

VOLTAIRE I. ROVIRA, PETITIONER, VS. HEIRS OF JOSE C. DELESTE, NAMELY JOSEFA L. DELESTE, JOSE RAY L. DELESTE, RAUL HECTOR L. DELESTE AND RUBEN ALEX L. DELESTE, RESPONDENTS.

G.R. No. 160825. March 26, 2010

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

A trial court's ruling on the matter of attorney's fees initiated through a motion, in a suit for recovery of ownership and possession of land, may be appealed by a mere notice of appeal. Since the suit is not one where multiple appeals are taken, a record on appeal is not necessary.

This Petition for Review on Certiorari assails the June 30, 2003 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 69383 which set aside and vacated the Orders of the Regional Trial Court (RTC) of Iligan City, Branch 01 dated October 17, 2001[2] and January 17, 2002.[3] Also assailed is the October 20, 2003 Resolution[4] denying the motion for reconsideration. The CA found that the RTC gravely abused its discretion amounting to lack or excess of jurisdiction when it recalled its Order granting the notice of appeal despite having been already divested of its jurisdiction.

Factual Antecedents

In 1963, a suit for recovery of ownership and possession of 34 hectares of land was instituted before the Court of First Instance of Lanao del Norte. Originally entitled Edilberto Noel as Administrator of the Intestate Estate of Gregorio Nanaman and Hilaria Tabuclin versus Dr. Jose C. Deleste, this was docketed as Civil Case No. 698. This case was decided with finality in 1995 by the Supreme Court which declared the parties as co-owners of the land and ordered defendant Dr. Jose C. Deleste (Dr. Deleste) to return half of it to the plaintiffs.

On May 24, 2000, herein petitioner Atty. Voltaire Rovira (Atty. Rovira) filed as an incident to the said Civil Case No. 698 a motion to resolve his claim for attorney's fees for services rendered to Dr. Deleste. The respondents filed their opposition to the said motion.

Ruling of the Regional Trial Court

On April 16, 2001, the RTC of Iligan City, Branch 01, issued an Order granting the motion of Atty. Rovira and awarded him attorney's fees of 25% of the 17-hectare portion adjudicated to Dr. Deleste.

On July 5, 2001, the respondents filed a Notice of Appeal. On August 16, 2001, Atty. Rovira filed a Motion for Writ of Execution and to Dismiss Appeal to which the respondents filed their opposition. In the Order of September 4, 2001, the RTC granted the Notice of Appeal of the respondents and further instructed: "Let the order of this Court granting attorney's fees to Atty. Rovira, dated April 16, 2001 together with his testimony be transmitted to the CA." However, Atty. Rovira filed a motion for reconsideration alleging among others that the respondents' notice of appeal failed to comply with the requirements of Rule 13 of the Rules of Court.

On October 17, 2001, the RTC issued an Order, the dispositive portion of which reads:

In view of this new development, this Court hereby sets aside its order of September 4, 2001 and hereby dismisses the appeal filed by the defendants. Let therefore a writ of execution [be issued] to implement the order of this Court entered on April 16, 2001.

As the Clerk of Court prematurely and before the lapse of the fifteen day period within which movant may file a motion for reconsideration transmitted to the Court of Appeals the order of April 16, 2001 together with the testimony of Atty. Voltaire Rovira, he is hereby directed to request the Clerk of Court of the Court of Appeals to return the same to this Court.

SO ORDERED.[5]

Respondents filed a motion for reconsideration of the aforesaid Order but this was denied in the January 17, 2002 Order. Hence, the respondents filed a petition for certiorari with the CA.

Ruling of the Court of Appeals

The CA found the trial court to have committed grave abuse of discretion. It found that the trial court was already divested of jurisdiction when it recalled its Order granting the notice of appeal because respondents' appeal had already been perfected and there was the ensuing elevation of its records. As previously mentioned, the CA set aside and vacated the two Orders of the RTC and disposed as follows:

WHEREFORE, the petition is GIVEN DUE COURSE and GRANTED. The assailed orders dated October 17, 2001 and January 17, 2002 are SET ASIDE and VACATED. Accordingly the preliminary injunction earlier issued is hereby made PERMANENT, and the respondent Judge is ordered to give due course to the appeal of the petitioners.

