LUCIANO ELLO AND GAUDIOSA ELLO, PETITIONERS, VS. THE COURT OF APPEALS, SPRINGFIELD DEVELOPMENT CORPORATION, AND CONSTANTINO G. JARAULA, RESPONDENTS.

G.R. NO. 141255. June 21, 2005

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Before us is a petition for certiorari[1] assailing the (1) Resolution[2] dated May 31, 1999 of the Court of Appeals in CA-G.R. SP No. 49904 dismissing outright the petition for review filed by spouses Luciano and Gaudiosa Ello, petitioners herein, on the ground that they failed to incorporate therein the affidavit of proof of service required under Section 11 in relation to Section 13, Rule 13 of the 1997 Rules of Civil Procedure, as amended; and (2) Resolution dated October 8, 1999 denying their motion for reconsideration.

In their petition, petitioners averred that on May 15, 1996, Springfield Development Corporation and Constantino G. Jaraula, respondents herein, jointly filed with the Municipal Trial Court in Cities (MTCC), Branch 4, Cagayan de Oro City, a complaint against them for forcible entry with application for preliminary mandatory injunction, docketed as Civil Case No. 96-May-346.

The complaint alleges inter alia that respondent Springfield Development Corporation is the owner and actual possessor of Lot No. 19-C[3] covered by Transfer Certificate of Title (TCT) No. T-92571, while respondent Constantino Jaraula is the owner and actual possessor of Lot No. 2291-B covered by TCT No. T-63088, both situated at Gusa, Cagayan de Oro City. The two lots adjoin each other and were originally parts of Lot No. 2291, a 12-hectare lot which has been developed by respondents as the Mega Heights Subdivision. In January, March and April of 1996, petitioner spouses Luciano and Gaudiosa Ello and their hired personnel surreptitiously and stealthily occupied respondents' lots, built a make-shift shed under the trees, and fenced the area they occupied. Respondents then demanded that petitioners and their hired personnel vacate the area but they refused. Instead, they threatened and prevented respondents from developing their lots into a subdivision. The matter reached the barangay but the parties failed to reach an amicable settlement. Thus, the Barangay Lupon Tagapamayapa issued a Certificate to File Action. Respondents prayed that petitioners be ordered to vacate the lots and to remove the improvements they constructed thereon.[4]

Petitioners, in their answer, specifically denied respondents' allegations, claiming that they have been in possession of the disputed lots for over thirty (30) years; that the Department of Agrarian Reform Adjudication Board (DARAB), in its Decision dated October 5, 1995 in DARAB Case No. 305, declared that the lots are covered by the Comprehensive Agrarian Reform Program (CARP) and petitioners are among the identified beneficiaries thereof; that the said Decision has become final and executory; and that, therefore, the MTCC has no jurisdiction over respondents' complaint for forcible entry.

On December 4, 1996, the MTCC rendered its Decision dismissing the complaint, thus:

> "WHEREFORE, in view of the foregoing consideration and for failure of the plaintiffs to establish by

> preponderance of evidence that they have brought the instant case within one year from entry of defendant, and in view of the fact that the land is subject matter of a DARAB Case No. 305, the court believes that it has no jurisdiction to try the instant case and, therefore, orders the dismissal of the same. The counterclaim filed by the defendants is also dismissed for lack of merit.
>
> SO ORDERED."[5]

On appeal, the Regional Trial Court (RTC), Branch 17, Cagayan de Oro City, in its Decision dated August 5, 1998, reversed the MTCC Decision, thus:

> "WHEREFORE, premises considered, the Decision of the lower court in Civil Case No. 96-May-346 of Branch 4, Municipal Trial Court in Cities, Cagayan de Oro City, rendered on December 4, 1996, is hereby ordered reversed and set aside, and this court hereby finds a case in favor of the plaintiffs and against the defendants, and hereby orders the defendants Luciano Ello and Gaudiosa Ello, their agents and privies to vacate Lots Nos. 19-C and 2291-B within ninety (90) days and deliver the same to the plaintiffs Springfield Development Corporation and Constantino Jaraula, and to refrain from ever disturbing and interrupting the plaintiffs in their rightful and feaceful possession and enjoyment of the parcels of land subject-matter of this case.
>
> Costs against the defendants.
>
> SO ORDERED."[6]

