THE HEIRS OF CRISTETA DE LA ROSA, PETITIONERS, VS. HON. ADELINA CALDERON- BARGAS, HEIRS OF SESINANDO MILLARE, ROSALINA M. COSEP, CARMELITA M. DAMASO,` MERCEDES M. ESPIRITU, AND ...

G.R. NO. 147939. July 06, 2007

Ponente: NACHURA, J.

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NACHURA, J.:

This is a Petition for Review on Certiorari[1] assailing the Decision[2] dated August 9, 2000, and the Resolution[3] dated April 30, 2001, of the Court of Appeals (CA) in CA-G.R. SP No. 54750.

The Facts

The present petition stems from a forcible entry with preliminary mandatory injunction[4] case decided by the Municipal Trial Court (MTC) of Tanay, Rizal. Petitioners[5] were declared to have illegally entered the parcel of land denominated as Lot 3223, located at Malalim, San Guillermo, Morong, Rizal. On August 26, 1998, the court rendered a Decision,[6] the dispositive portion of which reads:

In the light of the foregoing, the Court finds and so holds that preponderance of evidence is on the side of the plaintiffs. WHEREFORE, judgment is hereby rendered:

- Ordering the defendants and all persons claiming under them to vacate the subject premises and surrender possession thereof to the plaintiff.

- Ordering the defendants to pay plaintiffs:

a. P 30,000.00 as attorney's fee plus P 500.00 per Court appearance.

b. Costs of suit.

SO ORDERED.[7]

On October 5, 1998, petitioners filed a Notice of Appeal[8] from the aforesaid Decision. On November 20, 1998, the MTC rendered an Order[9] directing the Clerk of Court to immediately transmit the records of the case to the Regional Trial Court (RTC) within the required period.

On January 4, 1999, the RTC of Morong, Rizal furnished the parties with a Notice of Appealed Case,[10] the pertinent portion of which reads:

> You are hereby notified that this court has received the original record of this case on appeal from the Municipal Trial Court of Morong, Rizal consisting of Two Hundred Sixty-seven (267) pages and has docketed the same.[11]

On March 31, 1999, private respondents[12] filed a Motion for Dismissal of Appeal[13] alleging that petitioners

had not filed the required memorandum despite the fact that they had only until January 29, 1999 within which to do so.

On April 19, 1999, petitioners filed an Opposition to the Motion for Dismissal of Appeal.[14] Petitioners averred that they had not received the Notice of Appealed Case dated January 4, 1999. They claimed that they were sincere in their intention to prosecute their appeal and prayed that the Motion for Dismissal of the Appeal be denied and that they be given until April 27, 1999 within which to submit their memorandum.[15]

On April 14, 1999, prior to the filing by the petitioners of the Opposition to the Motion for Dismissal of Appeal, the RTC issued an Order[16] dismissing the case for failure of the petitioners to file the required memorandum. The pertinent portion of the Order reads:

> WHEREFORE, this present case is ordered DISMISSED for failure to comply with Section 7 (b), Rule 40 of the 1997 Rules of Civil Procedure.
>
> SO ORDERED.[17]

On April 23, 1999, petitioners filed a Motion for Reconsideration[18] of the Order of the RTC. On June 25, 1999, the RTC issued an Order[19] denying the Motion for Reconsideration and the Motion to Admit Memorandum of the petitioners. The pertinent portions of the Order read:

> An examination of the return card of the notice of appealed case shows that it was received by one of the staff of Atty. Metila on January 14, 1999. The Court says "one of the staff" because the same signature appears/resembles the recipient of the Motion for Dismissal of Appeal (Annex "B" of the Opposition) and the Pre-Trial Brief for the Plaintiffs (Annex "E" of the Opposition). The similarity of the signatures is very apparent that it is hard to believe that he did not receive the notice of appealed case; while the aforequoted pleadings of the counsel for plaintiffs/appellees were received by counsel for defendants/appellants.
>
> As correctly observed by counsel for plaintiffs/appellees, a Postman would not leave a registered letter from the Court, unless it was properly signed by the addressee or his representative. The Postman, as public official, is presumed to have regularly performed his duty, unless there is evidence to the contrary.
>
> Likewise, it is the duty of counsel for defendants/appellants to prepare the memorandum since he is the one who filed the present appeal. Hence, his failure to file the same is an inexcusable negligence.
>
> WHEREFORE, premises considered, the Motion for Reconsideration is DENIED for lack of merit. Consequently, the Motion to Admit Memorandum is likewise DENIED.
>
> Meanwhile, the second paragraph of the Order dated April 14, 1999 is amended to read as follows:
>
> "WHEREFORE, this present appeal is ordered DISMISSED for failure to comply with Section 7(B), Rule 40 of the 1997 Rules of Civil Procedure.
>
> "SO ORDERED."
>
> SO ORDERED..[20]

