

**HEIRS OF GENEROSO A. JUABAN AND FRANCIS M. ZOSA,
PETITIONERS, VS. CONCORDIO BANCALE, ISIDRA BANCALE,
JAUNITA BANCALE, ALEJANDRA BANCALE, DEMETRIO BANCALE,
MARTA BANCALE, TEOFILA...**

G.R. No. 156011. July 03, 2008

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

This petition for certiorari assails the November 20, 2000 Resolution[2] of the Court of Appeals in CA-GR. CV. No. 61696 which reconsidered its March 20, 2000 Resolution and reinstated the appeal filed by respondents. Also assailed is the November 7, 2002 Resolution[3] denying the Motion for Inhibition and Motion for Reconsideration.

On August 10, 1990, respondents filed against Eva Paras a complaint for rescission and/or annulment of contract, recovery of ownership and possession, damages and attorney's fees, before the Regional Trial Court of Lapu-Lapu City docketed as Civil Case No. 2309-L. Respondents were initially represented by Atty. Remotique but when he died, herein petitioners entered their appearance as respondents' counsel.

During the course of the trial, respondents and Eva Paras entered into a Compromise Agreement[4] upon which a Decision[5] was rendered by the Regional Trial Court of Lapu-lapu City, Branch 27, the pertinent portions of which read:

Finding the aforesaid compromise agreement to be in order and not contrary to law, morals or public policy, the said compromise agreement is hereby approved and judgment is hereby rendered in favor of plaintiffs and against defendants ordering the Register of Deeds of Lapu-lapu City to cancel TCT Nos. 15636 and 15818 and all titles subsequent thereto and to issue new titles in the names of plaintiffs Concordio Bancale, Isidra Bancale, Juanita Bancale, Gaudencia B. Gungob, Alejandra Bancale, Demetrio Bancale, Andresa Bancale, Marta Bancale, Teofila Bancale, Isidra Bancale, Regina Bancale, Fortunato Bancale and Wilfredo Bancale.

For this purpose, the notice of lis pendens annotated on T.C.T. Nos. 15636 and 15818 is hereby ordered cancelled.

SO ORDERED.[6]

Thereafter, respondents entered into an "Agreement to Sell and to Buy"[7] with Rene Espina which agreement contained the following stipulations, to wit:

- That the First Party agrees to sell the above-described parcels of land to the Second Party and the latter agrees to buy the same for a consideration of P1,800.00 per square meter. Each party will pay whatever taxes is due and owing from them;
- That in order to effect the transfer of TCT Nos. 15818 and 15636 from the name of Arte Cebuano to the names of the First Party, the Second Party will advance them the amount of P2,000,000.00;

- That it will take the First Party 5 days within which to transfer said titles to their names;
- That after the title is transferred to their names, the First Party will execute an absolute deed of sale in favor of the Second Party or whoever will be designated by him as the Vendee for the consideration mentioned in paragraph 2 hereof. The amount of P2,000,000.00 advanced by the Second Party shall form part of said certification;
- That the Second Party shall immediately effect the sale thereof within 5 days from the signing of this agreement by depositing the full purchase price in the account of Atty. Francis Zosa in Cebu City who will effect the payment to the First Party. The First Party, upon receiving the said amount, shall execute the deed of absolute sale within five days from receipt thereof.[8]

On August 26, 1997, petitioners filed a Motion to Fix Attorney's Fees[9] alleging that it was through their efforts that respondents were able to recover their title to the property and thus prayed that attorney's fees be fixed at P9 million to be taken from the selling price of the properties. On the same day the motion was filed, Judge Teodoro K. Risos issued an Order fixing the attorney's fees at P9 million.[10]

Respondents filed a Motion for Reconsideration[11] alleging that there was no basis for the trial court to fix the attorney's fees at P9 million because it was not mentioned in the Agreement to Sell and to Buy or that the same would be deducted from the proceeds of the sale; that Regina Bancale who affixed her conformity to the motion was not authorized by respondents; and that they were denied due process because they were not given an opportunity to oppose the motion.

On September 22, 1997, the trial court issued an Order[12] disposing thus:

WHEREFORE, in view of all the foregoing, the opposition to the motion to fix attorney's fees and the motion of plaintiffs-oppositors praying that the motion not to resolve the motion to fix attorney's fees until they are heard is declared moot and academic while their motion for reconsideration is declared as a mere scrap of paper and considered not filed.