The RTC held in part:

> "The fact that the defendants are now occupying Lots. Nos. 19-C and 2291-B without any concrete permanent improvement within the area is a testament that they only entered the same recently. And to this effect was the testimony of Architect Richard Tan, project manager of Mega Heights Subdivision, who explained that prior to January, 1996, the defendants were nowhere to be found in Lots Nos. 19-C and 2291-B.
>
> It is, therefore, the considered view of the court that the filing of the instant action for forcible entry in May, 1996 was done within one (1) year from the time of entry by the defendants in Lots Nos. 19-C and 2291-B. The court is morally convinced that while the defendants were in possession and occupation of Lot No. 2525 for many years, they have recently expanded their occupation and possession to Lots Nos. 19-C and 2291-B, lots adjacent to and adjoining Lot No. 2525. x x x.
>
> On the second issue, the court is likewise of the considered view that the lower court has jurisdiction over this case. The court is morally convinced that the Decision of DARAB dated October 5, 1995 has become moot and academic with the payment and relocation of the occupants of Lot No. 2291 (Exhibits 'F,' 'G,' 'H,' and 'I'), even before the DARAB Decision was rendered. The exclusion of the defendants from the payment of compensation is consistent with the findings of the lower court that 'the heirs of Nicholas Capistrano believes that the area occupied by the defendant is in excess of Lot 2291 per testimony of Engr. Belen and defendant Luciano Ello.' This is once more supported by the notes from CENRO (Exhibits '6' and '6-A') which show that defendants are occupants and possessors of Lot No. 2525. Apparently, the DAR had the same thing in mind because the defendants were not included in the original listing of actual occupants of Lot No. 2291."

On October 22, 1998, petitioners filed with the Court of Appeals a petition for review, docketed as CA-G.R. SP No. 49904.

In a minute Resolution dated May 31, 1999,[7] the petition was dismissed outright on the ground that it does not contain the affidavit of service required by Section 11 in relation to Section 13, Rule 13 of the 1997 Rules of Civil Procedure, as amended.

Petitioners, through the Public Attorney's Office, promptly filed a motion for reconsideration attaching therewith

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the affidavit of service dated June 17, 1999, executed by Gabriel M. Manasan. In his affidavit, Manasan stated that he is the messenger of the Public Attorney's Office, Cagayan de Oro City which directed him to file with the Court of Appeals through the mail the petition for review in CA-G.R. SP No. 49904, "LUCIANO 'CIANO' ELLO and GAUDIOSA ELLO, Petitioners, versus SPRINGFIELD DEV'T. CORP. and CONSTANTINO JARAULA, Respondents;" that on October 21, 1998, he personally served copies of the petition to the Law Office of respondents' counsel Atty. Constantino Jaraula at No. 12th St., Nazareth, Cagayan de Oro City and to the RTC, Branch 4, Cagayan de Oro City, per the stamped receipt indicated in their own copy of the petition;[8] and that the following day, October 22, 1998, he mailed copies thereof to the Court of Appeals per postal Registry Receipt No. 36680 attached to his affidavit.[9]

In their motion for reconsideration, petitioners averred that they failed to append to their petition the affidavit of service due to an excusable oversight considering the time constraint in filing the petition with its voluminous annexes; that they have a meritorious case as evidenced by the final Decision in DARAB Case No. 305 declaring them as CARP beneficiaries of the disputed property; and that there would be a denial of substantial justice if their petition would be dismissed merely by reason of technicality.[10] Citing previous rulings of this Court[11] that procedural rules should be liberally construed in order to promote substantial justice, petitioners prayed that the affidavit of proof of service attached to their motion be admitted and that their petition be given due course.

Still unconvinced, the Court of Appeals, in its Resolution dated October 8, 1999, denied petitioners' motion for reconsideration, invoking this Court's ruling in Solar Team Entertainment, Inc. vs. Judge Ricafort[12] that "strictest compliance with Section 11 of Rule 13 is mandated."[13]

Petitioners now come to us via the instant petition for certiorari assailing the twin minute Resolutions of the Court of Appeals. They allege that the said court "acted with grave abuse of discretion amounting to lack of jurisdiction" by persisting in dismissing their petition for review "solely on technical grounds without regard whatsoever to the substantial merit of their cause and the resulting injustice that could be created thereby."[14] They pray that the challenged Resolutions be annulled and that their petition be given due course.

