

**HEIRS OF FRANCISCO BIHAG, NAMELY: ALEJANDRA BIHAG,
NICOMEDES B. BIHAG, VERONICA B. ACOSTA, SUSANA B. MIÑOZA,
PAULINO B. BIHAG, DANILO B. BIHAG, TIMOTEO B. BIHAG JR.,
EDILBERTO B...**

G.R. No. 181949. April 23, 2014

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

The doctrine of finality of judgment dictates that, at the risk of occasional errors, judgments or orders must become final at some point in time.[1]

This Petition for Review on Certiorari[2] under Rule 45 of the Rules of Court assails the October 26, 2007[3] and January 14, 2008[4] Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 03019.

Factual Antecedents

On April 23, 1992, petitioners heirs of Francisco Bihag (Francisco), namely: Teofilo T. Bihag, Jorge T. Bihag, Leona B. Velasquez, Vivencia B. Suson and Timoteo T. Bihag,[5] represented by his heirs Nicomedes Bihag, Alejandra Bihag, Veronica B. Acosta, Susana Miñoza, Paulino Bihag, Danilo Bihag, Edilberto Bihag, Timoteo Bihag, Jr., Josephine B. Miñoza, and Ma. Fe Bihag, filed with the Regional Trial Court (RTC) of Mandaue City a Complaint[6] for Quieting of Title, Damages, and Writ of Injunction and Temporary Restraining Order (TRO), docketed as Civil Case No. MAN-1311, against respondents spouses Nicasio[7] and Primitiva (Primitiva) Bathan and their daughter, Duminina Bathan Gamalier. Petitioners alleged that sometime in the 1960's, respondent Primitiva approached her brother, Francisco, to borrow money.[8] But since he did not have money at that time, she instead asked him to mortgage his unregistered land in Casili, Mandaue City, to the Rural Bank of Mandaue City so that she could get a loan.[9] She promised that she would pay the obligation to the bank and that she would return to him the documents, which were submitted to the bank in support of the loan application.[10] Francisco agreed on the condition that respondent Primitiva would pay the real property tax of the subject land while it was mortgaged.[11] When Francisco died on December 13, 1976, petitioners found out that the mortgage had long been cancelled.[12] They confronted respondents to return the documents but to no avail.[13] Petitioners later discovered that respondents took possession of the land and were hauling materials and limestones from it to the prejudice of petitioners.[14] Thus, petitioners prayed that a TRO be issued against the latter to enjoin them from entering the land and from hauling materials therefrom.[15]

On the same day, the RTC issued a TRO[16] against respondents for a period of 20 days, pending the resolution of petitioners' application for a Writ of Preliminary Injunction.

Respondents, in their Answer,[17] denied the material allegations of the Complaint and interposed the defenses of lack of cause of action and laches. They claimed that respondent spouses already owned the land when it was mortgaged to the Rural Bank of Mandaue City in the 1960's.[18] They alleged that in 1956, Francisco borrowed

money from Primitiva using the tax declarations of the land as collateral;[19] that he failed to pay the loan;[20] and thus, in 1959, he verbally sold the land to respondent spouses.[21] Respondents insisted that petitioners knew about the sale,[22] as evidenced by the Extra-Judicial Declaration of Heirs with Deed of Sale,[23] which was signed by some of the petitioners in 1984.

In response, petitioners countered that the signatures of those who signed the Extra-Judicial Declaration of Heirs with Deed of Sale were obtained through fraud as they barely know how to read and were in their twilight years when they signed the document.[24]

On June 2, 1992, the RTC issued an Order[25] granting petitioners' application for the issuance of a Writ of Preliminary Injunction.

Thereafter, trial ensued.

Ruling of the Regional Trial Court

On March 20, 2006, the RTC issued a Decision[26] in favor of respondents. It gave credence to their version that Francisco sold the land to respondent Primitiva in 1959.[27] In addition, the RTC ruled that petitioners are estopped from claiming ownership over the said land by reason of laches, pointing out that respondents have been in possession of the land for more than 30 years and that Francisco, during his lifetime, never disputed their public and peaceful possession of the land.[28] Thus, the RTC decreed:

Foregoing considered, the Court decides in favor of the [respondents].

