

REPUBLIC OF THE PHILIPPINES (REPRESENTED BY THE PHILIPPINE ORTHOPEDIC CENTER) AND VICTOR S. CLAVEL, PETITIONERS, VS. SPOUSES JOSE AND AMELIA LURIZ, RESPONDENTS.

G.R. NO. 158992. January 26, 2007

Ponente: VELASCO, JR., J.

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VELASCO, JR., J.:

An appeal is a statutory right that must be exercised only in the manner and in accordance with the provisions of law. Having satisfactorily shown that they have complied with the rules on appeal, petitioners are entitled to the proper and just disposition of their cause.

The Case

This Petition for Review on Certiorari under Rule 45 of the Rules of Court seeks the annulment of the July 10, 2003 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 65073. The dispositive portion of the assailed Decision is as follows:

WHEREFORE, the instant appeal is hereby DENIED. The Decision dated December 7, 2000 of the Regional Trial Court of Quezon City, Branch 80 denying the Petitioner-Appellant's Petition for Certiorari, Prohibition and Mandamus is hereby accordingly AFFIRMED.[2]

The Facts

The instant case arose from an ejectment Complaint filed by respondents at the Quezon City Metropolitan Trial Court (MeTC), Branch 37, against Petitioner Victor S. Clavel, as occupant of Lot Nos. 8 and 10, Block 260, located at No. 68 Maria Clara St., Quezon City. In their complaint docketed as Civil Case No. 37-17388, respondents alleged that they were the owners of the disputed lots on the basis of Transfer Certificate of Title (TCT) No. 1297 issued in the name of Yoichi Urakami and two deeds of sale. The first deed of sale dated February 12, 1948 conveyed the transfer of the contested lots from Yoichi Urakami to Tomas Balingit. The second deed dated January 31, 1975 contained the transfer of the lots from Balingit to Amelia Luriz.

In his Answer, Clavel averred that the lots in question were owned and possessed by the Philippine Orthopedic Center (POC), a government medical facility, which had built four (4) cottages on said lots and had been in possession of the said lots since 1953. He alleged that the POC had authorized its administrative officers, including Clavel, to use the cottages as their residences. He also averred that respondents could not rely upon TCT No. 1297 as the basis of their claim because its original copy had allegedly been burned during the fire in the office of the Register of Deeds of Quezon City in 1998. He said that said title was deemed non-existent unless reconstituted. Moreover, he stressed that the deeds of sale relied upon by the respondents were not registered and hence, were of questionable character until duly proven. He then prayed that the case be dismissed.

On September 15, 1997, after trial on the merits, the Quezon City MeTC rendered a Decision in favor respondents, thus:

From the foregoing, this Court finds that [respondents'] claim has been duly established by satisfactory evidence, and therefore hereby renders judgment in favor of the [respondents] and against the [petitioner] Victor S. Clavel, ordering him and all persons claiming rights under him, or whoever is found in possession of subject properties;

- a) to immediately vacate Lots 8 and 10 of Block 260 located at No. 68-A Maria Clara Street, Quezon City, and restore peaceful possession thereof to herein [respondents];
- b) to pay [respondents] the sum of P10,000.00 per month as reasonable compensation for the use and occupancy of subject parcels of land to be computed from February 14, 1997 and every month thereafter until subject properties shall have been finally vacated;
- c) to pay respondents the sum of P20,000 for and attorney's fees; and
- d) to pay the costs of suit.

SO ORDERED.[3]

Thereafter, on October 9, 1997, respondents moved for the immediate execution of the MeTC Judgment. Further, through the Office of the Solicitor General, Clavel filed a Notice of Appeal on October 13, 1997.

On October 20, 1997, the MeTC granted the motion for execution and ordered the issuance of a writ of execution in favor of respondents. On October 24, 1997, Clavel subsequently filed an Opposition to the Motion for Execution and moved ad cautelam for the fixing of the supersedeas bond. On October 27, 1997, he moved for reconsideration and suspension of the implementation of the Writ of Execution.

