

**DOMINGO MARCIAL, PETITIONER, VS. HI-CEMENT CORPORATION/
UNION CEMENT CORPORATION, AGAPITO LLOCE, VICTORIANO
MURING, AND VENERANDO GAMBE, RESPONDENTS.**

G.R. No. 144900. November 18, 2005

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the Resolution[1] dated June 2, 2000 of the Court of Appeals (CA) in CA-G.R. SP No. 58910, which denied petitioner's motion for extension of time to file petition for review; and the CA Resolution dated August 16, 2000, which denied petitioner's motion for reconsideration.

The factual background of the case is as follows:

On June 15, 1995, petitioner Domingo Marcial filed a complaint for forcible entry against respondents Agapito Lloce, Victoriano Muring and Venerando Gambe (Lloce, et al.) before the Municipal Trial Court, Branch 1, Norzagaray, Bulacan (MTC), docketed as Civil Case No. 739. In his complaint, petitioner alleges that on April 11, 1995, respondents Lloce, et al. forcibly entered his land located in Sitio Gidgid, Bgy. Matictic, Norzagaray, Bulacan.[2]

On November 29, 1996, respondents Lloce, et al. filed their answer, alleging that: they are not the real parties-in-interest since they are mere employees of herein respondent Hi-Cement Corporation (HCC), acting for its interest; respondent HCC has been in possession of the disputed property under an agreement with Iluminada de Guzman, the owner thereof; petitioner has no right to possession of the disputed property.[3]

On February 23, 1996, upon joint manifestation of the parties, the MTC ordered for relocation survey of the subject property to be conducted by a survey team chaired by Engr. Librado Gellez, Chief of the Surveys Division of Bulacan, together with Engr. Eduardo America, representing the petitioner and Engr. Edilberto Villaseñor, representing the respondents Lloce, et al.[4]

Following the relocation survey, the survey team submitted a Surveyor's Report on May 29, 1996. The Surveyor's Report reads, in part:

- That on May 25, 1996, the undersigned surveyors went to the site to be surveyed at Barangay Matictic, Norzagaray, Bulacan;
- That verification survey was conducted in the presence of the following:
 - a. Domingo Marcial
 - b. Victorio (sic) Muring
- That the lot involved is Lot-3294, Cad-350, Norzagaray Cadastre with corresponding Advance Plan No. 14837 in the name of Gorgonio Bernabe and Francisco Cruz containing an area of 26,273 square meters;

- That this land was bought by Domingo Marcial by virtue [of] "Kasulatan ng Bilihan ng Lupa" dated February 14, 1987 rectified (sic) by Atty. Sergio Esquivel Bernabe, Notary Public;
- That with the guidance of a sketch plan reconnaissance within the premises was conducted;
- That the survey was conducted to possibly shot (sic) all existing monements (sic) of lot-3294, Cad-350, Norzagaray Cadastre in order to be used as reference in selecting common points;
- After a thorough computation and investigation of the corners shot, we found out and ascertain (sic) that corners 1, 2 and 3 of kit (sic)-3294, Cad-350, Norzagaray Cadastre are in proper position and that corner 3 was used as common point.

Considering therefore all these measurement, result of the verification survey conducted reveals that the digging and excavation made has an approximate area of 7,001 square meters.[5]

Hearings on the Surveyor's Report thereafter ensued.

More than two years after filing the complaint, petitioner filed on September 2, 1997 a motion for leave of court to amend and to admit his amended complaint to implead HCC as party defendant.[6] The trial court issued summons.[7]

On November 24, 1997, respondents filed an Answer to the amended complaint alleging that, in addition to previous arguments in their earlier answer, petitioner is guilty of laches and estoppel in filing the case; and claiming a compulsory counterclaim for moral and exemplary damages.[8]

On May 26, 1998, the MTC directed the parties to submit their position papers.[9]

On February 8, 1999, the MTC rendered judgment in favor of the petitioner, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against defendants Agapito Lloce, Victorio (sic) Muring, Venerando Gambe and Hi-Cement Corporation represented by Celso Miranda and/or all persons claiming rights under them, to:

- Vacate the area intruded to the extent of 7,001 square meters as embodied in the Report by the Chief of Surveys Division, Department of Environment and Natural Resources;
- To pay the plaintiff jointly and severally, actual damages with legal interests from April 11, 1995 until the amounts are fully paid on the area encroached, in an amount to be determined by a Board of Commissioners which is hereby constituted to be composed by the Clerk of Court of this Court as Chairman, and one (1) representative from each of the parties as members within twenty (20) days from receipt of this judgment and to submit a Recommendation thereon on the amount of actual damages actually determined;
- P20,000.00 as Attorney's Fees and appearance fee of P1,000.00 every hearing; and,
- To pay the costs of the suit.

Claims for moral and exemplary damages are denied for lack of merit.