Respondents, in their comment on the petition, counter that the Court of Appeals, in issuing the assailed Resolutions, properly exercised its discretion. They contend that petitioners, by failing to attach to their petition the required affidavit of service, "only succeeded in demonstrating their contempt for the Rules and the Honorable Supreme Court's directive in Solar Team Entertainment, Inc. vs. Judge Ricafort."[15]

The issue here is whether the Court of Appeals gravely abused its discretion when it dismissed outright petitioners' petition for review on the sole technical ground that it does not contain the affidavit of service as required by Section 11 in relation to Section 13, Rule 13 of the 1997 Rules of Civil Procedure, as amended.

Sections 3 and 5, Rule 13 of the 1997 Rules of Civil Procedure, as amended, prescribe two modes of filing and service of pleadings, motions, notices, orders, judgments and other papers. These are: (a) by personal delivery, governed by Section 6 of the same Rule; and (b) by mail, under Section 7 thereof. If service cannot be done either personally or by mail, substituted service may be resorted to pursuant to Section 8 of the same Rule.

However, Section 11 of Rule 13 requires that "whenever practicable," the filing of pleadings and other papers in court, as well as the service of said papers on the adverse party or his counsel, must be done "personally." But if such filing and service were through a different mode, the party concerned must submit a "written explanation" why they were not done personally. Section 11 provides:

> "SEC. 11. Priorities in modes of service and filing. – Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally.

> A violation of this Rule may be cause to consider the paper as not filed. (n)"

In relation to Section 11, Section 13 provides:

> "SEC. 13. Proof of service. – Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with Section 7 of this Rule. If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee. (10a)" (Underscoring supplied)

Section 11 is a new provision incorporated in the 1997 Rules of Civil Procedure, as amended, prescribing the mode of filing and service of pleadings, motions and other papers. In Solar Team Entertainment, Inc. vs. Judge Ricafort (supra), we explained that the primary objective of this new provision is to foil the mischief of delay, thus:

> "Personal service and filing are preferred for obvious reasons. Plainly, such should expedite action or resolution on a pleading, motion or other paper; and conversely, minimize, if not eliminate, delays likely to be incurred if service or filing is done by mail, considering the inefficiency of the postal service. Likewise, personal service will do away with the practice of some lawyers who, wanting to appear clever, resort to the following less than ethical practices: (1) serving or filing pleadings by mail to catch opposing counsel off-guard, thus leaving the latter with little or no time to prepare, for instance, responsive pleadings or an opposition; or (2) upon receiving notice from the post office that the registered parcel containing the pleading of or other paper from the adverse party may be claimed, unduly procrastinating before claiming the parcel, or worse, not claiming it at all, thereby causing undue delay in the disposition of such pleading or other papers.

The requirement under Section 11 is mandatory. Any violation of this Rule may be cause for the court to consider the paper as not filed.

However, such discretionary power of the court must be exercised properly and reasonably, taking into account the following factors: (1) "the practicability of personal service;" (2) "the importance of the subject matter of the case or the issues involved therein;" and (3) "the prima facie merit of the pleading sought to be expunged for violation of Section 11." Thus, we stressed in Solar :

> "If only to underscore the mandatory nature of this innovation to our set of adjective rules requiring personal service whenever practicable, Section 11 of Rule 13 then gives the court the discretion to consider a pleading or paper as not filed if the other modes of service or filing were resorted to and no written explanation was made as to why personal service was not done in the first place. The exercise of discretion must, necessarily, consider the practicability of personal service, for Section 11 itself begins with the clause 'whenever practicable.'
>
> We thus take this opportunity to clarify that under Section 11, Rule 13 of the Rules of Civil Procedure, personal service and filing is the general rule, and resort to other modes of service and filing, the exception. Henceforth, whenever personal service or filing is practicable, in light of the circumstances of time, place and person, personal service or filing is mandatory. Only when personal service or filing is not practicable may resort to other modes be had, which must then be accompanied by a written explanation as to why personal service or filing was not practicable to begin with. In adjudging the plausibility of an explanation, a court shall likewise consider the importance of the subject matter of the case or the issues involved therein, and the prima facie merit of the pleading sought to be expunged for violation of Section 11. x x x." (Underscoring supplied)

In the present case, there is no question that petitioners violated Section 11 of Rule 13 by failing to append the affidavit of service to their petition for review filed with the Court of Appeals. We note, though, that petitioners, upon receipt of the Court of Appeals' challenged Resolution dismissing outright their petition due to such omission, promptly filed a motion for reconsideration, readily acknowledging their procedural lapse and attaching therewith the required affidavit of service.