1. the dismissal of the case;
2. Plaintiffs to surrender possession and ownership of the property under consideration to Nicasio Bathan and Primitiva Bihag-Bathan;
3. Plaintiffs to pay moral damages of Fifty Thousand Pesos (P50,000.00); Attorney's fees of Fifty Thousand Pesos (P50,000.00) as well as litigation expenses in the amount of Ten Thousand Pesos (P10,000.00).

SO ORDERED.[29]

Petitioners moved for a reconsideration but the RTC denied the same in its August 11, 2006 Order.[30]

Unfazed, petitioners filed a Notice of Appeal on October 2, 2006.[31]

On January 5, 2007, the RTC issued an Order[32]denying the Notice of Appeal. The RTC declared that:

A reading of the Notice of Appeal will show that [petitioners] received a copy of the Decision on April 20, 2006 but filed the Motion for Reconsideration on April 28, 2006 after the lapse of eight (8) days. Furthermore, [petitioners] received a copy of the Order denying their motion on September 22, 2006 but filed the Notice of Appeal on October 2, 2006 after the lapse of ten (10) days. Thus, the Notice of Appeal was filed after the lapse of [the] fifteen (15) days reglementary period or to be exact after the lapse of eighteen (18) days.

x x x x

[Based] on the case cited above, [petitioners] only [have] (7) seven days from the date of receipt of the Order denying the Motion for Reconsideration to file the Notice of Appeal.

Considering that the Notice of Appeal was filed on the 15th day from receipt of the Order denying Motion for Reconsideration which is beyond the reglementary period to file the Notice of Appeal, the same is DENIED due course.

Notify counsels.

SO ORDERED.[33]

Thereafter, respondents filed a Motion for the Issuance of a Writ of Execution,[34] which petitioners did not oppose.

On April 24, 2007, the RTC issued an Order[35] granting the Motion and on May 2, 2007, it issued a Writ of Execution.[36]

Ruling of the Court of Appeals

On October 10, 2007, petitioners filed with the CA a Petition for Certiorari with prayer for the issuance of a TRO and/or Writ of Preliminary Injunction[37] under Rule 65 of the Rules of Court.

On October 26, 2007, the CA issued a Resolution[38] dismissing the Petition for being insufficient in form and substance. It found that the Petition failed to indicate the material dates as required under Section 3,[39] Rule 46 of the Rules of Court; that no prior motion for reconsideration was taken; that one of the petitioners, Jorge T. Bihag, failed to sign the verification and certification of non-forum shopping; that the verification appended to the Petition was a photocopy; that affiants failed to indicate the date of issue of their Community Tax Certificate; and that petitioners failed to submit the certified true copy of the RTC's April 24, 2007 Order, granting the issuance of a Writ of Execution.

Aggrieved, petitioners filed a Motion for Reconsideration[40] attaching a copy of the RTC's August 24, 2007 Order and explaining that no motion for reconsideration was filed since they never received a copy of the RTC's January 5, 2007 Order, denying their Notice of Appeal.

Respondents opposed the Motion, contending that petitioners received a copy of the RTC's January 5, 2007 Order as evidenced by the Certification issued by the assistant postmaster, attesting that petitioners, through their counsel's receiving clerk, received a copy of the Order on January 22, 2007.[41]

On January 14, 2008, the CA issued a Resolution[42] denying the Motion for Reconsideration filed by petitioners for lack of merit.

Issue

Hence, the instant Petition for Review on Certiorari with Application for Preliminary Injunction with the sole issue of "whether x x x the disapproval of the Notice of Appeal undertaken by petitioners from the judgment of the [RTC] was in accordance with law." [43]

Acting on petitioners' application for Preliminary Injunction, this Court, in its April 2, 2008 Resolution,[44] issued a TRO enjoining respondents from implementing the May 2, 2007 Writ of Execution issued by the RTC in Civil Case No. MAN-1311.