SO ORDERED.[13]

On October 15, 1997, respondents filed a Notice of Appeal,[14] to wit:

Opositors Concordio Bancale, et al., by their undersigned counsel, not satisfied with the Order of this Honorable Court, dated 22 September 1997, a copy of which was received by the undersigned on 09 October 1997, said order being not in accordance with law and not supported by facts, make known their intention to appeal, as they hereby appeal, said order to the Honorable Court of Appeals on questions of facts and law.

Cebu City, for Lapulapu City, 15 October 1997

However, as early as October 10, 1997, the trial court has declared the Order dated August 26, 1997 which fixed the attorney's fees at P9 million as final and executory and ordered the issuance of a writ for execution, to wit:

Considering that the Order of this Court dated August 26, 1997 has already become final and executory not having been appealed, the motion for execution is hereby GRANTED.

Let a Writ of Execution issue to satisfy the Order dated August 26, 1997 to enforce the same fixing the attorney's fees.

Sheriff Juan A. Gato of this Branch is hereby directed to implement the Writ.

SO ORDERED.[15]

Thus, on October 23, 1997, Sheriff Juan A. Gato levied upon the "rights, interests and participation" of

respondents over the two parcels of land covered by TCT Nos. 36425 and 36426 and sold the same at public auction for P9 million with herein petitioners as the winning bidders. Consequently, a certificate of sale was issued in their favor on December 3, 1997.[16]

Meanwhile, Judge Teodoro K. Risos compulsorily retired from service and was replaced by Judge Isaias R. Dicdican who issued an Order[17] dated December 1, 1998 stating thus:

WHEREFORE, in view of the foregoing premises, this Court hereby sets aside the order issued in this case on October 10, 1997 which considered as final and executory the August 26, 1997 order and, in its stead, hereby gives due course to the appeal filed by the plaintiffs-movants from the order issued in this case on September 22, 1997 which in effect is an appeal from the said August 26, 1997 order.

Consequently, the Clerk of this Branch of this Court is hereby directed to transmit immediately to the Clerk of Court of the Court of Appeals the entire record of this case.

The motion for reconsideration of the order issued on September 22, 1997 denying the plaintiffs-movants' plea for the inhibition of Judge Teodoro K. Risos is hereby denied for having become moot and academic as Judge Risos had already retired from the service.

IT IS SO ORDERED.[18]

In setting aside the October 10, 1997 Order of Judge Risos which considered as final and executory the August 26, 1997 Order fixing the attorney's fees at P9 million, Judge Dicdican found that there was a denial of due process because respondents were not allowed to comment on or oppose the motion to fix the attorney's fees. Moreover, Regina Bancale who signed the motion allegedly for herself and on behalf of the other respondents was not authorized.

Petitioners filed a Motion for Reconsideration[19] arguing that Judge Dicdican erred when he reconsidered the order declaring as final and executory the August 26, 1997 Order fixing petitioners' attorney's fees at P9 million; that the writ of execution has been fully implemented and the properties had been sold at public auction with herein petitioners as highest bidders; hence there is nothing more to reconsider. Petitioners also filed a Motion for Inhibition[20] and a Motion to Defer Consideration of the Motion for Reconsideration of the Order dated December 1, 1998 until after Motion for Inhibition of Acting Presiding Judge is finally resolved.[21]

In an Order[22] dated December 17, 1998, the trial court desisted from acting on the three motions on the ground that it has lost jurisdiction over the case after giving due course to respondents' appeal. The dispositive portion of the Order reads:

WHEREFORE, in view of the foregoing premises, this Court hereby desists from acting on the three motions filed in this case on December 7 and 14, 1998.

Consequently, the Court hereby reiterates its directive to the Clerk of this Court contained in the order issued on December 1, 1998 to transmit the record of this case immediately to the Clerk of Court of the Court of Appeals.

IT IS SO ORDERED.

Thereafter, the records of the case were transmitted to the Court of Appeals.

On July 27, 1999, petitioners filed before the Court of Appeals a Motion to Remand Records to the Court of Origin For Being Prematurely Transmitted to this Honorable Court and/or to Dismiss Appeal on the Ground that the Order Sought to be Appealed is not Appealable,[23] which was granted in a Resolution[24] dated March 20, 2000, to wit:

WHEREFORE, the Motion to Remand Records to the court of Origin for being prematurely transmitted to this Honorable Court and/or to Dismiss Appeal on the ground that the Order sought to be appealed is not appealable filed by movant-appellees is hereby GRANTED. The appeal is considered DISMISSED.

