

DOLORITA C. BEATINGO, PETITIONER, VS. LILIA BU GASIS, RESPONDENT.

G.R. No. 179641. February 09, 2011

Ponente: NACHURA, J.

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NACHURA, J.:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, assailing the Court of Appeals[1] (CA) Resolutions dated June 27, 2007[2] and August 13, 2007[3] in CA-G.R. CEB-CV No. 01624.

This petition stemmed from the following facts:

Petitioner Dolorita Beatingo filed a Complaint for Annulment and Cancellation of Sale, Reconveyance, Delivery of Title and Damages[4] against respondent Lilia Bu Gasis before the Regional Trial Court (RTC) of Iloilo City. The case was raffled to Branch 31 and docketed as Civil Case No. 00-26171.

Petitioner alleged that, on May 19, 1998, she bought a piece of land, denominated as Lot No. 7219 (hereafter referred to as the subject property), from Flora G. Gasis (Flora). The subject property was registered in the name of Flora's predecessor-in-interest. The sale was evidenced by a notarized Deed of Absolute Sale. On October 18, 1999, petitioner went to the Register of Deeds to have the sale registered. She, however, failed to obtain registration as she could not produce the owner's duplicate certificate of title. She, thus, filed a petition for the issuance of the owner's duplicate certificate of title but was opposed by respondent, claiming that she was in possession of the Original Certificate of Title (OCT) as she purchased the subject property from Flora on January 27, 1999, as evidenced by a Deed of Sale. This prompted petitioner to file the Complaint, insisting that she is the rightful owner of the subject property. She also maintained that respondent had been keeping the OCT despite knowledge that petitioner is the rightful owner. She further accused respondent of inducing Flora to violate the contract with her, which caused her damage, prejudice, mental anguish, and serious anxiety.[5]

On the other hand, respondent claimed that she purchased the subject property from Flora without knowledge of the prior sale of the same subject property to petitioner, which makes her an innocent purchaser for value. Respondent denied having induced Flora to violate her contract with petitioner as she never knew the existence of the alleged first contract. Lastly, respondent declared that, upon payment of the purchase price, she immediately occupied the subject property and enjoyed its produce.

On December 29, 2005, the RTC rendered a decision,[6] the dispositive portion of which reads:

WHEREFORE, on the basis of the testimonial and documentary evidence, the court finds that preponderant evidence has been established by the defendant as against the plaintiff, hence, JUDGMENT is therefore rendered in favor of the defendant.

Consequently, the complaint is DISMISSED and the defendant is hereby declared to be the lawful owner of the property in question. Further the plaintiff is hereby ordered to pay the defendant P30,000.00 in attorney's fees, litigation expenses of P10,000.00 and the costs of the suit.

SO ORDERED.[7]

The RTC considered the controversy as one of double sale and, in resolving the issues raised by the parties, it applied the rules laid down in Article 1544 of the Civil Code. As opposed to petitioner's admission that she did not pay the purchase price in full and that she did not acquire possession of the subject property because of the presence of tenants on it, the court gave more weight to respondent's evidence showing that she immediately acquired possession of the subject property and enjoyed its produce upon full payment of the purchase price. Since the two sales - that of petitioner and that of respondent - were not registered with the Registry of Property, the RTC held that whoever was in possession had the better right. Hence, it decided in favor of respondent.

Aggrieved, petitioner filed a Motion for New Trial and Reconsideration[8] on the ground that she was in possession of the subject property actually and constructively. The motion, however, was denied by the RTC in an Order[9] dated April 5, 2006.

Undaunted, petitioner elevated the matter to the CA via a Notice of Appeal. On December 20, 2006, the CA required petitioner to file an Appellant's Brief within forty-five (45) days from receipt of the notice.[10]

However, due to pressures of work in equally important cases with other clients, counsel for petitioner requested for an extension of ninety (90) days within which to file the brief.[11]

In a Resolution dated March 9, 2007, the CA granted the motion. The Resolution is quoted below for easy reference:

As prayed for, the plaintiff-appellant is hereby granted the maximum extension of ninety (90) days from 19 February 2007 or until 20 May 2007, within which to file an Appellant's Brief.[12]

Instead of filing the Appellant's Brief within the extended period, petitioner twice moved for extension of time to file the brief, covering an additional period of sixty (60) days for the same reasons as those raised in the first motion for extension.[13]

In a Resolution[14] dated June 27, 2007, the CA denied the motions for extension to file brief. Thus, for failure to file the Appellant's Brief, the appellate court dismissed the appeal. In a Resolution[15] dated August 13, 2007, the CA denied petitioner's motion for reconsideration.