On October 28, 1997, the MeTC dismissed petitioners' Notice of Appeal for failure to file the required appeal fee and denied their Motion to Fix Supersedeas Bond. Thereafter, on October 29, 1997, the MeTC denied petitioners' Motion for Reconsideration and Motion to Suspend Implementation of Writ of Execution.

On October 30, 1997, Deputy Sheriff Efren P. Luna, accompanied by policemen, took possession of the disputed lots, ejected all POC personnel from these lots, and padlocked the cottages on them.

On November 5, 1997, Clavel filed another Motion for Reconsideration questioning the dismissal of his Notice of Appeal, but the motion was consequently denied on November 11, 1997.

On November 13, 1997, Clavel filed with the Quezon City Regional Trial Court (RTC) a special civil action for certiorari, mandamus, and prohibition, docketed as Civil Case No. Q-97-32370, to annul the Order and Writ of Execution and subsequent orders of the MeTC.

On November 21, 1997, petitioner Republic filed its Motion for Intervention with the trial court, alleging ownership of the disputed lots by virtue of Proclamation Nos. 438 (series of 1953) and 732 (series of 1961) praying that it be allowed to adopt Clavel's petition as its petition-in-intervention, and for the issuance of a temporary restraining order to enjoin respondents from disposing, alienating, or encumbering the properties in question.

On December 7, 2000, the RTC denied the petition for certiorari, mandamus, and prohibition for lack of factual and legal basis; and petitioners eventually appealed the RTC Decision to the CA on December 22, 2000.

The Ruling of the Court of Appeals

Affirming the December 7, 2000 RTC Decision, the CA held that petitioners belatedly filed the appeal fees. It noted that petitioners admitted to have received the September 15, 1997 Decision of the MeTC on October 10, 1997. However, they paid the appeal fee only on October 28, 1997 or three (3) days beyond the reglementary period for filing an appeal. Thus, the appeal was not perfected and the assailed MeTC Decision had become final

and executory. Consequently, it was ministerial upon the MeTC judge to issue a writ of execution.

Moreover, the CA observed that petitioners erred when they failed to oppose respondents' motion for execution. Agreeing with the RTC, it sanctioned petitioners for not attending the hearing for the Motion for Execution although they were notified a day before the hearing. Also, it observed that the writ of execution could not be stayed because petitioners failed to post the required supersedeas bond.

The Issues

Petitioners submit the following issues for our consideration:

I

Whether or not the issuance by the [MeTC] Quezon City, Branch 37 of the following:

- (1) Order dated October 20, 1997 (Granting the Motion for Immediate Execution);
- (2) Writ of Execution dated October 20, 1997;
- (3) Order dated October 28, 1997 (dismissing the notice of appeal filed by petitioner Clavel);
- (4) Order dated October 29, 1997 (denying the "Motion for Reconsideration [of the October 20, 1997 Order] and Motion to Suspend Implementation of Writ of Execution") and
- (5) Order dated November 11, 1997 (denying the Motion for Reconsideration [of the October 28, 1997 Order] filed by Petitioner Clavel) were erroneous and improper and in grave abuse of the [MeTC] Judge's discretion amounting to lack or excess of jurisdiction; and

II

Whether or not the Court of Appeals acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it rendered the Decision dated July 10, 2003 (denying petitioners' appeal and affirming the Decision of the RTC-Quezon City, Branch 80 (which denied petitioners' Petition for Certiorari, Mandamus and Prohibition)).[4]

In gist, the petition revolves on the following issues: (1) the timeliness of the payment of the docket fees; and (2) the propriety of the issuance of the Writ of Execution.

The Ruling of the Court

The petition has merit.