SO ORDERED.[25]

Respondents filed a Motion for Reconsideration[26] which was granted by the Court of Appeals in the herein assailed Resolution[27] dated November 20, 2000, the dispositive portion of which reads:

WHEREFORE, the instant Motion for Reconsideration is GRANTED and this Court's Resolution dated March 20, 2000 dismissing the appeal and remanding the records to the court of origin, is hereby RECONSIDERED and SET ASIDE. Consequently, the instant appeal is REINSTATED. Appellants are therefore directed to file their appellants brief within the reglementary period provided by law.

SO ORDERED.[28]

Not satisfied, petitioners filed a Motion for Reconsideration[29] and a Motion for Inhibition[30] but both motions were denied in a Resolution[31] dated November 7, 2002.

Hence, the instant petition for certiorari raising the following issues:[32]

- The Court of Appeals correctly dismissed the private respondents' appeal on the ground that the September 22, 1997 Order denying their Motion for Reconsideration is not appealable. However, it had no jurisdiction and/or committed grave abuse of discretion when it reconsidered the dismissal on the baseless ground that the intention of private respondents was to appeal as well the August 26, 1997 Order fixing petitioners' attorney's fees as said conclusion is contrary to the admission of private respondents that the only Order they were appealing was the September 22, 1997 Order denying their Motion for Reconsideration;
- The Court of Appeals has no jurisdiction to review the August 26, 1997 Order as it is already final and executory no appeal having been interposed regarding said order; and
- The Court of Appeals denied the petitioners due process when it denied petitioners Motion for the Inhibition of the ponente of the questioned resolutions.[33]

Petitioners allege that the appellate court committed grave abuse of discretion when it reconsidered its resolution dismissing the appeal of the respondents and concluded without basis that the latter intended to appeal as well the Order dated August 26, 1997 since the only subject of their appeal is the September 22, 1997 Order denying their motion for reconsideration, which is a non-appealable order.

The petition lacks merit.

Section 1 of Rule 41 and Section 9 of Rule 37 of the Rules of Court, provide:

RULE 41

APPEAL FROM THE REGIONAL TRIAL COURT

SECTION 1. Subject of appeal.- An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

- (a) An order denying a motion for new trial or reconsideration; x x x

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special action under Rule 65.

RULE 37

SEC. 9. Remedy against order denying a motion for new trial or reconsideration.- An order denying a motion for new trial or reconsideration is not appealable, the remedy being an appeal from the judgment or final order.

Respondents' reference in their notice of appeal to the September 22, 1997 Order denying their motion for reconsideration should be deemed to refer to the August 26, 1997 Order granting petitioners' motion to fix attorney's fees at P9 million. This was clearly stated in the Order of the trial court dated December 1, 1998, to wit:

WHEREFORE, in view of the foregoing premises, this Court hereby sets aside the order issued in this case on October 10, 1997 which considered as final and executory the August 26, 1997 order and, in its stead, hereby gives due course to the appeal filed by the plaintiffs-movants from the order issued in this case on September 22, 1997 which in effect is an appeal from the said August 26, 1997 order.[34] (Underlining ours)

This interpretation is more in accord with the intent of the parties. We also agree with the foregoing ratiocination by the Court of Appeals, to wit:

The interest of substantial justice dictates that we transcend literal error in order to give way to the real intention of the party appealing. Taken literally, the Notice of Appeal indeed convey that the subject of appeal is the September 22, 1997 Order. But going into the intent of the appellants as stated by them in their various pleadings and which intent was duly recognized by the lower court, it is apparent that what is really questioned and desired to be appealed is the August 26, 1997 Order. Even the period within which the appeal is lodged showed compliance within the 15-day reglementary period as reckoned from the August 26, 1997 Order. In recognition that what is in truth appealed is the August 26 Order, the lower court said:

x x x Nevertheless, the records shows that, on October 15, 1997, the plaintiffs-movants filed their Notice of Appeal from the said order issued by the Court in this case on September 22, 1997 which in effect is also an appeal from the August 26, 1997 Order. In their Notice of Appeal, the plaintiffs-movants stated that they received a copy of the order appealed from on October 9, 1997. This means that they filed their Notice of Appeal six (6) days from receipt of a copy of the order appealed from. This being so, their Notice of Appeal was filed on time, even if we tack the period of seven (7) days that elapsed from August 26 to September 2, 1997 when the period of appeal from the August 26, 1997 order was tolled by the filing by the plaintiffs-movants of a motion for reconsideration thereof. Adding seven (7) days and six (6) days would yield a total of only thirteen (13) days.[35]

