

TANCREDO REDEÑA, PETITIONER, VS. HON. COURT OF APPEALS AND LEOCADIO REDEÑA, RESPONDENTS.

G.R. No. 146611. February 06, 2007

Ponente: GARCIA, J.

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GARCIA, J.:

In this special civil action for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, petitioner Tancredo Redeña (Tancredo, hereafter) seeks the annulment and setting aside of the Resolution[1] dated April 28, 2000 of the Court of Appeals in CA-G.R. CV No. 59641, as reiterated in its Resolution[2] of November 16, 2000, denying the petitioner's motion for reconsideration.

The present controversy sprung from an action for partition filed by petitioner Tancredo against his older half-brother, herein private respondent Leocadio Redeña (Leocadio, for brevity) before the then Court of First Instance (now Regional Trial Court [RTC]) of San Pablo City, Laguna, and thereat docketed as Civil Case No. S-241 which was subsequently inherited by Branch 33 of the RTC, Siniloan, Laguna.

The basic complaint for partition alleges that plaintiff Tancredo and defendant Leocadio are both sons of one Maximo Redeña: Tancredo, by Maximo's marriage to Magdalena Fernandez, and Leocadio, by Maximo's previous marriage to Emerenciana Redeña. The complaint further alleged that the parties' common father, Maximo, left several pieces of realty, to wit: a residential lot at M. Calim Street, Famy, Laguna; a riceland at Poroza, Famy, Laguna; and another parcel of land at Maate, also in Famy, Laguna.

In a decision[3] dated August 20, 1997, the trial court, based on the evidence presented, confined the partition to only the property actually pertaining to the estate of the parties' deceased father and co-owned by them, namely, the parcel of land at Maate, and accordingly rendered judgment as follows:

WHEREFORE, premises considered, judgment is hereby rendered ordering the defendant [now respondent Leocadio] to partition only the property located at Maate, Famy, Laguna after plaintiff's [Tancredo's] reimbursement of the expenses incurred by the defendant in relation to the said lot. However, partition cannot be effected with regard to properties located at M. Calim Street, Famy, Laguna and the property located at Poroza, Famy, Laguna, as the same belong to the defendant. No pronouncement as to costs.

SO ORDERED. (Words in brackets supplied)

On December 11, 1997, petitioner filed with the trial court a Notice of Appeal.[4] The court gave due course to the notice and directed the elevation of the records of the case to the CA whereat petitioner's appeal was docketed as CA-G.R.CV No. 59641.

On September 28, 1998, the CA issued a resolution directing petitioner, as appellant, to file his appellant's brief. Evidently, the period for filing the brief was even extended by the CA.

On March 9, 1999, there being no appellant's brief filed within the extended period, the CA issued a resolution[5] considering the appeal abandoned and accordingly dismissing the same. The dismissal resolution reads:

For failure of plaintiff-appellant [now petitioner] to file the required brief within the extended period, the instant appeal is hereby considered ABANDONED and accordingly DISMISSED, pursuant to Section 1(e), Rule 50, 1997 Rules of Civil Procedure.

On November 8, 1999 or eight (8) months after the CA issued the above resolution, petitioner filed a motion for reconsideration[6] thereof. In a resolution[7] of November 25, 1999, the CA denied the motion.

Then, on December 28, 1999, in the same CA-G.R. CV No. 59641, petitioner filed a Petition for Relief[8] bearing date December 27, 1999, anchored on Section 2,[9] Rule 38 of the 1997 Rules of Civil Procedure. In that pleading, petitioner prays the CA to set aside its dismissal resolution of March 9, 1999, supra, reinstate his appeal and grant him a fresh period of forty-five (45) days from notice within which to file his appellant's brief.

In the herein assailed Resolution[10] dated April 28, 2000, the CA denied the aforementioned Petition for Relief, thus:

WHEREFORE, the petition for relief dated 27 December 1999 is hereby DENIED.

SO ORDERED.

Explains the CA in said resolution:

Petition for relief is not among the remedies available in the Court of Appeals. In fact, authorities in remedial law (noted authors Regalado, Herrera, and Feria) are one in their commentaries that these petitions are filed with the trial courts. Not one of them has advanced an opinion or comment that this equitable relief can be obtained in the Court of Appeals. Under Rule 47, an annulment of judgment or final orders and resolutions may be filed before this court based on the ground of extrinsic fraud which seems to be the premise of the petition. Perhaps it is worth looking into by the petitioner if the factual basis of the present petition for relief may qualify as an extrinsic fraud, under Rule 47.

