SPS. HENRY O AND PACITA CHENG, PETITIONERS, VS. SPS. JOSE JAVIER AND CLAUDIA DAILISAN, RESPONDENTS.

G.R. No. 182485. July 03, 2009

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Assailed in this petition for review on certiorari is the November 29, 2007 Decision[1] of the Court of Appeals in CA-G.R. CV No. 82342, setting aside the May 29, 2003 Order[2] of Branch 155 of the Regional Trial Court of Pasig City in Civil Case No. 33043 which denied respondents' Motion for Execution[3] of the trial court's October 29, 1987 Decision.[4] Also assailed is the April 10, 2008 Resolution[5] denying the Motion for Reconsideration.[6]

In May 1979, respondents filed a Complaint for Annulment of Contract of Sale[7] involving a parcel of land in Tanay, Rizal. They alleged that petitioners took advantage of respondent Jose Javier's illiteracy and deceived him to sign a Deed of Sale over the subject property; and that petitioners did not pay in full the contract price.

On October 29, 1987, the Regional Trial Court of Pasig City, Branch 155 rendered a Decision, the dispositive portion of which states:

> Wherefore, judgment is hereby rendered in favor of plaintiffs [herein respondents] and against the defendant [herein petitioner Henry O.];
>
> - Declaring as null and void the Deed of Sale marked as Exh. A.
>
> - Ordering the Register of Deeds to cancel TCT M-7458 issued in favor of defendant;
>
> - Ordering the plaintiff to return the sum of P20,000.00 to defendant which they received as down payment and
>
> - Ordering the plaintiff to pay attorney's fees of P5,000.00 and to pay the costs.
>
> SO ORDERED.[8]

Respondents filed a Notice of Appeal[9] which was denied by the trial court for having been belatedly filed.[10] On the other hand, petitioners filed a Motion for Reconsideration[11] but the same was also denied in an Order[12] dated October 16, 1989.

Thirteen years thereafter, respondents allegedly discovered that no copy of the October 16, 1989 Order was sent to petitioners; hence they filed an Urgent Ex-Parte Motion[13] for the transmittal of the said Order to petitioners and their counsel of record which was granted by the trial court in an Order[14] dated December 9, 2002.

Meanwhile, petitioners filed a Manifestation[15] that their previous counsel[16] received a copy of the October 16, 1989 Order sometime in November 1989 thus making the service of another copy superfluous and unnecessary. Nonetheless, a copy of the October 16, 1989 Order was still served upon them. Thereafter, respondents moved for the execution of judgment[17] but the same was denied by the trial court in its May 29,

2003 Order,[18] to wit:

> Acting on the Motion For Execution of Judgment dated October 29, 1987 filed by the plaintiffs [herein respondents], through counsel, stating, among others, that defendants [herein petitioners] failed to perfect an appeal within the reglementary period, and it appearing that more than 13 years had elapsed since the issuance of the Order dated October 16, 1989 thus, making the same final and executory, and it appearing further that plaintiffs have not taken any action to enforce the Decision rendered in the instant case except by mere motion which is not allowed by Sec. 6, Rule 39 of the 1997 Rules of Civil Procedure, and it appearing finally that plaintiffs failed to exercise due diligence in asserting their right within a reasonable time warranting the presumption that they either had abandoned or declined to assert it (Heirs of Pedro Lopez vs. Hondesto de Castro, et al., G.R. No. 112905, February 3, 2000), the same is hereby DENIED for lack of merit.
>
> SO ORDERED.[19]

Respondents appealed to the Court of Appeals which set aside the above-quoted Order and directed the trial court to issue a writ of execution. According to the appellate court, the trial court's decision had not attained finality in 1989 because petitioners were not served a copy of the October 16, 1989 Order denying the motion for reconsideration; and that the trial court erred in declaring that respondents slept on their right to enforce judgment.

On April 10, 2008, the Court of Appeals denied petitioners' Motion for Reconsideration; hence, this petition based on the following grounds:

> - WHETHER OR NOT THE DECISION DATED 29 OCTOBER 1987 BECAME FINAL AND EXECUTORY ONLY IN 2002.
>
> - WHETHER OR NOT RESPONDENTS ARE GUILTY OF ESTOPPEL IN PAIS OR LACHES?
>
> - WHETHER OR NOT THE APPEAL SHOULD HAVE BEEN DISMISSED.[20]

Petitioners insist that their former counsel received a copy of the October 16, 1989 Order but they opted not to appeal the same anymore. They contend that it was sent to them at the same time a copy thereof was sent to respondents, in view of the presumption of regularity in the performance of the postmaster's official duty. Since they never appealed the October 29, 1987 Decision, petitioners conclude that the same became final and executory; consequently, respondents' move to have it executed 13 years after its finality is already barred by prescription.