SO ORDERED.[10]

Dissatisfied, respondents appealed. On January 26, 2000, the Regional Trial Court, Branch 85, Malolos, Bulacan (RTC), reversed the decision of the MTC and dismissed petitioner's complaint.[11]

The RTC held that petitioner's evidence failed to measure up to the quantum of evidence required in civil cases since he failed to prove by preponderance of evidence his better right to material possession of Lot-3294,

Cad-350, Norzagaray Cadastre; and that building a fence, the certifications by the police that petitioner filed complaints for destruction of his fence, and the certification of the Lupon Tagapamayapa are not proofs of prior possession.

As to the MTC's reliance on the relocation survey, the RTC held that it was error for the MTC to consider respondents' acquiescence for a relocation survey as an admission on their part that petitioner indeed is the owner thereof and they had encroached and hauled materials therefrom; that to sustain such a finding would be too presumptuous and poses a dangerous precedent because litigants would never ever accede to a relocation survey of a disputed property lest they be estopped later on as having admitted their opponents' rights thereto.

Petitioner received the decision on February 11, 2000.[12] On February 26, 2000, petitioner filed a motion for reconsideration.[13] On May 15, 2000, the RTC denied the motion for reconsideration.[14] On May 23, 2000, petitioner received the Order denying his motion for reconsideration.[15]

On May 24, 2000, petitioner filed a Notice of Appeal with the RTC.[16] On May 29, 2000, the RTC denied petitioner's notice of appeal for being an improper mode of appeal since the assailed decision was rendered by the RTC in exercise of its appellate jurisdiction.[17]

However, three days earlier, or on May 26, 2000, petitioner had filed a motion for extension of time to file petition for review with the CA, which reads as follows:

COMES NOW the petitioner, through counsel, and to this Honorable Court most respectfully alleges;

I

Petitioner received the Decision dated January 26, 2000 which he received February 11, 2000; and

II

He filed a Motion for Reconsideration on February 26, 2000;

III

On May 23, 2000 he received order dated May 15, 2000 denying his motion for reconsideration. Under Sec. 1, Rule 42 Rules of Civil Procedure, he has 15 days to file Petition for Review in relation to Sec. 2 (b) Rule 41, Rule of Civil Procedure, but he may not be able to finish it before the deadline, because undersigned counsel is saddled with preparation of equally urgent pleadings, briefs and memoranda, aside from daily trials.

Caloocan City for Manila, May 25, 2000.[18]

On June 2, 2000, the CA issued the first assailed resolution, denying petitioner's motion for extension. The CA held:

Going by the rather ambiguous and equivocal averments of the petitioner-movant, he had, if at all, but exhausted the 15-day period within which to file the petition for review. For, petitioner-movant alleges that "petitioner received the Decision dated January 26,2000, which he received on February 11, 2000;" and he filed a motion for reconsideration thereof on February 26, 2000. Which means that by the second mentioned date (February 26, 2000), the 15-day period to file the petition for review had already elapsed. Even so, petitioner claims that it was on May 23, 2000 that he received the Order, dated May 15, 2000, denying his motion for reconsideration. And now he alleges that "he has 15 days to file petition for review xxx.", but that "he may not be able to finish before deadline, because undersigned counsel is saddled with preparation of equally urgent pleadings, briefs and memoranda, aside from daily trials."

Section 1, Rule 42 of the 1997 Rules provides that upon proper motion and the payment of the full amount of

the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen(15) days within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

We believe that the common excuse that movant or counsel may not be able to finish the petition for review before the deadline, allegedly for the reason that counsel is saddled with the preparation of equally urgent pleadings, briefs and memoranda, aside from daily trials, (none of which in this case has been substantiated or verified, except for the self-serving assertions to that effect by petitioner and/or his counsel), cannot be palmed off as that "most compelling reason" to justify a departure or exception from the Rule.[19]

Prior to receipt, however, of the said first assailed resolution, petitioner filed, on June 7, 2000, an amended motion for extension of time to file petition for review, praying for a thirty-day period from June 7, 2000 or until July 7, 2000 to file his petition for review.[20]

Petitioner filed a motion for reconsideration of the CA Resolution dated June 2, 2000,[21] but it was denied by the CA in its second assailed Resolution dated August 16, 2000.[22] The second assailed resolution reads in part:

The motion for reconsideration posits nothing new. The arguments therein advanced had been taken up, discussed and disposed of in the impugned resolution. What we said there need not be repeated all over again here. This is not even to say that the Court had also considered the private respondents' opposition which obviously sets forth substantial and weighty arguments which petitioner conveniently sought to overlook or gloss over in his motion for extension of time to file petition for review.[23]

Hence, the present petition for review on certiorari.