On September 7, 1999, petitioners filed a petition for certiorari[21] before the CA. The petitioners questioned the jurisdiction of the respondent Judge to try and hear the case. They alleged that the RTC of Morong, Rizal had not acquired jurisdiction over the person of the petitioners and over the subject matter of the action due to the failure of the clerk of court to furnish them with the Notice of Appealed Case.[22] Petitioners proffer that they only became aware that their case was already with the RTC of Morong when they received private respondents' Motion for Dismissal of the Appeal.[23]

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On August 9, 2000, the CA issued a Decision[24] denying the petition and affirming in toto the decision of the trial court. The court decreed that failure to comply with Section 6, Rule 40 of the Rules of Court, is not jurisdictional. The letter of transmittal that was required to be sent to the parties was just for purposes of certification to ensure the completeness of the records transmitted.[25] An appeal by a party by notice of appeal is deemed perfected as to him upon the filing of a notice of appeal in due time as mandated by Section 9, Rule 41 of the Revised Rules of Court.[26]

Petitioners filed a Motion for Reconsideration. However, the same was denied in a Resolution[27] dated April 30, 2001.

On May 21, 2001, petitioners filed a Petition for Review on Certiorari with this Court assailing the Decision and Resolution of the CA. Petitioners contend that compliance with the directives of Sections 6 and 7, Rule 40[28] of the Revised Rules of Court is mandatory and is important in order for the appellate court to acquire jurisdiction over the person of the petitioners and over the subject matter of the case. Petitioners claim that their receipt of the motion for dismissal of the appeal was their first formal notification that the case was already within the jurisdiction of the RTC of Morong, Rizal. They aver that the clerk of court of the MTC failed to furnish them a copy of the letter of transmittal, while the clerk of court of the RTC failed to notify them of the receipt by the said court of the complete record of Civil Case No. 1135. They insist that they have not received the notice of appealed case dated January 4, 1999. Petitioners stress that the failure of the clerks of court of both the MTC and the RTC to furnish them copies of the letter of transmittal and notice of appealed case constituted a violation of their right to due process and that such failure on the part of the clerk of court resulted in their failure to file the required memorandum on time.[29] Furthermore, they question private respondents' motion for dismissal of appeal on the ground that the time and date of hearing thereof was not specified in the motion.

The Issues

Petitioners submit the following questions of law for resolution:

I

> Whether or not the Court of Appeals erred in denying the petitioners' Petition and Motion for Reconsideration based on its erroneous interpretation of Section[s] 6 and 7 of Rule 40 of the 1997 Rules of Civil Procedure.
>
> II
>
> Whether or not the Court of Appeals erred in affirming RTC-Morong's dismissal of petitioners' appeal on the sole basis of private respondents' improper, defective and invalid motion for dismissal of appeal.[30]

The Ruling of the Court

We affirm the ruling of the appellate court.

Petitioners are of the mistaken notion that receipt of the letter of transmittal and of the notice of appealed case is the reckoning point for the RTC to acquire jurisdiction over their appeal. This is contrary to the clear provision of Section 9, Rule 41 of the Revised Rules of Court, which states, in part, that a party's appeal by notice of appeal is deemed perfected as to him upon the filing of the notice of appeal in due time. The RTC acting as an appellate court acquired jurisdiction over the case of the petitioners upon their filing of the notice of appeal on October 5, 1998. The filing of the notice of appeal in due time and the payment of the appropriate fees by the petitioners perfected their appeal in the RTC. As a necessary consequence thereof, the MTC was divested of jurisdiction over their case.[31] From the filing of the written notice of appeal, petitioners' appeal was perfected without need of any further act, and, consequently, the trial court lost jurisdiction over the case, both over the record and over the

subject of the case.[32]