Significantly, Gabriel Manasan's affidavit of service shows that the petition for review was filed with the Court of Appeals in Manila through registered mail. This mode of filing is permitted under Section 11 of Rule 13 since it s obviously impractical for petitioners and their counsel, who are all residents of Cagayan de Oro City, to personally file their petition in Manila. As to the service of copies of the petition, Manasan personally served the same on respondents' counsel and the RTC in Cagayan de Oro City, thus fully complying with Section 11.

Clearly, Manasan's affidavit of service is a substantial compliance with the requirement under Section 11. It bears stressing that petitioners' procedural lapse in not appending such affidavit to their petition did not in any way thwart the laudable objective of Section 11 as stated in Solar, i.e., to quell the lawyers' unethical practice of deliberately resorting to delays in the filing and service of pleadings, motions and other papers. Indeed, the evil sought to be prevented by the new rule is absent here. Also, there is absolutely no indication from petitioners' omission that they demonstrated their contempt for the Rules and our directive in Solar, as claimed by respondents.

Moreover, we note that the Court of Appeals, despite petitioners' motion for reconsideration showing compliance with Section 11, still denied the same, without taking into account the importance of the issues raised in the petition.

It must be stressed that the findings of fact of the MTCC and the RTC are diametrically opposed from each other. The MTCC found that for many years before respondents filed the complaint for forcible entry, petitioners have been in possession of the disputed property awarded to them by the CARP. On the contrary, the RTC found that they are not CARP beneficiaries.

In their petition for review before the Court of Appeals, petitioners ascribed to the RTC the following errors:

1. In ruling that the filing of the forcible entry complaint was within one (1) year from petitioners' entry on the subject land.

2. In finding that respondents are the owners in fee simple of the subject land; and

3. In ruling that the Decision in DARAB Case No. 305 has become moot and academic.

The assigned errors are purely factual in nature which only the Court of Appeals can determine. By dismissing the petition outright would absolutely foreclose the resolution of these errors. Clearly, justice would be better served if the Court of Appeals resolves the factual issues raised in the petition.

In Sebastian vs. Morales,[16] we ruled that "rules of procedure must be faithfully followed except only when for persuasive reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure," which exception is present here.

In fine, we hold that the Court of Appeals, in issuing its assailed Resolutions, acted with grave abuse of discretion amounting to lack or excess of jurisdiction.

WHEREFORE, the instant petition for certiorari is hereby GRANTED. The challenged Resolutions dated May 31, 1999 and October 8, 1999 of the Court of Appeals in CA-G.R. SP No. 49904 are ANNULLED and SET ASIDE. The petition for review is ordered REINSTATED.

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SO ORDERED.

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

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[1] Filed under Rule 65 of the 1997 Rules of Civil Procedure, as amended.

[2] Penned by Associate Justice Fermin A. Martin, Jr. and concurred in by Justice B. A. Adefuin-De la Cruz (both retired) and Justice Presbitero J. Velasco, Jr. (now Court Administrator).

[3] Or Lot No. 2291-A as stated by the MTCC in its Decision dated December 4, 1996 in Civil Case No. 96-May-346, Rollo at 47.

[4] Rollo at 40, 47-48.

[5] Id., at 52.

[6] Id., at 45-46.

[7] Id., at 23.

[8] Id., at 38.

[9] Id., at 29-30.

[10] Id., at 25-26.

[11] City of Cebu vs. Court of Appeals, G.R. No. 109173, July 5, 1996, 258 SCRA 175; Republic vs. Hernandez, G.R. No. 117209, February 9, 1996, 253 SCRA 509.

[12] G.R. No. 132007, August 5, 1998, 293 SCRA 661, 670.

[13] Rollo at 20.

[14] Petition, Rollo at 14.

[15] Comment, Rollo at 134.

[16] G.R. No. 141116, February 27, 2003, 397 SCRA 549.

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