Petitioner's motion for reconsideration of the above-mentioned resolution was likewise denied by the CA in its equally challenged Resolution[11] of November 16, 2000, wherein the appellate court further wrote:

Under the 1964 Rules of Court, there was only one court where a petition for relief may be filed - the Court of First Instance, now the Regional Trial Court. Section 1 thereof governs a petition to Court of First Instance for relief from judgment of inferior court while Section 2 thereof governs petition to Court of First Instance for relief from judgment or other proceeding thereof. The 1997 Rules of Civil Procedure has altered the said precept. Now, it must be filed before the Municipal Trial Courts or Metropolitan Trial Courts for judgments or final orders or other proceedings taken in said courts, and in the same case. And for judgment, order, or other proceedings in the Regional Trial Court, it must be filed in the same Regional Trial Court which rendered the judgment or final order, or other proceedings taken and in the same case. In other words, under the present rule, such a petition may be filed in the same court which rendered the judgment or final order, or proceedings taken and in the same case. This is in accordance with uniform procedure rule for Municipal and Regional Trial Courts.

The above construction to limit the term "any court" to Municipal Trial Court and Regional Trial Court - and not to include the Court of Appeals - finds support in Section 7 of the Rules which states:

Sec. 7. Procedure where the denial of an appeal is set aside. - Where the denial of an appeal is set aside, the lower court shall be required to give due course to the appeal and to elevate the record of the appealed case as if a timely and proper appeal had been made.

Significantly, there is no specific provision in both the 1964 and 1997 Rules of Court making the petition under Rule 38, applicable in the Court of Appeals. The procedure in the Court of Appeals from Rule 44 to Rule 55 with the exception of Rule 45 which pertains to the Supreme Court, identifies the remedies available before said court

such as annulment of judgment or final orders and resolution (Rule 47); motion for reconsideration (Rule 52); and, new trial, (Rule 53). Nowhere is petition for relief under Rule 38 mentioned.

But even as the CA stood firm on its stand that a petition for relief from denial of appeal is not among the remedies available before the CA itself, the appellate court, in the same Resolution of November 16, 2000, left the final determination of the question to this Court, thus:

Parenthetically, the main question presented herein is novel in that there is yet no definite and definitive jurisprudence from the Supreme Court. Perhaps, the case will clarify this gray area in our adjective law for guidance of the Bench and Bar. The issue should be elevated to that Tribunal.

Presently, petitioner is now before this Court via the instant recourse on his submission that the CA committed grave abuse of discretion when it -

I

XXX RULED THAT A PETITION FOR RELIEF IS NOT AN AVAILABLE REMEDY IN THE COURT OF APPEALS.

II

XXX REFUSED TO GRANT THE PETITION DESPITE A CLEAR SHOWING THAT (A) PETITIONER, BY REASON OF FRAUD AND MISTAKE, WAS PREVENTED FROM PROSECUTING HIS APPEAL, AND (B) PETITIONER HAS A GOOD AND SUBSTANTIAL CAUSE OF ACTION AGAINST PRIVATE RESPONDENT.

We DISMISS.

In *Hagonoy Market Vendor Association v. Municipality of Hagonoy, Bulacan*, G.R. No. 137621, February 6, 2002, then Associate Justice, now Chief Justice Reynato S. Puno, reminded us that 6

Laws are of two (2) kinds: substantive and procedural. Substantive laws, insofar as their provisions are unambiguous, are rigorously applied to resolve legal issues on the merits. In contrast, courts generally frown upon an uncompromising application of procedural laws so as not to subvert substantial justice. Nonetheless, it is not totally uncommon for courts to decide cases based on a rigid application of the so-called technical rules of procedure as these rules exist for the orderly administration of justice.

From the petition, it is clear that this Court is called upon to relax the application of procedural rules, or suspend them altogether, in favor of petitioner's substantial rights. There is no doubt as to the power of this Court to do that. In a fairly recent case, we reiterated:

The Court has often stressed that rules of procedure are merely tools designed to facilitate the attainment of justice. They were conceived and promulgated to effectively aid the court in the dispensation of justice. Courts are not slaves to or robots of technical rules, shorn of judicial discretion. In rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat against substantive rights, and not the other way around. Thus, if the application of the Rules would tend to frustrate rather than promote justice, it is always within our power to suspend the rules or except a particular case from its operation.[12]

The Rules itself expressly states in Section 2 of Rule 1 that the rules shall be liberally construed in order to promote their object and to assist the parties in obtaining just, speedy and inexpensive determination of every action and proceeding. Courts, therefore, not only have the power but the duty to construe and apply technical rules liberally in favor of substantive law and substantial justice. Furthermore, this Court, unlike courts below, has the power not only to liberally construe the rules, but also to suspend them, in favor of substantive law or

substantial rights. Such power inherently belongs to this Court, which is expressly vested with rule-making power by no less than the Constitution.[13]

