and the assailed decision and resolution of the Court of Appeals in CA-G.R. SP No. 50360 are AFFIRMED.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Austria-Martinez, and Callejo, Sr., JJ., concur.

[1] CA Rollo, pp. 91-97. Penned by Abad Santos, Jr., J., with Callejo, Sr., and Umali, JJ., concurring.

[2] Id. at 80.

[3] Rollo, p. 70.

[4] Supra note 1 at 105.

[5] ART. 434. In an action to recover, the property must be identified, and the plaintiff must rely on the strength of his title and not on the weakness of the defendant's claim.

[6] Rollo, pp. 58-59.

[7] Id. at 61.

[8] Ibid.

[9] SEC. 7. Procedure in the Regional Trial Court. –

x x x

(b) Within fifteen (15) days from such notice, it shall be the duty of the appellant to submit a memorandum which shall briefly discuss the errors imputed to the lower court, a copy of which shall be furnished by him to the adverse party. Within fifteen (15) days from receipt of the appellant's memorandum, the appellee may file his memorandum. Failure of the appellant to file a memorandum shall be a ground for dismissal of the appeal.

[10] Supra note 6, at 62.

[11] Id. at 70.

[12] CA Rollo, p. 97.

[13] Id. at 96.

[14] Id. at 105.

[15] Rollo, p. 144.

[16] SEC. 7. Procedure in the Regional Trial Court –

x x x

(c) Upon filing of the memorandum of the appellee, or the expiration of the period to do so, the case shall be considered submitted for decision. The Regional Trial Court shall decide the case on the basis of the entire record of the proceedings had in the court of origin and such memoranda as are filed.

[17] 21. Appeal to the Regional Trial Courts. –

x x x

(c) Upon receipt of the original record, or of the record on appeal and of the transcripts and exhibits, the Clerk of Court of the Regional Trial Court shall notify the parties of such fact.

(d) Within fifteen (15) days from receipt by the parties of the notice referred to in the preceding paragraph, they may submit memoranda and/or briefs or be required by the Regional Trial Court to do so. After the submission of such memoranda and/or briefs or upon the expiration of the period to file the same, the Regional Trial Court shall decide the case on the basis of the entire record of the proceedings had in the court of origin and such memoranda and/or briefs, as may have been filed.

[18] Feria and Noche, II CIVIL PROCEDURE ANNOTATED (2001 Ed.) 146.

[19] Diokno v. Rehabilitation Finance Corp., 91 Phil. 608, 610 (1952); Baranda v. Gustilo, 165 SCRA 757, 770 (1988).

[20] Statsky, LEGAL THESAURUS AND DICTIONARY (1986 Ed.) 263.

[21] Vda. De Mesa v. Mencias, 18 SCRA 533, 542 (1966).

[22] Solid Homes, Inc., v. Court of Appeals, 341 Phil. 261, 278 (1997).

[23] Sps. Bella v. Court of Appeals, 345 Phil. 1, 7-8 (1997).

[24] Quibuyen v. Court of Appeals, 9 SCRA 741, 747 (1963); Philippine Rabbit Bus Lines, Inc. v. Galauran and Pilares Construction Corp., 118 SCRA 664, 668 (1982).

[25] Republic v. The Register of Deeds of Quezon, 314 Phil. 473, 482-483 (1995), citing U-Sing Button & Buckle Industry v. National Labor Relations Commission, 221 SCRA 680 (1993).

[26] Sta. Rita v. Court of Appeals, 317 Phil. 578, 584-585 (1995).

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