Timeliness of the Payment of Docket Fees

Appeal is an essential part of our judicial process. As such, courts should proceed with caution so as not to deprive a party of the right to appeal,[5] particularly if the appeal is meritorious. However, the right to appeal is merely a statutory right. For this reason, it should be exercised only in the manner and in accordance with the provisions of the law.[6]

In an appeal from a judgment or final order of a municipal trial court to the regional trial court, Rule 40 of the Rules of Court provides:

Sec. 2. When to appeal.—An appeal may be taken within fifteen (15) days after notice to the appellant of the judgment or final order appealed from. x x x

x x x x

Sec. 3. How to appeal.—The appeal is taken by filing a notice of appeal with the court that rendered the judgment or final order appealed from. x x x

x x x x

Sec. 5. Appellate court docket and other lawful fees.—Within the period for taking an appeal, the appellant shall pay to the clerk of the court which rendered the judgment or final order appealed from the full amount of the appellate court docket and other lawful fees. Proof of payment thereof shall be transmitted to the appellate court together with the original record or the record on appeal, as the case may be.

Accordingly, in order to perfect an appeal, the following must be complied with: first, a notice of appeal must be filed within 15 days from the notice of final judgment or final order appealed from; second, such notice of appeal must be filed with the court which rendered the judgment or final order, and served upon the adverse party; third, within the same period, payment of the full amount of appellate court docket and other legal fees to the clerk of the court which rendered the judgment or final order.

Notably, full payment of the appellate docket fees within the prescribed period is mandatory, even jurisdictional. Otherwise, the appeal is deemed not perfected and the decision sought to be appealed from becomes final and executory.[7]

In the instant case, petitioners do not deny that they paid the appellate docket fees on October 18, 1997.[8] However, they maintain good faith, averring that such payment was seasonably filed. They clarified that what was stated in their Notice of Appeal as the date of receipt of the MeTC Decision was a mere inadvertence. They aver that it was petitioner Clavel who received the Decision on October 10, 1997. However, he forwarded said Decision through fax message to their counsel.[9] The latter, upon receipt of the message, immediately prepared a Notice of Appeal and mistakenly stated that they received the MeTC Decision on October 10, 1997. They alleged that as shown in the stamp receipt on their counsel's copy of the MeTC Decision, it was only on October 13, 1997 that the latter officially received said Decision. They explained that as soon as their counsel received the Decision, on the same day, the latter filed the prepared Notice of Appeal without correcting the date of receipt of the MeTC Decision, as already stated in said notice. Thus, relying on their counsel's date of receipt of the Decision, they paid the appellate docket fees on October 28, 1997.

We find that petitioners seasonably paid the appellate docket fees.

It is a hornbook doctrine that when a party is represented by counsel, notice to the client and to any other lawyer, not the counsel of record, is not a notice in law.[10] The only exception, as provided in Section 2 of Rule 13 of the 1997 Rules of Civil Procedure, is when service upon the parties themselves is ordered by the court. Indisputably, in their Motion for Reconsideration of the Order denying their Notice of Appeal, petitioners submitted a photocopy of the notice of decision which the trial court served on their counsel. The said copy had an October 13, 1997 stamped receipt. Unfortunately, the trial court offhandedly dismissed the petitioners' explanation without taking into account the said proof.

Relying on the date when the counsel of petitioners received the notice of judgment, the period to commence appeal should be reckoned on October 13, 1997. Accordingly, they had fifteen (15) days to perfect their appeal. Having paid the appellate docket fees on October 28, 1997, petitioners had validly perfected their appeal.

Liberal Construction of the Rule on Nonpayment of Docket Fees

Even assuming that petitioners belatedly filed the appellate docket fees, the circumstances of the case would have warranted a liberal construction of the rule on nonpayment of docket fees.