SO ORDERED.[6]

Petitioner filed a motion for reconsideration which the CA denied in its October 20, 2003 Resolution.[7]

Issues

Petitioner raises the following issues:

I

WHETHER RESPONDENTS PERFECTED THEIR APPEAL [THEREBY DIVESTING] THE TRIAL COURT OF JURISDICTION OVER PETITIONER'S CLAIM FOR ATTORNEY'S FEES

II

WHETHER THE COURT OF APPEALS HAD JURISDICTION OVER CA- G.R. SP. NO. 59393, RESPONDENTS' PETITION FOR CERTIORARI WITH THE COURT OF APPEALS which

(a) Did not mention in the statement of material dates when respondents filed their motion for reconsideration to the assailed RTC order of October 16, 2001;

(b) Contained deliberate suppressions and omissions of material portions of the record and other documents relevant or pertinent thereto as are referred to in the petition, as required in Section 3, Rule 46 of the Rules of Court in relation with Rule 65;

(c) Did not contain the full names of the petitioners as required in Section 3, Rule 46 in relation with Section 1, Rule 3 of the Rules of Court. [Furthermore,] "Heirs of Jose C. Deleste" is not a natural or juridical person or one authorized by law to institute an action in Court.[8]

Petitioner's Arguments

Petitioner contends that respondents' appeal was not perfected for their

failure to file a record on appeal to elevate the incident to the CA during the execution process in Civil Case No. 698 and for failure of their notice of appeal to comply with the mandatory provisions of Rule 13 of the Rules of Court. He also contends that a petition for certiorari being a remedy in equity must strictly comply with Section 1, Rule 65 in relation with Section 3, Rule 46 of the Rules of Court otherwise the appellate court does not acquire jurisdiction over the petition.

Respondents' Arguments

Respondents, on the other hand, contend that the intent of the rules for the preferred mode of service had been met considering that their notice of appeal, although served by registered mail, was immediately received by the petitioner. They argue that lapses in compliance with technical rules can be disregarded so as not to override substantial justice. Respondents also contend that the case subject of the petition is not one falling under the category of "special proceedings or other cases of multiple or separate appeals where the law or the rules require the filing of a record on appeal." They also submit that they substantially complied with the rules and that the CA correctly ruled in not dismissing the petition and in ordering the RTC to give due course to the appeal considering respondents' strong and substantial points in their opposition to petitioner's motion to resolve attorney's fees.

Our Ruling

The petition has no merit.

Perfection of Appeal

Rule 41 of the Rules of Court provides:

Sec.2. Modes of appeal. -

(a) Ordinary appeal. - The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

Multiple appeals are allowed in special proceedings, in actions for partition of property with accounting, in the special civil actions of eminent domain and foreclosure of mortgage.[9] The rationale behind allowing more than one appeal in the same case is to enable the rest of the case to proceed in the event that a separate and distinct issue is resolved by the court and held to be final.[10] In such a case, the filing of a record on appeal becomes indispensable since only a particular incident of the case is brought to the appellate court for resolution with the rest of the proceedings remaining within the jurisdiction of the trial court.[11]

The main action involved herein, being a suit for recovery of ownership and possession, is not one where multiple appeals can be taken or are necessary. The choice[12] of asserting a claim for attorney's fees in the very action in which the services in question have been rendered, as done by the petitioner herein, will not convert a regular case into one falling under the category of "other cases of multiple or separate appeals where the law or these Rules so require." The main case handled by petitioner lawyer has already been decided with finality up to the appeal stage and is already in the execution stage. The trial court has also already resolved the incident of attorney's fees. Hence, there is no reason why the original records of the case must remain with the trial court. There was also no need for respondents to file a record on appeal because the original records could already be sent to the appellate

court[13] for the resolution of the appeal on the matter of the attorney's fees.

To repeat, since the case has not been made out for multiple appeals, a record on appeal is unnecessary to perfect the appeal. The only requirement to perfect the appeal in the present case is the filing of a notice of appeal[14] in due time. This the respondents did. Concededly, the respondents did not strictly follow Rule 13, Sec. 11[15] on priorities on modes of service. However, since rules of procedure are mere tools designed to facilitate the attainment of justice, their strict and rigid application which would result in technicalities that tend to frustrate rather than promote substantial justice must be avoided.[16] The relaxation of the rules on service is all the more proper in the present case, where petitioner had already received his copy of the notice of appeal by registered mail, since the Court has previously ruled that a litigant's failure to furnish his opponent with a copy of his notice of appeal is not a sufficient cause for dismissing it and that he could simply have been ordered to furnish appellee with a copy of his appeal.[17]

The appeal of respondents having been perfected by the filing of the notice of appeal in due time and the time to appeal of petitioner having expired,[18] the CA correctly found that the trial court had already lost jurisdiction over the case at the time it rendered its October 17, 2001 Order.

Also, the April 16, 2001 Order of the RTC granting attorney's fees to Atty. Rovira together with his testimony are in fact pertinent records of the case, though very incomplete. Since these records were transmitted to the CA, the statement of the CA holding that the records of Civil Case No. 698 were elevated to it by virtue of the September 4, 2001 Order of the RTC is not without basis, contrary to the contention of petitioner..