We grant the petition.

In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence.[21] When a plaintiff's case depends upon the establishment of a negative fact, and the means of proving the fact are equally within the control of each party, then the burden of proof is upon the party averring the negative fact.[22]

In the instant case, respondents assert the negative fact, i.e., that no copy of the October 16, 1989 Order was sent to petitioners. In short, they have the burden of proof to show that petitioners were not furnished with a copy of the October 16, 1989 Order.

To prove that petitioners did not receive a copy of the Order, respondents submitted the certification of the Acting Branch Clerk of Court of the Regional Trial Court-Pasig, Branch 155 stating that "there is no showing that the Order of this Court dated October 16, 1989 which was sent by registered mail to Atty. Nicasio E. Martin at his address appearing on record was received by the said counsel" and that "the registry receipt number evidencing that this Court had indeed sent the said Order by registered mail to Atty. Nicasio E. Martin at his given address is no longer available and cannot be located anymore despite diligent efforts."[23] However, said certification does

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not conclusively prove that the Order was not sent to or received by petitioners' counsel. On the contrary, what the certification shows is that a copy of the Order was sent by registered mail to petitioner's counsel but the registry receipt accompanying the same could no longer be found in the records. Said certification did not indicate that the Order was never sent out. Besides, a closer examination of the records shows that although no registry receipt was attached to the October 16, 1989 Order, the dorsal side bears a notation stating "Reg. Mail, date, and 1. N. Martin 2. D. Telan."[24] This is similar to the notations in the other notices[25] that were previously sent to and received by the parties' counsels. Besides, the best evidence to prove that notice was sent would be a certification from the postmaster, and not from the clerk of court, who should certify not only that the notice was issued or sent but also as to how, when and to whom the delivery thereof was made. The mailman may also testify that the notice was actually delivered.[26]

Respondents miserably failed to discharge their burden of proof. Their bare assertion, without presenting proof to substantiate the same, failed to show that petitioners were not furnished with a copy of the October 16, 1989 Order. Moreover, petitioners admitted having received a copy of the Order denying their Motion for Reconsideration but chose not to appeal the October 29, 1987 Decision anymore.

Section 8, Rule 13 of the Rules of Court states that:

> SEC. 8. Completeness of service. Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of five (5) days after mailing, unless the court otherwise provides. Service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect at the expiration of such time.

Pursuant to the foregoing rule, when petitioners' former counsel received in November of 1989 a copy of the October 16, 1989 Order by registered mail, service is deemed completed. Since they chose not to file an appeal, the October 29, 1987 Decision became final and executory after the lapse of 15 days from the date of receipt of the October 16, 1989 Order.

Once a judgment becomes final, it is basic that the prevailing party is entitled as a matter of right to a writ of execution the issuance of which is the trial court's ministerial duty, compellable by mandamus.[27] However, the prevailing party must comply with the time limitations in enforcing judgments. Section 6, Rule 39 of the Revised Rules of Court states that:

> A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations.

The purpose of the law in prescribing time limitations for enforcing judgments by action is to prevent obligors from sleeping on their rights.[28]

In the instant case, the October 29, 1987 Decision became final and executory in 1989. However, respondents moved for its execution only on January 24, 2003. Having slept on their right to enforce the judgment for more than 13 years, respondents are now barred by the statute of limitations from asking for its execution. Mere presumption that petitioners filed an appeal is not a valid excuse in failing to verify the status of the case and assert their right to enforce judgment for more than a decade. Respondents' blind reliance on their lawyer and inaction for 13 years constitute unreasonable delay in exercising their right to have the October 29, 1987 Decision be executed.

Litigants represented by counsel should not expect that all they need to do is sit back and relax, and await the

outcome of their case. They should give the necessary assistance to their counsel, for at stake is their interest in the case. While lawyers are expected to exercise a reasonable degree of diligence and competence in handling cases for their clients, the realities of law practice as well as certain fortuitous events sometimes make it almost physically impossible for lawyers to be immediately updated on a particular client's case. [29]

Had respondents been persistent in following up the status of their case with their former lawyer, they would have discovered that he was already a judge thus necessitating the hiring of another lawyer. Their indifference, if not negligence, is indicative of lack of interest in executing the decision rendered in their favor. Obviously, respondents capitalized on their alleged discovery that petitioners were not furnished a copy of the October 16, 1989 Order as a convenient excuse for tarrying on the motion for execution and non-compliance with Rule 39, Sections 1 and 6 of the Rules of Court.

