

HEIRS OF SPOUSES JULIAN DELA CRUZ AND MAGDALENA TUAZON, REPRESENTED BY THEIR ATTORNEY-IN-FACT AND CO-HEIR, VIRGILIO C. ALVENDIA, PETITIONERS, VS. HEIRS OF FLORENTINO QUINTOS, SR....

G.R. No. 149692. July 30, 2002

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before Us is a petition for review on certiorari under Rule 45 filed by petitioners seeking to reverse and set aside the Resolution dated May 29, 2001 of the Court of Appeals[1] which dismissed their petition for review of the decision of the Regional Trial Court of Lingayen, Pangasinan (Branch 38) on the ground that the petition was filed out of time; and, the Resolution dated August 29, 2001[2] denying their motion for reconsideration.

Sometime in 1996, petitioners filed with the Municipal Trial Court of Lingayen, Pangasinan an action for reconveyance with damages[3] against respondents alleging, among others, that they are the children of the late Ariston dela Cruz, who was the only forced and legal heir of his deceased parents, Julian dela Cruz and Magdalena Tuazon who died intestate; that sometime in 1897, Magdalena Tuazon purchased from Herminigildo and Filomena Tiong a certain parcel of land located at Heroes Street, Lingayen, Pangasinan consisting of 605 square meters and since then respondents and their predecessors had been in continuous occupation and adverse possession of the subject land; that sometime in 1987, private respondents' predecessor Florentino Quintos, Sr., filed an application for the judicial registration of a certain land which included petitioners' land; that the land registration court granted Quintos' application and decreed the land in Florentino Quintos' name and OCT No. 22665 was subsequently issued; that OCT No. 22665 was partitioned into four separate lots and petitioners' land was covered by TCT No. 173052; that respondents subsequently filed a complaint (docketed as Civil Case No. 4118) for illegal detainer against petitioners for the latter's refusal to vacate the subject land which resulted in petitioners' ejectment from the subject property.

Respondents filed their answer with counterclaim, alleging that the subject land had always belonged to respondents' late father Florentino Quintos, Sr., who in turn inherited the same from his mother, Dolores Tuazon; that the affidavit evidencing petitioners' ownership of the subject land was not attached to the complaint; that respondents' predecessors merely tolerated petitioners' possession of the subject land; that petitioners never filed their opposition to respondents' application for registration despite knowledge thereof; that the land registration case which was the basis for the issuance of OCT No. 22665 in the name of the predecessor of respondents was a proceeding in rem which bound all persons whether notified or not.

On January 29, 1999, a decision[4] was rendered by the MTC declaring petitioners as the legal owners of the land covered by TCT No. 173052 and ordering respondents to convey to petitioners the subject land and to pay damages to petitioners. [15]

Respondents filed their appeal before the Regional Trial Court, Lingayen, Pangasinan (Branch 38). On January

19, 2000, the RTC[6] reversed the decision of the MTC dismissing the complaint, declaring respondents as the absolute owners of the subject land and ordering petitioners to pay damages to respondents.

Petitioners filed their motion for reconsideration which the trial court denied in a Resolution dated March 8, 2000.[7]

On April 18, 2000, petitioners, through counsel, filed with the Court of Appeals (CA) a motion for extension of time to file a petition for review which she subsequently filed on May 2, 2000. Respondents filed a motion to dismiss the petition for review for being filed out of time since the certification issued by Postmaster Elizabeth I. Torio of Dagupan City Post Office and the affidavit of Ricardo C. Castro, Clerk III of the Regional Trial Court show that the trial court's Resolution dated March 8, 2000 denying petitioners motion for reconsideration was received by the secretary of petitioners' counsel on March 16, 2000, thus the filing of the petition was filed 28 days late.

Petitioners' counsel filed her Comment to respondents' motion to dismiss alleging that when she arrived in her office on April 3, 2000, she found copies of pleadings and correspondence including a copy of the trial court's Resolution dated March 8, 2000 denying her motion for reconsideration; that she thought that these pleadings and correspondence were all received on April 3, 2000; that upon receipt of respondents' motion to dismiss, she confronted her secretary who told her that the envelope containing the Resolution was only opened on April 3, 2000 and her secretary could not recall if the Resolution was among those she received on March 16, 2000.