Petitioners' Arguments

Petitioners' sole contention is that the RTC's denial of their Notice of Appeal contravenes the ruling in *Neypes v. Court of Appeals*,[45] which grants an aggrieved party a fresh period of 15 days from receipt of the denial of a motion for new trial or motion for reconsideration within which to file the notice of appeal.[46] Petitioners claim that their Notice of Appeal was timely filed on October 2, 2006 or within 10 days after they received the Order denying their Motion for Reconsideration on September 22, 2006.[47]

Respondents' Arguments

Instead of responding to petitioners' contention, respondents put in issue petitioners' failure to move for a reconsideration of the denial of their Notice of Appeal.[48] Respondents assert that the absence of a motion for

reconsideration justifies the CA's denial of the Petition for Certiorari filed by petitioners.[49]

Anent petitioners' alleged non-receipt of the January 5, 2007 Order, respondents insist that this is belied by the Certification issued by the assistant postmaster certifying that on January 22, 2007, the receiving clerk of the office of petitioners' counsel received a copy of the January 5, 2007 Order.[50] Respondents further contend that even if petitioners did not receive a copy of the said Order, they should have at least opposed the Motion for Issuance of a Writ of Execution filed by respondents or moved for a reconsideration of the RTC's April 24, 2007 Order granting respondents' Motion for the Issuance of a Writ of Execution.[51] Failing to do so, petitioners lost the right to question the RTC's Orders.[52] Thus, the CA correctly dismissed the Petition for Certiorari filed by petitioners under Rule 65 of the Rules of Court.

Our Ruling

The Petition must fail.

An aggrieved party is allowed a fresh period of 15 days counted from receipt of the order denying a motion for a new trial or motion for reconsideration within which to file the notice of appeal in the RTC.

In *Neypes*, the Supreme Court, in order to standardize the appeal periods provided in the Rules and to afford litigants fair opportunity to appeal their cases, declared that an aggrieved party has a fresh period of 15 days counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration, within which to file the notice of appeal in the RTC.[53]

In light of the foregoing jurisprudence, we agree with petitioners that their Notice of Appeal was timely filed as they had a fresh 15-day period from the time they received the Order denying their Motion for Reconsideration within which to file their Notice of Appeal.

The January 5, 2007 Order has attained finality.

But while we agree with petitioners that their Notice of Appeal was erroneously denied by the RTC, we are nevertheless constrained to deny the instant Petition as the January 5, 2007 Order, denying petitioners' Notice of Appeal, has attained finality. It is a settled rule that a decision or order becomes final and executory if the aggrieved party fails to appeal or move for a reconsideration within 15 days from his receipt of the court's decision or order disposing of the action or proceeding.[54] Once it becomes final and executory, the decision or order may no longer be amended or modified, not even by an appellate court.[55]

In this case, petitioners, through their counsel, received a copy of the assailed January 5, 2007 Order, under Registry Receipt No. E-0280, on January 22, 2007, as evidenced by the Certification of the assistant postmaster. As such, petitioners should have filed their motion for reconsideration within 15 days, or on or before February 6, 2007, but they did not. Instead, they filed a Petition for Certiorari before the Court of Appeals on October 10, 2007. At this time, the RTC's January 5, 2007 Order denying the Notice to Appeal had long become final and executory. Petitioners' mere denial of the receipt of the assailed Order cannot prevail over the Certification issued by the assistant postmaster as we have consistently declared that "[t]he best evidence to prove that notice was sent would be a certification from the postmaster, who should certify not only that the notice was issued or sent but also as to how, when and to whom the delivery and receipt was made." [56]

Considering that the January 5, 2007 Order has attained finality, it may no longer be modified, altered, or disturbed, even if the modification seeks to correct an erroneous conclusion by the court that rendered it.[57]

In view of the foregoing, we find no error on the part of the CA in denying the Petition for Certiorari.

WHEREFORE, the Petition is hereby DENIED. The assailed October 26, 2007 and January 14, 2008 Resolutions of the Court of Appeals in CA-G.R. SP No. 03019 are hereby AFFIRMED.

The Temporary Restraining Order issued by the Court on April 2, 2008 is hereby LIFTED.

SO ORDERED.

Carpio, (Chairperson), Brion, Perez, and Perlas-Bernabe, JJ., concur.

[*] Also referred to as Ma. Fe Bihag in some parts of the records.

[**] Also referred to as Dominina B. Gamalier in some parts of the records.