We also find satisfactory the explanation of the respondents that the erroneous reference to the September 22, 1997 Order instead of the August 26, 1997 Order to which the Notice of Appeal relates was an oversight on the part of their counsel. Although litigants are normally bound by the negligence of their counsel, however, there were instances when the Court withheld the application of this rule in cases of recklessness or gross negligence of counsel which deprives the client of due process of law, or when its application results in an outright deprivation of one's property through technicality, as in the instant case. Besides, petitioners clearly understood from the start that the subject matter on appeal was the excessive award of attorney's fees in the Order dated August 26, 1997.

Petitioners' contention that the appellate court committed grave abuse of discretion in denying their motion for inhibition has likewise no merit. Mere suspicion that a judge or justice is partial to a party is not enough. Bare allegations of partiality and prejudgment will not suffice in the absence of clear and convincing evidence to overcome the presumption that the judge will undertake his noble role to dispense justice according to law and evidence and without fear or favor. There should be sufficient evidence to prove the allegations, and there must be showing that the judge had an interest, personal or otherwise, in the prosecution of the case. To be a disqualifying circumstance, the bias and prejudice must be shown to have stemmed from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case.[36] In the instant case, the fact that the Court of Appeals reconsidered its Order dated March 20, 2000 dismissing

respondents' appeal and eventually reinstating the same, by itself, does not imply bias or partiality on the part of the justices.

The court has the discretion to dismiss or not to dismiss an appellant's appeal. It is a power conferred on the court, not a duty. The discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case. Technicalities, however, must be avoided. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice.[37]

Litigations must be decided on their merits and not on technicality. Every party litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities. Thus, dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override substantial justice. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.[38]

WHEREFORE, the petition is DISMISSED. The assailed Resolution of the Court of Appeals dated November 20, 2000 in CA-G.R. CV No. 61696 granting respondents' motion for reconsideration and reinstating their appeal, and the November 7, 2002 Resolution denying the motion for reconsideration, are AFFIRMED.

SO ORDERED.

Quisumbing, Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Petitioner Generoso A. Juaban died on April 19, 2006 and was substituted by his wife Vibina Juaban and children Jose Augusto Juaban, Generoso Juaban, Jr., Mariso Juaban and Antonio Juaban as approved by the Court in its Resolution of June 19, 2006; rollo, p. 437.

* Designated in lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 508 dated June 25, 2008.

[2] Rollo, pp. 277-281.

[3] Id. at 303-304.

[4] Id. at 104-107.

[5] Id. at 117-118; penned by Judge Teodoro K. Risos.

[6] Id. at 118.

[7] Id. at 108-115.

[8] Id. at 109.

[9] Id. at 127-128.

[10] Id. at 129.

[11] Id. at 130-134.

[12] Id. at 138-140.

[13] Id. at 140.

[14] Id. at 141.

[15] Id. at 146.

[16] Id. at 158.

[17] Id. at 147-151.

[18] Id. at 151. Emphasis supplied.

[19] Id. at 152-157.

[20] Id. at 167-168.

[21] Id. at 169-170.

[22] Id. at 171.

[23] Id. at 174-188.

[24] Id. at 230-235; penned by Associate Justice Eloy R. Bello, Jr. and concurred in by Associate Justices Delilah Vidallon-Magtolis and Mercedes Gozo-Dadole.

[25] Id. at 234.

[26] Id. at 236-251.

[27] Id. at 277-281.

[28] Id. at 281.

[29] Id. at 282-289.

[30] Id. at 300-302.

[31] Id. at 303-304.

[32] Id. at 18.

[33] Id.

[34] Id. at 151.

[35] Id. at 279.

[36] *Chin v. Court of Appeals*, G.R. No. 144618, August 15, 2003, 409 SCRA 206.

[37] *Great Southern Maritime Services Corp. v. Acuña*, G.R. No. 140189, February 28, 2005, 452 SCRA 422, 436.

[38] Id.

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