

**SOFIA CANTON, DECEASED, REPRESENTED BY CO-ADMINISTRATORS
OF HER ESTATE, MACARAIG CANTON, JR., AND JUAN V. BOLO,
DOMINGO L. ANTIGUA, ROGELIO UY, AND JUAN V. BOLO,
PETITIONERS, VS CITY...**

G.R. NO. 152898. February 12, 2007

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review on certiorari[1] of the Resolutions[2] dated 19 February 2002 and 18 March 2002 of the Court of Appeals in CA-G.R. SP No. 68969. The Resolutions dismissed the petition filed by Sofia Canton as represented by co-administrators of her estate, Domingo L. Antigua, Rogelio Uy, and Juan V. Bolo (collectively, petitioners) for failure to comply with Section 2, Rule 42 of the 1997 Rules of Civil Procedure.

The Facts

Employees of Metro Cebu Development Project (MCDP) identified the area disputed in the present case as part of the South Cebu Reclamation Project. On 24 June 1998, MCDP, with the assistance of the Squatters Prevention Encroachment Elimination Division (SPEED) of the Office of the City Mayor of Cebu City, removed the barbed wire fence from the disputed area on the ground that it was "an illegal construction for lack of necessary permit."

Petitioners filed a case for forcible entry, docketed as Civil Case No. 926, against MCDP and the City of Cebu (collectively, respondents) before the Municipal Trial Court of Talisay, Cebu. Petitioners alleged that respondents' agents unlawfully entered their property and demolished their fence. Petitioners stated that their property is in San Roque, Talisay, Cebu and is outside the South Cebu Reclamation Project. Petitioners showed tax declarations to prove their ownership of the disputed area.

Respondents, on the other hand, argued that petitioners have no right of ownership and of possession over the disputed area. The disputed area is foreshore land which was reclaimed and developed by respondents as part of the South Cebu Reclamation Project.

The Ruling of the Municipal Trial Court

In its decision[3] dated 15 November 1998, the Municipal Trial Court ruled in favor of petitioners. The Municipal Trial Court stated that the only issue raised before it is prior physical possession and not the right to ownership or possession. Thus, respondents' removal of the fence on the ground of lack of a construction permit may be legally proper but they should have secured the aid of the court prior to entering into possession of the disputed property. The dispositive portion of the Municipal Trial Court's decision reads:

WHEREFORE, judgment is hereby rendered ordering the [respondents] and all persons acting in their behalf to vacate immediately the property subject of this case and to surrender possession thereof to the [petitioners];

[respondents] are further ordered to pay [petitioners] attorney's fee in the sum of P5,000.00 and the cost of the suit.

SO ORDERED.[4]

MCDP filed a notice of appeal with the Regional Trial Court.

The Ruling of the Regional Trial Court

In its decision[5] dated 2 June 2000, the Regional Trial Court reversed the decision of the Municipal Trial Court. The Regional Trial Court declared that the disputed area is foreshore land that is not subject of any foreshore lease agreement between the government and any private individual. Hence, the disputed area should be considered as part of the public domain belonging to the State irrespective of its location, whether it be in the Municipality of Talisay or the City of Cebu. The Regional Trial Court further declared that respondents' removal of the fence is not an act of forcible entry. The dispositive portion of the Regional Trial Court's decision reads:

WHEREFORE, premises considered, judgment is hereby rendered REVERSING the appealed decision of the lower court.

Consequently, a new judgment is rendered DISMISSING the complaint in the above-entitled case. The compulsory counterclaims are also dismissed for insufficiency of evidence.

IT IS SO ORDERED.[6]

Respondents received the Regional Trial Court's decision on 23 June 2000. On the other hand, petitioners allegedly received their copy of the Regional Trial Court's decision only on 7 January 2002. Petitioners filed their petition with the appellate court on 16 January 2002.

The Ruling of the Court of Appeals

On 19 February 2002, the Court of Appeals issued a resolution which dismissed the petition outright:

For failure of the petitioners to attach to their petition copies of the complaint, answer, parties' position papers filed with the Municipal Trial Court, and parties' appeal memoranda filed with the Regional Trial Court, in violation of Section 2, Rule 42 of the 1997 Rules of Civil Procedure, the present petition for review is DISMISSED OUTRIGHT, pursuant to Section 3 of the same Rule.

SO ORDERED.[7]

Petitioners filed a motion for reconsideration on 1 March 2002. However, petitioners did not submit copies of the complaint and answer filed with the Municipal Trial Court. Neither did petitioners submit copies of the appeal memoranda filed with the Regional Trial Court. Petitioners characterized the Court of Appeals' ruling as "overly harsh in applying the Rules, applying technicality rather than substance in disposing their petition."

The Court of Appeals did not appreciate petitioners' obstinacy. In its denial of the motion for reconsideration, the Court of Appeals reasoned that:

The lacking pleadings filed with the lower courts are, however, indispensable for the purpose of determining the veracity of the allegations of the petitions that the "[Regional Trial Court] erred in inserting an alien cause of action that the complained acts of [respondents] was 'an exercise of the power of eminent domain' even if there is no pending case for expropriation" ([Rollo], p. 10), and that the [respondents] purportedly made admissions in their answer (Ibid., p. 11). Accordingly, there is nothing technical in requiring the petitioners to submit copies of said pleadings.[8]

The Issue

Dissatisfied with the Court of Appeals' ruling, petitioners stated that "[i]n its application of Sec. 2, Rule 42 of the Rules of Civil Procedure, the Court of Appeals erred in outright dismissing the petition because copies of the complaint, answer, parties' position papers filed with the Municipal Trial Court and parties' appeal memoranda filed with the Regional Trial Court were not attached." [9]

The Ruling of the Court

The petition has no merit.