The alleged failure of the clerks of court to furnish petitioners copies of the letter of transmittal and Notice of Appealed Case that resulted in their inability to file their memorandum on time can no longer be reviewed by this Court. The findings of facts of the RTC are deemed final and conclusive as to this Court, especially when they are adopted and affirmed by the CA.[33]

On the second issue, petitioners question the motion for dismissal of appeal filed by private respondents in the RTC as defective for failing to specify the exact date and time of the hearing of the motion and for not containing the address of the petititioners.[34]

A perusal of the records of the case reveals that private respondents complied with the requirements of Sections 4 and 5 of Rule 15[35] of the Revised Rules of Court. Said motion contains the required notice of hearing. The specific date and time of the hearing of the motion was left by the respondents to the discretion of the court. We believe, and so hold, that private respondents substantially complied with the provisions of the Rules of Court regarding litigated motions. What is important is that petitioners were properly apprised that such motion was filed by private respondents. The obligation to notify them when the hearing on the motion would be heard rests on the trial court.

WHEREFORE, the petition is DISMISSED for lack of merit. Costs against the petitioners.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, and Chico-Nazario, JJ., concur.

[1] Revised Rules of Court, Rule 45.

[2] Penned by Associate Justice Andres B. Reyes, with Associate Justices Quirino D. Abad Santos, Jr. and Romeo A. Brawner, concurring; rollo, pp. 18-23.

[3] Id. at 25.

[4] Entitled "Lope C. Mata, Heirs of Sesinando R. Millare (represented by Francisco R. Millare), Rosalina M. Cosep, Carmelita M. Damaso (represented by Jun M. Damaso), Mercedes M. Espiritu and Felicita M. San Felipe v. Cristeta Dela Rosa-Inguito and Pablo R. Inguito," docketed as Civil Case No. 1135.

[5] Defendants in the MTC.

[6] Penned by Judge Leili Suarez Acebo; rollo, pp. 26-28. .

[7] Rollo, p. 28

[8] Id. at 29-30.

[9] Order issued by Judge Leili Suarez Acebo; CA rollo, p. 15.

[10] Issued by Gay S. Bigornia, Officer-in-Charge of the RTC, Branch 78, Morong, Rizal; id at 18.

[11] Id.

[12] Plaintiff-appellees in the RTC.

[13] CA rollo, pp. 19-21.

[14] Id. at 28-20.

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[15] Id.

[16] Id. at 24.

[17] Issued by Judge Adelina Calderon-Bargas; id.

[18] CA rollo, pp. 25-29.

[19] Rollo, pp. 41-43.

[20] Id. at 42-43.

[21] Revised Rules of Court, Rule 65.

[22] CA rollo, p. 5.

[23] Id.

[24] Rollo, pp. 18-23.

[25] Id. at 21.

[26] Id. at 21-22.

[27] Id. at 25.

[28] SEC. 6. Duty of the clerk of court. - Within fifteen (15) days from the perfection of the appeal, the clerk of court or the branch clerk of court of the lower court shall transmit the original record or the record on appeal, together with the transcript and exhibits. Which he shall certify as complete, to the proper Regional Trial Court. A copy of his letter of transmittal of the records to the appellate court shall be furnished the parties.

SEC. 7. Procedure in the Regional Trial Court. —

> (a) Upon receipt of the complete record or the record on appeal, the clerk of court of the Regional Trial Court shall notify the parties of such fact.
>
> (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.
>
> (c) Upon the 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.

[29] Id. at 134-145.

[30] Rollo, p. 4.

[31] Fortune Life and Gen. Insurance Co., Inc. v. Court of Appeals, G.R. No. 101374, July 30, 1993, 224 SCRA 829, 835.

[32] Obosa v. Court of Appeals, 334 Phil. 253, 266 (1997).

[33] Hko Ah Pao v. Ting, G.R. No. 153476, September 27, 2006, 503 SCRA 551, 562.

[34] Rollo, p. 143.

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[35] Sec. 4. Hearing of motion. — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

SEC. 5. Notice of hearing. — The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

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