In the exercise of its impartial jurisdiction, the Court allows a liberal construction of the rules on the manner and periods for perfecting appeals in order to serve the demands of substantial justice. Specifically, on the payment of docket fees, the Court in *Buenaflor v. CA* qualifies that:

The established rule is that the payment in full of the docket fees within the prescribed period is mandatory. Nevertheless, this rule must be qualified, to wit: First, the failure to pay appellate court docket fee within the reglementary period allows only discretionary dismissal, not automatic dismissal, of the appeal; Second, such power should be used in the exercise of the Court's sound discretion "in accordance with the tenets of justice and fair play and with great deal of circumspection considering all attendant circumstances.[11]

In *Mactan Cebu International Airport Authority v. Mangubat*,[12] the payment of the docket fees was delayed by six days but the Court excused the late payment because the party showed willingness to abide by the Rules by immediately paying the docket fees. Also, we ruled in *Yambao v. Court of Appeals* that "the appellate court may extend the time for the payment of the docket fees if appellant is able to show that there is a justifiable reason for x x x failure to pay the correct amount of docket fees within the prescribed period, like fraud, accident, mistake, excusable negligence, or a similar supervening casualty, without fault on the part of the appellant." [13]

In the same manner, the Court in *Saddalan v. Court of Appeals* affirmed the reinstatement of an appeal previously dismissed for failure to pay the docket fees. It held that the appeal was dismissed not because the appellant lacked interest in the case, but because of lack of proper notice. Thus, it considered the reinstatement of the appeal as just and proper because the "interest of substantial justice far outweighs whatever negligence"[14] was committed.

Although the CA found that the docket fees were belatedly paid, it should have taken cognizance of the persuasive reasons attendant in this case that merit a relaxation of the rules. Notably, the Notice of Appeal was immediately prepared and filed before the expiration of the period to file said notice. It would seem thus, that the alleged three-day delay in the payment of appellate fees was not a result of petitioners' inexcusable lethargy to pursue the case.

More importantly, petitioners should not be denied of their right to the proper and just disposition of their cause. The gravamen of the complaint at the MeTC is the rightful possession of the disputed land. Petitioner POC had been in peaceful possession of said land by virtue of a law long before the claims of ownership of respondents. On the other hand, relying on a certificate of ownership and deeds of sale, respondents suddenly alleged that they merely tolerated the occupation of petitioners on the disputed land.[15]

An ejectment case, based on the allegation of possession by tolerance, falls under the category of unlawful detainer. Unlawful detainer involves the person's withholding from another of the possession of real property to which the latter is entitled, after the expiration or termination of the former's right to hold possession under a contract, either expressed or implied.[16] Where the plaintiff allows the defendant to use his/her property by tolerance without any contract, the defendant is necessarily bound by an implied promise that s/he will vacate on demand, failing which, an action for unlawful detainer will lie.[17]

The assailed MeTC Decision gave credence to the certificate of title of respondents. However, considering that petitioners had prior possession of the land, it is important to squarely rule on whether such prior possession was merely by virtue of an implied agreement, and whether such tolerance had already ceased. A reading of the MeTC Decision, on the contrary, reveals that no such findings were made. Hence, it appears that a thorough review of the case is merited.

Propriety of the Issuance of the Writ of Execution

Petitioners assail the issuance of the Writ of Execution on the ground that it was hastily issued without affording them the right to oppose respondents' motion for execution.[18] They aver that contrary to the prescribed rule, the execution of the MeTC judgment was ordered even before the period to file an appeal had lapsed.

We agree. It should be noted that the appellate court relied on Rule 39 of the 1997 Rules on Civil Procedure in

affirming the trial court's issuance of the writ of execution. However, the applicable rule in cases of forcible entry and unlawful detainer is Rule 70, which states, thus:

Sec. 19. Immediate execution of judgment; how to stay same.—If judgment is rendered against the defendant, execution shall issue immediately upon motion, unless appeal has been perfected and the defendant to stay execution files a sufficient supersedeas bond, approved by the Municipal Trial Court and executed in favor of the plaintiff to pay the rents, damages, and costs accruing down to the time of the judgment appealed from, and unless during the pendency of the appeal, he deposits with the appellate court the amount of rent due from time to time under the contract, if any, as determined by the judgment of the Municipal Trial Court. x x x

The foregoing rule provides that a judgment in favor of the plaintiffs shall be immediately executory. It can be stayed by the defendant only by perfecting an appeal, filing a supersedeas bond, and making a periodic deposit of the rental or the reasonable compensation for the use and occupancy of the property during the pendency of the appeal. These requisites are mandatory and concurrent.[19] Thus, if not complied with, execution will issue as a matter of right.