[1] Gallardo-Corro v. Gallardo, 403 Phil. 498, 511 (2001).

[2] Rollo, pp. 3-12.

[3] CA rollo, pp. 75-76; penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Francisco P. Acosta and Amy C. Lazaro-Javier.

[4] Id. at 97-99.

[5] Deceased.

[6] Records, Volume 1, pp. 1-6.

[7] Due to his untimely demise, defendant Nicasio was substituted by his heirs; id. at 98-99.

[8] Id. at 2.

[9] Id.

[10] Id. at 2-3.

[11] Id. at 2.

[12] Id. at 3.

[13] Id.

[14] Id.

[15] Id. at 5.

[16] Id. at 10; penned by Judge Mercedes Gozo-Dadole.

[17] Id. at 12-22.

[18] Id. at 15.

[19] Id. at 13.

[20] Id.

[21] Id. at 12-13.

[22] Id. at 12-13.

[23] Id. at 23 (unnotarized).

[24] Id. at 35.

[25] Id. at 38-39; penned by Judge Mercedes Gozo-Dadole.

[26] Id., Volume 3, pp. 553-574; penned by Presiding Judge Augustine A. Vestil.

[27] Id. at 570.

[28] Id. at 572-573.

[29] Id. at 573-574.

[30] Id. at 613.

[31] Id. at 626.

[32] Id. at 630-631.

[33] Id.

[34] Id. at 632-634.

[35] Id. at 647.

[36] Id. at 652-653.

[37] CA rollo, pp. 2-9.

[38] Id. at 75-76. The Resolution reads:

The present Petition for Certiorari with prayer for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction is ordered DISMISSED for being insufficient in form and in substance, to wit:

- It does not show the material dates required under Sec. 3 Rule 46 of the Rules of Court such as: (a) when notice of the judgment or final order or resolution subject thereof was received, (b) when a motion for new trial or reconsideration, if any, was filed and (c) when notice of the denial thereof was received;
- No prior Motion for Reconsideration was taken. The precipitate filing of petition for certiorari under Rule 65 of the Rules of Court without first moving for reconsideration of the assailed order of the lower court warrants the outright dismissal of the case. Certiorari will not lie unless the aggrieved party has no other claim, speedy and adequate remedy in the course of law, such as the filing of a Motion for Reconsideration;
- One of the petitioners, Jorge T. Bihag, has not signed the verification and certification of non-forum shopping;
- The Verification appended to the petition appears to be a photocopy only and the affiants did not indicate the date of issue of their Community Tax Certificate Number; and
- Lastly, the petitioners did not submit the certified true copy of the Order dated 24 April 2007 of the public respondent granting the issuance of a writ of execution.

SO ORDERED.

[39] Section 3. Contents and filing of petition; effect of noncompliance with requirements. — The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.

It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. The certification shall be accomplished by the proper clerk of court or by his duly authorized representative, or by the proper officer of the court, tribunal, agency or office involved or by his duly authorized representative. The other requisite number of copies of the petition shall be accompanied by clearly legible plain copies of all documents attached to the original.

The petitioner shall also submit together with the petition a sworn certification 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.

The petitioner shall pay the corresponding docket and other lawful fees to the clerk of court and deposit the amount of P500.00 for costs at the time of the filing of the petition.

The failure of the petitioner to comply any of the requirements shall be sufficient ground for the dismissal of the petition.

[40] CA rollo, pp. 77-81.

[41] Id. at 84-88.

[42] Id. at 97-99.

[43] Rollo, p. 184.

[44] Id. at 109-113.

[45] 506 Phil. 613, 626 (2005).

[46] Rollo, pp. 184-185.

[47] Id. at 185.

[48] Id. at 170-171.

[49] Id. at 172.

[50] Id. at 170.

[51] Id. at 170-171.

[52] Id. at 171.

[53] Reyes v. Court of Appeals, supra note 45.

[54] Heirs of the late Flor Tungpalan v. Court of Appeals, 499 Phil. 384, 389 (2005).

[55] Id.

[56] Bernarte v. Philippine Basketball Association (PBA), G.R. No. 192084, September 14, 2011, 657 SCRA 745, 753.

[57] Gallardo-Corro v. Gallardo, supra note 1.

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