Hence, the instant petition on the following grounds:

A. THE RESPONDENT COURT OF APPEALS ERRED IN NOT REVIEWING ON THE MERITS THE APPEAL OF THE PETITIONER, CONSIDERING THAT, THE DECISION OF THE REGIONAL TRIAL COURT OF ILOILO IS SO HORENDOUSLY WRONG WHEN THE SAID COURT DECIDED IN FAVOR OF THE PRIVATE RESPONDENT, WHICH IF NOT REVIEWED, OR REVERSED, WILL CAUSE INJUSTICE TO TRIUMPH AS AGAINST WHAT IS RIGHT AND LEGAL, SACRIFICING SUBSTANTIAL JUSTICE IN FAVOR OF TECHNICALITIES, CONSIDERING THAT:

- Petitioner was the first buyer of the property while the private respondent is only the second buyer;
- It is petitioner who is in possession of the said property and that;
- Private respondent was not able to have her own deed of sale registered with the Register of Deeds;

B. THE RESPONDENT COURT OF APPEALS SHOULD HAVE EXERCISED ITS DISCRETION, IN FAVOR OF SUBSTANTIAL JUSTICE, BY ADMITTING THE APPELLANT'S BRIEF OF THE PETITIONER TAKING INTO CONSIDERATION THAT PETITIONER IN GOOD FAITH HAS FILED THE NEEDED MOTIONS FOR EXTENSIONS (sic) TO FILE BRIEF, AND THE BRIEF WAS IN FACT FILED WITHIN THE PERIOD OF THE REQUESTED EXTENSIONS.[16]

Petitioner insists that the appeal should not have been dismissed because her failure to file the Appellant's Brief was not deliberate and intended for delay. She claims that prior to the expiration of the 90-day extension within which to file the brief, she again asked for two more extensions. She explains that the counsel could not prepare the Appellant's Brief because the law firm was swamped with numerous cases and election related problems which needed his attention.

We find petitioner's arguments bereft of merit.

Section 7, Rule 44 of the Rules of Court provides:

Sec. 7. Appellant's Brief. - It shall be the duty of the appellant to file with the court, within forty-five (45) days from receipt of the notice of the clerk that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee.

In a Resolution dated December 20, 2006, the CA required petitioner to file the Appellant's Brief. The notice was received by petitioner on January 5, 2007. However, instead of filing the required brief, petitioner requested for additional time to prepare "due to pressures of work in equally important cases, plus court appearances, preparation of memoranda, conference with other clients." The CA granted the request and specifically stated that the same was the maximum extension. This notwithstanding, instead of complying with the court's directive, petitioner again filed two motions for extension, for a total period of sixty (60) days. This time, the CA denied the motions and eventually dismissed the appeal in accordance with Section 1(e),[17] Rule 50 of the Rules of Court.

Evidently, petitioner's counsel was negligent in failing to file the required brief not only within 45 days from receipt of the notice but also within the extended period of ninety (90) days granted by the appellate court. He, however, explains that he could not comply with the court's directive because he had to attend to other cases that he considered more important and urgent than the instant case. Regrettably, such excuse is unacceptable.[18] An attorney is bound to protect his client's interest to the best of his ability and with utmost diligence. Failure to file brief certainly constitutes inexcusable negligence, more so if the delay results in the dismissal of the appeal.[19] Every member of the Bar should always bear in mind that every case that a lawyer accepts deserves his full attention, diligence, skill, and competence, regardless of its importance, whether he accepts it for a fee or for free.[20] Unfortunately, petitioner is bound by the negligence of her counsel.

The failure to file the Appellant's Brief, though not jurisdictional, results in the abandonment of the appeal which may be the cause for its dismissal. It is true that it is not the ministerial duty of the CA to dismiss the appeal. The appellate court has the discretion to do so, and such 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.[21]

The question of whether or not to sustain the dismissal of an appeal due to petitioner's failure to file the Appellant's Brief had been raised before this Court in a number of cases. In some of these cases, we relaxed the Rules and allowed the belated filing of the Appellant's Brief. In other cases, however, we applied the Rules strictly and considered the appeal abandoned, which thus resulted in its eventual dismissal. In *Government of the Kingdom of Belgium v. Court of Appeals*,[22] we revisited the cases which we previously decided and laid down the following guidelines in confronting the issue of non-filing of the Appellant's Brief:

- (1) The general rule is for the Court of Appeals to dismiss an appeal when no appellant's brief is filed within the reglementary period prescribed by the rules;
- (2) The power conferred upon the Court of Appeals to dismiss an appeal is discretionary and directory and not ministerial or mandatory;

(3) The failure of an appellant to file his brief within the reglementary period does not have the effect of causing the automatic dismissal of the appeal;

(4) In case of late filing, the appellate court has the power to still allow the appeal; however, for the proper exercise of the court's leniency[,] it is imperative that:

- (a) the circumstances obtaining warrant the court's liberality;
- (b) that strong considerations of equity justify an exception to the procedural rule in the interest of substantial justice;
- (c) no material injury has been suffered by the appellee by the delay;
- (d) there is no contention that the appellee's cause was prejudiced;
- (e) at least there is no motion to dismiss filed.