On May 29, 2001, the CA issued the assailed Resolution dismissing petitioners' petition for review for being filed out of time. It found the explanation given by petitioners' counsel unconvincing since she failed to give the reason why the envelope was opened only on April 3, 2000; that counsel's secretary did not even admit that she actually received the said Resolution; that it is the counsel's duty to adopt and strictly maintain a system that efficiently takes into account all court notices sent to her and she failed to instruct and remind her secretary on what should be done with respect to such notices and processes. Petitioners' motion for reconsideration was denied in a Resolution dated August 29, 2001.

Hence, the present petition on the following grounds:

- 1) The appellate court rejected and refused to consider the valid reason submitted by the petitioner's counsel for the apparent delay in the filing of the petition for review with said court; hence the dismissal of the petition was tainted with grave abuse of discretion;
- 2) Granting, *arguendo*, that there is a basis for the dismissal of the petition, the appellate court should have applied the principle of liberal construction of the Rules pursuant to Rule 1, Section 6 of the 1997 Rules of Civil Procedure (1997 RCP), considering the valid and meritorious case of petitioners.
- 3) In either case, it is respectfully submitted that the appellate court has departed from the accepted and usual course of judicial proceedings in dismissing outright the petition for review as to call for the supervision of this Honorable Court in the exercise of its equity jurisdiction.[8]

We deny the petition.

Section 1, Rule 42 of the 1997 Rules on Civil Procedure, provides that the petition shall be filed and served within 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.[9] In the instant case, it has been established that the resolution denying petitioners' motion for reconsideration of the trial court's decision was received by the secretary of petitioners' former counsel on March 16, 2000, thus the last day of the 15-day period within which to file the

petition for review with the respondent court was March 31, 2000. Considering that counsel filed a motion for extension of time to file a petition for review with the respondent court only on April 18, 2000, the judgment of the RTC subject of the petition for review had already become final and executory. Consequently, the CA did not err in dismissing the petition for being filed out of time since it has no more jurisdiction to entertain the petition much less to alter a judgment.

This Court has invariably ruled that perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional.[10] The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case.[11] The right to appeal is not a natural right nor a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.[12] The party who seeks to avail of the same must comply with the requirement of the rules. Failing to do so, the right to appeal is lost. [13]

We agree with the CA when it found that the reason advanced by petitioners' former counsel, which is that she received the resolution denying her motion for reconsideration only on April 3, 2000 as she found it on her table on the same date, unacceptable. The negligence of her secretary in failing to immediately give the trial court's resolution denying petitioners' motion for reconsideration upon receipt to the counsel and the negligence of counsel to adopt and arrange matters in order to ensure that official or judicial communications sent by mail would reach her promptly cannot be considered excusable. The Court has also often repeated that the negligence of the clerks which adversely affect the cases handled by lawyers, is binding upon the latter.[14] The doctrinal rule is that the negligence of counsel binds the client because otherwise, "there would never be an end to a suit so long as new counsel could be employed who could allege and show that prior counsel had not be sufficiently diligent, or experienced, or learned.[15]

Petitioners claim that there should be a liberal construction of the rules of procedure in order to effect substantial justice and appeal to this Court's exercise of equity jurisdiction. We are not persuaded. There is no showing in this case of any extraordinary circumstance which may justify a deviation from the rule on timely filing of appeals. As held in the case of *Tupas vs. CA*: [16]

"Rules of procedure are intended to ensure the orderly administration of justice and the protection of substantive rights in judicial and extrajudicial proceedings. It is a mistake to suppose that substantive law and adjective law are contradictory to each other or, has often been "suggested, that enforcement of procedural rules should never be permitted if it will result in prejudice to the substantive rights of the litigants. This is not exactly true; the concept is much misunderstood. As a matter of fact, the policy of the courts is to give effect to both kinds of law, as complementing each other, in the just and speedy resolution of the dispute between the parties. Observance of both substantive and procedural rights is equally guaranteed by due process, whatever the source of such rights, be it the Constitution itself or only a statute or a rule of court. (*Limpot vs. CA*, 170 SCRA 369)