The only issue presented for our consideration is the propriety of the Court of Appeals' outright dismissal of the petition. Instead of admitting his fault, petitioners' counsel would rather blame the Court of Appeals and the seeming harshness of its reliance on technical rules of procedure.

Failure to Comply with Section 2, Rule 42 of the 1997 Rules of Civil Procedure

Petitioners insist that the Court of Appeals adopted its own rule when it required petitioners to attach copies of the "complaint, answer, parties" position papers filed with the Municipal Trial Court and parties' appeal memoranda filed with the Regional Trial Court." Petitioners state that Section 2, Rule 42 of the 1997 Rules of Civil Procedure does not require any of the pleadings enumerated by the Court of Appeals. Petitioners submit that if the Court of Appeals is allowed to continue to dismiss petitions for failure to attach specific pleadings, practice before the Court of Appeals would be reduced to a guessing game as to what pleading will satisfactorily support the petition in the mind of the court.

Section 2, Rule 42 of the 1997 Rules of Civil Procedure reads as follows:

Form and contents. - The petition shall be filed in seven (7) legible copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full names of the parties to the case, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the specific material dates showing that it was filed on time; (c) set forth concisely a statement of the matters involved, the issues raised, the specification of errors of fact or law, or both, allegedly committed by the Regional Trial Court, and the reasons or arguments relied upon for the allowance of the appeal; (d) be accompanied by clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the Regional Trial Court, the requisite number of plain copies thereof and of the pleadings and other material portions of the record as would support the allegations of the petition.

The petitioner shall also submit together with the petition a certification under oath that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom. (Emphasis added)

Section 3 of the same Rule states that non-compliance with any of Section 2's requirements is a ground for the dismissal of the petition. Section 3, Rule 42 of the 1997 Rules of Civil Procedure reads as follows:

Effect of failure to comply with requirements. - The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

In his motion for reconsideration, petitioners' counsel, instead of submitting the pleadings required by the Court of

Appeals, continued to assert that "the complaint, or answer, filed with the Municipal Trial Court and parties' appeal memoranda filed with the Regional Trial Court are not indispensable to support the allegations in view of the clear and concise statement of the matters in dispute by both court of origin and appellate and the parties' position paper." [10]

Our ruling in *Atillo v. Bombay* [11] should serve as a guide to all practitioners who ignore the Court of Appeals' directive and insist on their own interpretation of the Rules of Court:

[I]t is not disputed that it is petitioner who knows best what pleadings or material portions of the record of the case would support the allegations in the petition. Petitioner's discretion in choosing the documents to be attached to the petition is however not unbridled. The [Court of Appeals] has the duty to check the exercise of this discretion, to see to it that the submission of supporting documents is not merely perfunctory. The practical aspect of this duty is to enable the [Court of Appeals] to determine at the earliest possible time the existence of prima facie merit in the petition. Moreover, Section 3 of Rule 42 of the Rules of Court provides that if petitioner fails to comply with the submission of "documents which should accompany the petition," it "shall be sufficient ground for the dismissal thereof." In this case, the insufficiency of the supporting documents combined with the unjustified refusal of petitioner to even attempt to substantially comply with the attachment requirement justified the dismissal of her petition.

Rules of procedure must be used to facilitate, not to frustrate, justice. [12] However, petitioners and their counsel should bear in mind that the right to appeal is not a natural right. The right to appeal is a statutory privilege, and it may be exercised only in the manner and in accordance with the provisions of the law. [13] A party who seeks to appeal must comply with the law's requirements; otherwise, he forfeits his privilege. Rules of procedure may be relaxed only to relieve a litigant of an injustice which is not commensurate with the degree of his thoughtlessness in not complying with the prescribed procedure. [14]

WHEREFORE, the petition is DENIED. The Resolutions dated 19 February 2002 and 18 March 2002 of the Court of Appeals in CA-G.R. SP No. 68969 are AFFIRMED.

SO ORDERED.

Quisumbing, (Chairperson), Carpio-Morales, Tinga, and Velasco, Jr., JJ., concur.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 33, 35-37. Penned by Associate Justice Salvador J. Valdez, Jr. with Associate Justices Mercedes Gozo-Dadole and Juan Q. Enriquez, Jr., concurring.

[3] *Id.* at 38-41. Penned by Judge Mario V. Manayon.

[4] *Id.* at 41.

[5] *Id.* at 42-44. Penned by Judge Agapito L. Hontanosas, Jr.

[6] *Id.* at 44.

[7] *Id.* at 33.

[8] *Id.* at 36.

[9] *Id.* at 10.

[10] *CA rollo*, pp. 54-55.

[11] 404 Phil. 179, 191-192 (2001).

[12] Cusi-Hernandez v. Sps. Diaz, 390 Phil. 1245 (2000).

[13] See Spouses Ortiz v. Court of Appeals, 360 Phil. 95 (1998).

[14] See Limpot v. Court of Appeals, G.R. No. 44642, 20 February 1989, 170 SCRA 367.

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