Worth noting is the fact that in respondents' Notice of Appeal, they stated that the October 29, 1987 Decision is "contrary to the facts and the laws involved in the case,"[30] notwithstanding that the same had been rendered in their favor. Also in 2001, Antonio D. Javier, the son of respondents, sent petitioners a facsimile letter which reads:

> 18 December 2001
>
> Mr. Henry O.,
>
> This is with regards to the piece of land owned by my father situated in Tanay, Rizal, which is now presently in your possession.
>
> I have been trying to call for quite some time now but I was not so lucky to have contacted you. This is to ask for your help in order to settle this matter once and for all.
>
> At this point, may I offer you One Hundred Thousand Pesos (P100,000.00) as settlement, but I guess, it would be much better if we could talk personally regarding this matter.
>
> (signed)
>
> Mr. Antonio D. Javier[31]

Considering that the October 29, 1987 Decision was rendered in their favor which ordered the reconveyance of the property to herein respondents, we find it unusual that they filed a notice of appeal and even stated that the Decision was contrary to the laws and facts involved in the case; likewise unusual is their offer of P100,000.00 to petitioners just to get hold of the property.

Finally, we find respondents guilty of laches, the essence of which is the failure or neglect, for an unreasonable and unexplained length of time to do that which, by exercising due diligence, could or should have been done earlier; it is the negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.[32] Laches is not concerned with the mere lapse of time, rather, the party must have been afforded an opportunity to pursue his claim in order that the delay may sufficiently constitute laches.[33]

WHEREFORE, the Petition for Review on Certiorari is GRANTED. The November 29, 2007 Decision of the Court of Appeals in CA-G.R. CV 82342, setting aside the May 29, 2003 Order of Branch 155 of the Regional Trial Court of Pasig City in Civil Case No. 33043, which denied respondents' Motion for Execution of the Judgment of the trial court as embodied in its October 29, 1987 Decision, and its April 10, 2008 Resolution denying petitioners' Motion for Reconsideration are REVERSED and SET ASIDE.

SO ORDERED.

Chico-Nazario, Velasco, Jr., Nachura, and Peralta, JJ., concur

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[1] Rollo, pp. 57-63; penned by Associate Justice Magdangal M. de Leon and concurred in by Associate Justices Rebecca de Guia-Salvador and Ricardo R. Rosario.

[2] Id. at 39, penned by Judge Luis R. Tongco.

[3] Id. at 31-32.

[4] Id. at 51-54, penned by Judge Fernando I. Gerona, Jr.

[5] Id. at 111-112.

[6] Id. at 64-71.

[7] Records, pp. 2-6.

[8] Rollo, p. 54.

[9] Records, p. 355.

[10] Id. at 357.

[11] Id. at 345-354.

[12] Id. at 358.

[13] Id. at 359-360.

[14] Id. at 376.

[15] Id. at 379-380.

[16] Atty. Nicasio Martin, now deceased.

[17] Records, pp. 382-383.

[18] Rollo, p. 39.

[19] Id.

[20] Id. at 13.

[21] Rules of Court, Rule 133, Sec. 1.

[22] People v. Solayao, G.R. No. 119220, September 20, 1996, 262 SCRA 255, 265, citing V. Francisco, Evidence 13, 1973 ed.

[23] Rollo, p. 72.

[24] Records, p. 358.

[25] Id. at 302, 344, 357, 371, 387, 397, and 403.

[26] Aguilar v. Court of Appeals, 369 Phil. 655, 661-662 (1999).

[27]Greater Metropolitan Manila Solid Waste Management Committee v. Jancom Environmental Corporation,

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G.R. No. 163663, June 30, 2006, 494 SCRA 280, 296.

[28] Camacho v. Court of Appeals, 351 Phil. 108, 115 (1998).

[29] Gold Line Transit, Inc. v. Ramos, 415 Phil. 492, 504 (2001).

[30] Records, p. 355.

[31] CA rollo, p. 77.

[32] Felix v. Buenaseda, 310 Phil. 161, 174 (1995).

[33] Pineda v. Heirs of Eliseo Guevara, G.R. No. 143188, February 14, 2007, 515 SCRA 627, 635.

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