Jurisdiction of the CA over the Petition for Certiorari

The discretion on initially determining the sufficiency of a petition for certiorari lies with the court before which the petition was filed. In this matter, the CA determined the petition filed before it to be sufficient. We sustain the CA's determination for the reasons specified below.

First, the failure to comply with the rule on a statement of material dates in the petition may be excused since the dates are evident from the records.[19] In the case at bar, the petition for certiorari filed before the CA contained a statement of material dates. Although the date of filing of the motion for reconsideration was not stated, it is nevertheless evident from the records that the said motion for reconsideration was filed on time on December 10, 2001.[20]

Second, "the Rules do not specify the precise documents, pleadings or parts of the records that should be appended to the petition other than the judgment, final order, or resolution being assailed. The Rules only state that such documents, pleadings or records should be relevant or pertinent to the assailed resolution, judgment or orders; as such, the initial determination of which pleading, document or parts of the records are relevant to the assailed order, resolution or judgment, falls upon the petitioner. The CA will ultimately determine if the supporting documents are sufficient to even make out a prima facie case".[21] The CA, having given due course to the petition, must have found the documents sufficient. We find no sufficient reason to reverse the Decision of the CA.

Third, the caption of the petition filed with the CA may not have specified the individual names of the heirs of Dr. Deleste but the verification contained all the names and signatures of the four heirs. The petition sufficiently contains the full names of the petitioners therein, thus substantially complying with the requirement of the Rules of Court.

Technicalities that impede the cause of justice must be avoided. In *Heirs of Generoso A. Juaban v. Bancale*,[22] which also finds application to the present case, the Court elaborated:

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.

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.

WHEREFORE, the petition is DENIED. The June 30, 2003 Decision of the Court of Appeals in CA-G.R. SP No. 69383 and its October 20, 2003 Resolution are AFFIRMED.

SO ORDERED..

Carpio, (Chairperson), Brion, Abad, and Perez, JJ., concur.

[1] Rollo, pp. 21-27; penned by Associate Justice Roberto A. Barrios and concurred in by Associate Justices Elvi John S. Asuncion and Edgardo F. Sundiam.

[2] Id. at 60-61; penned by Judge Mamindiara P. Mangotara.

[3] CA rollo, p. 23.

[4] Rollo, pp. 45-46.

[5] Id. at 61.

[6] Id. at 26-27.

[7] Id. at 46.

[8] Id. at 218.

[9] Roman Catholic Archbishop of Manila v. Court of Appeals, 327 Phil. 810, 819 (1996).

[10] Id.

[11] Marinduque Mining and Industrial Corporation v. Court of Appeals, G.R. No. 161219, October 6, 2008, 567 SCRA 483, 493.

[12] A claim for attorney's fees may be asserted either in the very action in which the services in question have been rendered, or in a separate action. Quirante v. Intermediate Appellate Court, 251 Phil. 704, 708 (1989).

[13] Marinduque Mining and Industrial Corporation v. Court of Appeals, supra note 11 at 494.

[14] See Cortes v. Court of Appeals, 443 Phil. 42 (2003).

[15] Sec. 11. Priorities in modes of service and filing. - Whenever practicable, the service and filing of pleadings

and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed.

[16] *Ace Navigation Co., Inc. v. Court of Appeals*, 392 Phil. 606, 613 (2000).

[17] *Precision Electronics Corporation v. National Labor Relations Commission*, G.R. No. 86657, October 23, 1989, 178 SCRA 667, 670.

[18] Sec. 9. Perfection of appeal; effect thereof. - 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.

A party's appeal by record on appeal is deemed perfected with respect to the subject matter thereof upon the approval of the record on appeal filed in due time.

In appeals by notice of appeal, the court loses jurisdiction over the case. upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties.

In appeals by record on appeal, the court loses jurisdiction only over the subject matter. thereof upon the approval of the records on appeal filed in due time and the expiration of the time to appeal of the other parties.

In either case, prior to the transmittal of the original record or the record on appeal, the court may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, approve compromises, permit appeals of indigent litigants, order execution pending appeal in accordance with section 2 of Rule 39, and allow withdrawal of the appeal. (Underscoring supplied)

[19] *Great Southern Maritime Services Corp. v. Acuña*, 492 Phil. 518, 527 (2005).

[20] CA rollo, p. 16.

[21] *Quintano v. National Labor Relations Commission*, 487 Phil. 412, 424-425 (2004).

[22] G.R. No. 156011, July 3, 2008, 557 SCRA 1, 14, citing *Great Southern Maritime Services Corp. v. Acuña*, supra note 19.

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