It is equally settled, however, that this Court's power to liberally construe and even to suspend the rules, presupposes the existence of substantial rights in favor of which, the strict application of technical rules must concede. The facts are borne out by the records pertaining to petitioner's purported undivided share in the property at M. Calim Street, Famy, Laguna, and the property in Poroza clearly showed that these two properties had been subject of an agreement (Exh. "1") whereby petitioner recognized respondent's rights to said properties. This fact binds this Court, there being nothing on record with the trial court as to the herein alleged fraud against the petitioner. Upon thorough deliberation of the supposed substantial rights claimed by the petitioner with the court below, the Court finds no cogent basis to favorably rule on the merits of the appeal even if it may be given due course which is indispensable to justify this Court in considering this case as an exception to the rules.

The present case will have to be decided in accordance with existing rules of procedure. We apply the settled principle that petition for relief under Rule 38 of the Rules of Court is of equitable character, allowed only in exceptional cases as when there is no other available or adequate remedy.[14] Hence, a petition for relief may not be availed of where a party has another adequate remedy available to him, which is either a motion for new trial or appeal from the adverse decision of the lower court, and he is not prevented from filing such motion or taking the appeal. The rule is that relief will not be granted to a party who seeks to be relieved from the effect of the judgment when the loss of the remedy at law is due to his own negligence, or a mistaken mode of procedure; otherwise, the petition for relief will be tantamount to reviving the right of appeal which has already been lost either because of inexcusable negligence or due to a mistake in the mode of procedure taken by counsel.[15]

Under Section 2 of Rule 38, supra, of the Rules of Court, a party prevented from taking an appeal from a judgment or final order of a court by reason of fraud, accident, mistake or excusable negligence, may file in the same court and in the same case a petition for relief praying that his appeal be given due course. This presupposes, of course, that no appeal was taken precisely because of any of the aforesaid reasons which prevented him from appealing his case. Hence, a petition for relief under Rule 38 cannot be availed of in the CA, the latter being a court of appellate jurisdiction. For sure, under the present Rules, petitions for relief from a judgment, final order or other proceeding rendered or taken should be filed in and resolved by the court in the same case from which the petition arose. Thus, petition for relief from a judgment, final order or proceeding involved in a case tried by a municipal trial court shall be filed in and decided by the same court in the same case, just like the procedure followed in the present Regional Trial Court.[16]

Here, the record shows that petitioner in fact filed a Notice of Appeal with the trial court, which the latter granted in its order of December 11, 1997 and ordered the elevation of the records to the CA. In turn, the CA, in its resolution of September 28, 1998, required the petitioner, thru his former counsel, Atty. Geminiano Almeda, to file his appellant's brief. But petitioner failed to comply. Consequently, in its resolution of March 9, 1999, the CA considered the appellant's appeal as ABANDONED and DISMISSED the same.

Additionally, after the dismissal of his appeal, petitioner filed with the CA a motion for reconsideration of the dismissal resolution. Unfortunately, however, the motion was filed very much late on November 8, 1999. Expectedly, in its resolution[17] of November 25, 1999, the CA denied the motion for reconsideration, to wit:

The last day to file a motion for reconsideration was on 06 April 1999 and as of 18 October 1999 no such motion was ever filed; in fact on 19 October 1999 the court resolved that an entry of judgment may now be issued. The motion for reconsideration, however, pleas for leniency on account of his former lawyer's inefficiency and negligence in that he failed to appeal the case. This is not well taken.

His former lawyer's lack of fidelity and devotion to his client in the discharge of his duty of perfecting the appeal on time without demonstrating fraud, accident, mistake or excusable negligence cannot be a basis for judicial relief. The client has to bear the adverse consequences of the inexcusable mistake or negligence of his counsel or of the latter's employee and may not be heard to complain that the result of the litigation might have been different had he proceeded differently (*Inocando v. Inocando*, 100 Phil. 266)

WHEREFORE, the motion is hereby DENIED.

Petitioner presents himself as a mere farmer seeking the Court's leniency to the point of disregarding the rules on reglementary period for filing pleadings. But he fails to point out any circumstance which might lead the Court to conclude that his station in life had in any way placed his half-brother in a more advantageous position. As we see it, petitioner failed to show diligence in pursuing his cause. His condition as a farmer, by itself alone, does not excuse or exempt him from being vigilant on his right. He cannot lay the blame solely on his former lawyer. It is settled that clients are bound by the mistakes, negligence and omission of their counsel.[18] While, exceptionally, a client may be excused from the failure of his counsel, the circumstances obtaining in this case do not convince the Court to take exception.

