

CORNELIO ANTIQUERA, PLAINTIFF-APPELLANT, VS. VICENTE M. TUPASI, DEFENDANT-APPELLEE.

UDK-1737 [C.A.-G.R. No. 44976-R]. July 31, 1974

Ponente: CASTRO, J.

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CASTRO, J.:

Cornelio Antiquera is the plaintiff and Vicente M. Tupasi is the defendant in civil case 226 (collection of a sum of money) of the municipal court of Bayombong, Nueva Vizcaya.

Decision therein was rendered on June 15, 1966. A copy thereof was received by Antiquera on September 17, 1966. On September 21, 1966 he filed a motion for reconsideration. On January 12, 1967 the municipal court modified its decision by reducing the amount awarded to him from P500 to P100. A copy of this amended decision was received by him on March 7, 1967.

On March 21, 1967 he filed a "Further Motion for Reconsideration" on the ground that the amended decision is without basis in fact and in law. This motion was denied on September 11, 1967.

On October 5, 1967 he perfected his appeal from the amended decision to the Court of First Instance of Nueva Vizcaya.

Whereupon the defendant Tupasi moved for the dismissal of the appeal on the ground that it was filed out of time. This motion was denied by the Court of First Instance which held that the "Further Motion for Reconsideration" interrupted the running of the period for appeal as the subject thereof was the amended decision. However, the court, in a later order dated November 13, 1968, reversed itself and dismissed Antiquera's appeal upon the following findings: from March 7, 1967 (date Antiquera received a copy of the amended decision) to March 21, 1967 (date he filed "Further Motion for Reconsideration"), 14 days elapsed; from October 3, 1967 (date Antiquera received a copy of the order denying his "Further Motion for Reconsideration") to October 5, 1967 (date he perfected his appeal), 2 more days elapsed. (An appeal from the municipal court to the CFI must be perfected within 15 days.).

Antiquera impugns this order, stating that (1) when a party files a motion for reconsideration on the last day for appeal he still has one day from receipt of the order denying his motion within which to perfect his appeal; and (2) the date October 3, 1967 which appears in his "Opposition to Motion to Dismiss Appeal" as the date when he received the order of September 11, 1967 denying his "Further Motion," is a typographical or clerical error, as he in fact received the said order only on October 5, 1967 - the date he perfected his appeal - as evidenced by the corresponding registry return receipt.

On March 17, 1969 the Court of First Instance issued an order denying Antiquera's motion to correct the alleged typographical error, because the record does not support his contention and the alleged registry return receipt could nowhere be found in the record of the case.

On March 31, 1969 Antiquera appealed the said order to the Court of Appeals. On June 26, 1974 the latter court

certified the case to this Court on the ground that the issues raised are purely of law.

This case should be returned to the Court of Appeals because the appeal poses a basic question of fact: did Antiquera receive a copy of the order of the municipal court dated September 11, 1967 only on October 5, 1967 and not on October 3, 1967? A resolution of this question of fact will also resolve the issue of whether Antiquera's appeal from the municipal court to the Court of First Instance was timely filed or was time-barred.

ACCORDINGLY, this case is hereby ordered remanded to the Court of Appeals for action and decision in accordance with law. No costs.

Makalintal, C.J., Teehankee, Makasiar, Esguerra, and Munoz Palma, JJ., concur.

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