(5) In case of delay, the lapse must be for a reasonable period; and

(6) Inadvertence of counsel cannot be considered as an adequate excuse as to call for the appellate court's indulgence except:

- (a) where the reckless or gross negligence of counsel deprives the client of due process of law;
- (b) when application of the rule will result in outright deprivation of the client's liberty or property; or
- (c) where the interests of justice so require.

In this case, we find no reason to disturb the appellate court's exercise of sound discretion in dismissing the appeal. We must emphasize that the right to appeal is not a natural right but a statutory privilege, and it may be exercised only in the manner and in accordance with the provisions of law.[23] The Court cannot say that the issues being raised by petitioner are of such importance that would justify the appellate court to exempt her from the general rule, and give due course to her appeal despite the late filing of her Appellant's Brief.[24]

Nevertheless, in our desire to put an end to the present controversy, we have carefully perused the records of this case and reached the conclusion that the decision dated December 29, 2005 of the RTC is in perfect harmony with law and jurisprudence.[25]

The present controversy is a clear case of double sale, where the seller sold one property to different buyers, first to petitioner and later to respondent. In determining who has a better right, the guidelines set forth in Article 1544 of the Civil Code apply. Article 1544 states:

Art. 1544. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.

Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

Should there be no inscription, the ownership shall pertain to the person who in good faith was first in possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith.

Admittedly, the two sales were not registered with the Registry of Property. Since there was no inscription, the next question is who, between petitioner and respondent, first took possession of the subject property in good faith. As aptly held by the trial court, it was respondent who took possession of the subject property and, therefore, has a better right.

Petitioner insists that, upon the execution of the public instrument (the notarized deed of sale), she already acquired possession thereof, and thus, considering that the execution thereof took place ahead of the actual possession by respondent of the subject property, she has a better right.

We do not agree.

Indeed, the execution of a public instrument shall be equivalent to the delivery of the thing that is the object of the contract. However, the Court has held that the execution of a public instrument gives rise only to a prima facie presumption of delivery. It is deemed negated by the failure of the vendee to take actual possession of the land sold.[26]

In this case, though the sale was evidenced by a notarized deed of sale, petitioner admitted that she refused to make full payment on the subject property and take actual possession thereof because of the presence of tenants on the subject property. Clearly, petitioner had not taken possession of the subject property or exercised acts of dominion over it despite her assertion that she was the lawful owner thereof.[27]

Respondent, on the other hand, showed that she purchased the subject property without knowledge that it had been earlier sold by Flora to petitioner. She had reason to believe that there was no defect in her title since the owner's duplicate copy of the OCT was delivered to her by the seller upon full payment of the purchase price. She then took possession of the subject property and exercised acts of ownership by collecting rentals from the tenants who were occupying it.

Hence, the RTC is correct in declaring that respondent has a better right to the subject property.

WHEREFORE, premises considered, the petition is DENIED for lack of merit. The Court of Appeals Resolutions dated June 27, 2007 and August 13, 2007 in CA-G.R. CEB-CV No. 01624 are AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Peralta, Abad, and Mendoza, JJ., concur.

[1] Cebu City Station.

[2] Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Antonio L. Villamor and Stephen C. Cruz, concurring; rollo, pp. 125-126.

[3] Id. at 214-215.

[4] Id. at 48-53.

[5] Id. at 72-74.

[6] Penned by Judge Rene S. Hortillo; id. at 72-86.

[7] Id. at 85-86.

[8] Id. at 87-107.

[9] Id. at 111-112.

[10] Id. at 113.

[11] Id. at 114-115.

[12] Id. at 117.

[13] Id. at 118-123.

[14] Supra note 2.

[15] Supra note 3.

[16] Rollo, p. 21.

[17] Section 1. Grounds for dismissal of appeal. - An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

x x x x

(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules.

[18] Jetri Construction Corporation v. Bank of the Philippine Islands, G.R. No. 171687, June 8, 2007, 524 SCRA 522, 530.

[19] Barbuco v. Atty. Beltran, 479 Phil. 692, 696 (2004).

[20] Id. at 697.

[21] Government of the Kingdom of Belgium v. Court of Appeals, G.R. No. 164150, April 14, 2008, 551 SCRA 223, 241, citing Carco Motor Sales, Inc. v. Court of Appeals, No. L-44609, August 31, 1977, 78 SCRA 526.

[22] Supra, at 241-242.

[23] Cariño v. Espinoza, G.R. No. 166036, June 19, 2009, 590 SCRA 43, 48.

[24] Government of the Kingdom of Belgium v. Court of Appeals, supra note 21, at 242.

[25] See Jetri Construction Corporation v. Bank of the Philippine Islands, supra note 18, at 530.

[26] Ten Forty Realty and Development Corporation v. Cruz, 457 Phil. 603, 615 (2003).

[27] See San Lorenzo Development Corporation v. Court of Appeals, 490 Phil. 7 (2005).

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