In seeking exemption from the above rule, petitioner claims that he will suffer deprivation of property without due process of law on account of the gross negligence of his previous counsel. To him, the negligence of his former counsel was so gross that it practically resulted to fraud because he was allegedly placed under the impression that the counsel had prepared and filed his appellant's brief. He thus prays the Court reverse the CA and remand the main case to the court of origin for new trial.

Admittedly, this Court has relaxed the rule on the binding effect of counsel's negligence and allowed a litigant another chance to present his case (1) where the reckless or gross negligence of counsel deprives the client of due process of law; (2) when application of the rule will result in outright deprivation of the client's liberty or property; or (3) where the interests of justice so require.[19] None of these exceptions obtains here.

For a claim of counsel's gross negligence to prosper, nothing short of clear abandonment of the client's cause must be shown. Here, petitioner's counsel failed to file the appellant's brief. While this omission can plausibly qualify as simple negligence, it does not amount to gross negligence to justify the annulment of the proceedings below.

In *Legarda v. Court of Appeals*,[20] where the Court initially held that the counsel's failure to file pleadings at the trial court and later on appeal amounted to gross negligence, the Court, on motion of the respondent therein, granted reconsideration and applied the general rule binding the litigant to her counsel's negligence. In said case, the Court noted that the proceedings which led to the filing of the petition "were not attended by any irregularity." The same observation squarely applies here.

To recapitulate, petitioner is not entitled to relief under Rule 38, Section 2 of the Rules of Court. He was not prevented from filing his notice of appeal by fraud, accident, mistake or excusable negligence, as in fact he filed one. The relief afforded by Rule 38 will not be granted to a party who seeks to be relieved from the effects of the judgment when the loss of the remedy of law was due to his own negligence, or a mistaken mode of procedure for that matter; otherwise, the petition for relief will be tantamount to reviving the right of appeal which has already been lost, either because of inexcusable negligence or due to a mistake of procedure by counsel.[21] The Rules allow a petition for relief only when there is no other available remedy, and not when litigants, like the petitioner, lose a remedy by negligence.

On a final note, the extraordinary writ of certiorari may be issued only where it is clearly shown that there is patent and gross abuse of discretion as to amount to an evasion of positive duty or to virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and

despotic manner by reason of passion or personal hostility.[22] The Court finds no such abuse of discretion in this case.

WHEREFORE, the instant petition is DISMISSED and the assailed resolutions of the CA are AFFIRMED.

No pronouncement as to costs.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, and Azcuna, JJ., concur.
Corona, J., on leave.

[1] Penned by Associate Justice Buenaventura J. Guerrero (ret.) with Associate Justices Portia Aliño-Hormachuelos and Teodoro P. Regino (ret.), concurring; Rollo, pp. 29-30.

[2] Id. at 31-33.

[3] Id. at 38-44.

[4] Id. at 45.

[5] Id. at 47.

[6] Id. at 48-52.

[7] Id. at 54.

[8] Id. at 55-66.

[9] SEC. 2. Petition for relief from denial of appeal.- When a judgment or final order is rendered by any court in a case, and a party thereto, by fraud, accident, mistake, or excusable negligence, has been prevented from taking an appeal, he may file a petition in such court and in the same case praying that the appeal be given due course.

[10] Supra note 1.

[11] Supra note 2.

[12] Grand Placement and General Services Corporation v. Court of Appeals, G.R. No. 142358, January 31, 2006, 481 SCRA 189.

[13] The Supreme Court shall have the power to promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts. The admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. (Art. VIII, Sec. 5, Subsec. 5, 1987 Constitution).

[14] Ibabao v. IAC, G.R. No. L-74848, May 20, 1987, 150 SCRA 76.

[15] Supra.

[16] Regalado, Remedial Law Compendium, Vol. 1, 2002 ed., p. 399.

[17] Supra note 7.

[18] Jose v. Court of Appeals, G.R. No. 128646, March 14, 2003, 399 SCRA 83.

[19] Sarraga, Sr. v. Banco Filipino Savings and Mortgage Bank, 442 Phil. 55 (2002).

[20] G.R. No. 94457, 18 March 1991, 195 SCRA 418 (Decision); 345 Phil. 890 (1997) (Resolution).

[21] Supra note 9.

[22] Lalican v. Vergara, G.R. No. 108619, July 31, 1997, 276 SCRA 518.

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