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"For all its conceded merits, equity is available only in the absence of law and not as its replacement. Equity is described as justice outside legality, which simply means that it cannot supplant although it may, as often happens, supplement the law. We said in an earlier case, and we repeat it now, that all abstract arguments based only on equity should yield to positive rules, which pre-empt and prevail over such persuasions. Emotional appeals for justice, while they may wring the heart of the Court, cannot justify disregard of the mandate of the law as long as it remains in force. The applicable maxim, which goes back to the ancient days of the Roman jurists- and is now still reverently observed- is 'aequetas nunquam contravenit legis.'" (*Aguila vs. CA*, 160 SCRA 359)

At any rate, we find no reversible error committed by the RTC in dismissing petitioners' complaint for reconveyance against respondents. Petitioners' claim of ownership was based on the affidavit of Herminigildo and Filomena Tiong executed on November 9, 1926 which stated among others that they were the former owners in common of the subject parcel of land which they sold to Magdalena Tuazon (petitioners' predecessor in interest) on or about the year 1897. However, such affidavit was not accompanied by any instrument showing the sale between the Tiong spouses and Magdalena Tuazon. By itself, an affidavit is not a mode of acquiring ownership,[17] thus it cannot serve as the basis of ownership of the petitioners. Moreover, the RTC found that there was no tax declaration or title in the name of the Tiong spouses to evidence their ownership of the subject land. On the other hand, respondents' ownership of the subject land was by virtue of a land registration case where the land registration court found sufficient the well documented evidence submitted by applicant Florentino Quintos, Sr. (respondents' predecessor in interest) to prove their ownership of 2,048 sq. meters lot which included the subject land.

In civil cases, the burden of proof is on the plaintiff to establish his case by a preponderance of evidence. If he claims a right granted or created by law, he must prove his claim by competent evidence. He must rely on the strength of his own evidence and not on the weakness of that of his opponent.[18] The RTC had correctly ruled that petitioners failed to show sufficient proof of ownership over the subject land covered by TCT No. 173052 so as to entitle them the return of the same.

WHEREFORE, the petition is DENIED. The Court of Appeals' Resolution dated May 29, 2001 and Resolution dated August 29, 2001 are AFFIRMED. Costs against petitioners.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, Kapunan, and Ynares-Santiago, JJ., concur.

[1] Penned by Justice Remedios A. Salazar-Fernando, concurred in by Justices Romeo A. Brawner and Juan Q. Enriquez, Jr.; CA- G.R. SP NO. 58545; Rollo, pp. 25-26.

[2] Rollo, pp. 27-28.

[3] Ibid, pp. 50-54.

[4] Penned by Judge Hermogenes Fernandez: Civil Case No. 4182; Rollo, pp. 55-81.

[5] Rollo, pp. 80-81.

[6] Ibid, pp. 82-96; Penned by Judge Leo M. Rapatalo; Civil Case No. 17975.

[7] Ibid, pp.97-100.

[8] Ibid, p. 15.

[9] Section 1. How appeal taken; time for filing- 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, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of P500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. The petition shall be filed and served 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. 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 only 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.

[10] Villanueva vs. CA, 205 SCRA 537, 543 citing Reyes vs. Carrasco, 38 SCRA 296 (1971); Republic, et al. vs. Reyes, etc., et al., 71 SCRA 450 (1976); Borre, et al., vs. CA, et al., 158 SCRA 560 (1988); Sublay vs. NLRC; 324 SCRA 188

[11] Villanueva vs. CA, supra citing Martha Lumber Mill, Inc. vs. Lagradante, et al., 99 Phil 434 (1956); Pabores vs. Workmen's Compensation Commission, et al., 104 Phil 505 (1958); A.L. Ammen Transportation, Co., Inc. vs. Workmen's Compensation Commission, et al., 12 SCRA 508 (1964).

[12] Ibid, citing Tropical Homes, Inc. vs. National Housing Authority, et al., 152 SCRA 540 (1987); Borre, et al vs. CA, supra.

[13] Ibid, citing Ozaeta vs. CA, et. al., 179 SCRA 800 (1989).

[14] Negros Stevedoring Co., Inc. vs. CA, 162 SCRA 371, 375 (1988).

[15] Gacutana-Fraile vs. Domingo, 348 SCRA 414, 422 (2000).

[16] 193 SCRA 597, 600 (1991).

[17] Cequeña vs. Bolante, 330 SCRA 216, 223-224 (2000).

[18] Javier vs. CA, 231 SCRA 498, 504 (1994).

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