In his Memorandum, petitioner poses the following issues:

- WHETHER OR NOT THE COURT OF APPEALS ERRED IN DENYING THE FIRST AND ONLY MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REVIEW ON CERTIORARI.
- WHETHER OR NOT THE REGIONAL TRIAL COURT ERRED OR COMMITTED GRAVE ABUSE OF DISCRETION REVERSING THE DECISION OF THE MUNICIPAL TRIAL COURT OF NORZAGARAY IN CIVIL CASE NO. 739, BY DISREGARDING ITS OWN FINDINGS ON THE SURVEYOR'S REPORT, AND BY NOT APPLYING THE DOCTRINE OF ESTOPPEL AND APPLICABLE JURISPRUDENCE WHICH SUPPORT CORRECTNESS AND PROPRIETY OF THE DECISION OF THE TRIAL COURT.[24]

Petitioner contends that the CA erred in denying his first motion for extension since he filed it on May 26, 2000, well within the fifteen-day period to file his petition for review or until June 7, 2000, counted from receipt of the denial of his motion for reconsideration on May 23, 2000. Moreover, he submits that he has a meritorious case and respondents are estopped from denying that Lot-3294 belongs to him.

On the other hand, respondents submit that the RTC decision is final with respect to respondent HCC because petitioner did not implead respondent HCC as party-respondent in his motions for extension before the CA. They contend that, even if the decision is not yet final as against HCC, the CA correctly denied the first motion for extension because it did not contain a prayer or relief and therefore was fatally defective, while the amended motion for extension requested for thirty days which is beyond the fifteen-day period allowed by the rules and no compelling reason has been offered by petitioner's counsel to warrant the grant of a thirty-day period.

At the outset, the Court notes that the CA erred in denying for late filing of petitioner's first motion for extension to file petition for review. Undoubtedly, the error was caused by confusion due to the ambiguous averments in the motion for extension that "petitioner received the Decision dated January 26, 2000 which he received on February 11, 2000; and he filed a motion for reconsideration thereof on February 26, 2000." The reckoning date for filing

the motion for extension to file petition for review with the CA was on May 23, 2000 when petitioner received the order of the denial of his motion for reconsideration pursuant to Section 1, Rule 42 of the 1997 Rules of Civil Procedure to the effect that "(a) party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals . . . within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment." The motion for reconsideration filed on February 26, 2000 was timely filed since the records lay bare that it was filed on the fifteenth day from receipt, counted from February 11, 2000. Petitioner received on May 23, 2000 the Order dated May 15, 2000 which denied his motion for reconsideration. Accordingly, at the time petitioner filed his first motion for extension of time on May 26, 2000, the period to file the petition for review or motion for extension to file the same has not yet expired since only three days has elapsed.

However, the first motion for extension is fatally defective for failure to include a prayer or relief; no period for extension was sought in the motion. Under Section 3,[25] Rule 15 of the Rules of Court, a motion shall state the relief sought to be obtained. As a result, it is pro forma or a mere scrap of paper and of no legal effect which the CA may ignore.

Be that as it may, it cannot escape the Court's attention that petitioner filed an amended motion for extension on June 7, 2000 or fifteen days from May 23, 2000, the date of receipt of the Order dated May 15, 2000. Since the amended motion for extension was filed within the reglementary period, the CA should have acted on the amended motion for extension and also considered it in the resolution of petitioner's motion for reconsideration. Yet, as borne out by the records, no action was taken by the CA on the amended motion for extension. In denying the motion for reconsideration, the CA undoubtedly acted with precipitate haste. Whether the amended motion for extension is meritorious is not within the power of this Court to pass upon or look into at this instance. Consequently, the case should be remanded to the CA for proper action on the amended motion for extension.

In view of premature dismissal of this case by the CA, the Court need not delve on the second ground raised by the petitioner.

WHEREFORE, the instant petition is GRANTED. The assailed Resolutions dated June 2, 2000 and August 16, 2000 of the Court of Appeals in CA-G.R. SP No. 58910 are SET ASIDE. The case is hereby REMANDED to the CA for further proceedings and appropriate action. No pronouncement as to costs.

SO ORDERED.

Puno, (Chairman), Callejo, Sr., and Tinga, JJ., concur.
Chico-Nazario, J., on leave.

[1] Penned by Associate Justice Renato C. Dacudao and concurred in by Associate Justices Cancio C. Garcia (now Associate Justice of this Court) and Remedios A. Salazar-Fernando.

[2] Original Records, p. 2.

[3] Id., p. 13.

[4] Id., p. 29a.

[5] Id., p. 39.

[6] Id., p. 93.

[7] Id., p. 100.

[8] Id., p. 103.

[9] Id., p. 131.

[10] Id., p. 203.

[11] Id., p. 346.

[12] Id., p. 362.

[13] Id., p. 363.

[14] Id., p. 400.

[15] Id., p. 406.

[16] Ibid.

[17] Id., p. 410.

[18] CA Rollo, p. 2.

[19] Id., pp. 7-8.

[20] Id., p. 9.

[21] Id., p. 13.

[22] Id., p. 38.

[23] Ibid.

[24] Rollo, pp. 118-119.

[25] SEC. 3. Contents. – A motion shall state the relief sought to be obtained and the grounds upon which it is based, and if required by these Rules or necessary to prove facts alleged therein, shall be accompanied by supporting affidavits and other papers.

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