In this case, the appellate court held that petitioners' failure to perfect the appeal and to file a supersedeas bond warranted the immediate execution of the MeTC judgment. However, a review of the records reveals that even before petitioners had the opportunity to perfect their appeal and file a supersedeas bond, the writ of execution had already been issued. Petitioners received the MeTC Decision on October 13, 1997; thus, they had until October 28, 1997 to perfect their appeal. Petitioners' Notice of Appeal filed on October 13, 1997 should have cautioned the trial court to await the expiration of the reglementary period for filing an appeal before issuing the questioned writ. However, the writ of execution was issued as early as October 20, 1997.

Public policy dictates that ejectment cases must be resolved with the least possible delay, and judgments rendered in favor of plaintiff be immediately executed.[20] However, the rules of procedure prescribe trial courts to strike a balance between the plaintiffs' and defendants' right to relief.

WHEREFORE, the petition is GRANTED and the July 10, 2003 Decision of the Court of Appeals is REVERSED and SET ASIDE. The Municipal Trial Court is directed to give due course to the appeal in Civil Case No. 37-17388 and approve the amount of supersedeas bond as required in Section 19 of Rule 70 of the Rules of Court. Likewise, the Writ of Execution issued by the Metropolitan Trial Court on October 20, 1997 is hereby SET ASIDE.

No costs.

SO ORDERED.

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

[1] Penned by Associate Justice Noel G. Tijam, with Associate Justices Portia Alino-Hormachuelos and Edgardo P. Cruz concurring, rollo, pp. 84-92.

[2] Id. at 91-92.

[3] Id. at 146-147.

[4] Id. at 53-54, original in capital letters.

[5] Salazar v. Court of Appeals, G.R. No. 142920, February 6, 2002, 376 SCRA 459, 471, citing Labad v. University of Southern Philippines, et al., G.R. No. 139665, August 9, 2001, 362 SCRA 510.

- [6] Manalili v. Arsenio, G.R. No. 140858, November 27, 2001, 370 SCRA 625, 626.
- [7] Alfonso v. Andres, G.R. No. 139611, October 4, 2002, 390 SCRA 465, 470.
- [8] Rollo, p. 950.
- [9] Id.
- [10] De Leon v. Court of Appeals, G.R. No. 138884, June 6, 2002, 383 SCRA 216, 228; Ramos v. Court of Appeals, G.R. No. 124354, December 29, 1999, 321 SCRA 584, 598; Rural Bank of Alaminos Employees Union v. National Labor Relations Commission, G.R. No. 100342-44, October 29, 1999, 317 SCRA 669, 682-683.
- [11] G.R. No. 142021, November 29, 2000, 346 SCRA 563, 567.
- [12] G.R. No. 136121, August 16, 1999, 312 SCRA 463.
- [13] Supra note 7, at 147.
- [14] G.R. No. 128967, May 20, 2004, 428 SCRA 586, 597.
- [15] Rollo, p. 895.
- [16] Pajuyo v. Court of Appeals, G.R. No. 146364, June 3, 2004, 430 SCRA 492, 519.
- [17] Id.
- [18] Rollo, p. 956.
- [19] Antonio v. Geronimo, G.R. No. 124779, November 29, 2005, 476 SCRA 340, 348-349.
- [20] Chua v. CA, G.R. No. 112948, April 18, 1997, 271 SCRA 546, 549.

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