

HEIRS OF GAVINO SABANAL, NAMELY, TECLA VDA. DE SABANAL, CARINA SABANAL AND REGNER SABANAL, PETITIONERS, VS. THE HON. BENJAMIN K. GOROSPE, IN HIS CAPACITY AS THE THEN PRESIDING J...

G.R. No. 50168. September 30, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

At issue in this petition is the authority of a trial court to dismiss an appeal from its own decision.

This case has its origin from Land Registration Case No. 225 (GLRO Rec. No. N-22467) brought before the Court of First Instance of Misamis Oriental on April 12, 1962, where Gavino Sabanal, substituted by herein petitioners upon his death on December 2, 1977, was the original applicant for the registration of Cadastral Lot No. 3845-C-5 at Carmen, Cagayan de Oro. Oppositors to the application of Gavino Sabanal were his brothers, sisters and other relatives who claimed that the property sought to be registered belonged to applicant's father and should, therefore, pass to his heirs, applicant and oppositors, pro indiviso. Respondents Carmen Realty and Development Corporation and its president Dante Sarraga intervened in said case on the basis of its alleged acquisition by purchase of the subject property. The oppositors later executed a waiver and quitclaim in favor of respondent corporation upon payment of P20,000.00.

As found by the Court below, the sequential transfers of the subject property were as follows: Gavino Sabanal by virtue of a Deed of Conditional Sale sold the subject property to Lilia Marfori on August 28, 1963; the spouses Lilia and Edgardo Marfori sold the same property to Dante P. Sarraga on November 11, 1963; the spouses Dante and Teresa Sarraga executed a Deed of Assignment over the subject land in favor of private respondent Carmen Realty on November 22, 1963.

After a protracted trial of 16 years, the court below finally rendered its decision^[1] on May 2, 1978 ordering the issuance of a decree of registration in the name of respondent corporation and the withdrawal by the applicant Gavino Sabanal of the P24,000.00 consigned to the court by intervenor corporation.

Petitioners received the decision of respondent court on June 9, 1978. On June 27, 1978, they filed their notice of appeal, on June 29, 1978, the appeal bond and on June 30, 1978, their record on appeal. Several hearings were held before the respondent court for the approval of the record on appeal which was opposed by the private respondents. Petitioners amended their record on appeal for several times until finally they submitted their fourth amended record on appeal.

On December 19, 1978, respondent judge issued an order dismissing petitioners' appeal which reads as follows:

"Quite apart from the fact that the fourth amended record on appeal has been filed out of time, and the circumstance that majority of the deceased petitioner's heirs have desisted from appealing, this Court must dismiss the appeal on the ground that it is 'manifestly and palpably frivolous' and interposed for delay.

This land registration case has been pending in this Court for sixteen (16) years and the three remaining appellants are among the heirs of the original petitioner who had already sold the property to a third party from whom the intervenor derived his rights, and therefore had already lost any registerable right thereon, so that their appeal is 'one so readily cognizable as devoid of merit on the face of the record that there is little, if any, prospect that it can ever succeed.' (MRR Co. vs. Ballesteros et al., 16 SCRA 643).

This case is an instance in which the appeal is evidently without merit taken manifestly for delay, to serve as leverage to get additional price money (sic) from the intervenor.

In view of all the foregoing, the record on appeal is hereby disapproved, and the appeal of some of the substituted heirs to the original deceased petitioner is hereby disallowed."^[2]

The main issue to be resolved in this case is whether respondent judge committed a grave abuse of discretion in dismissing the appeal of petitioner.

Before We proceed to the resolution of this case, it is appropriate to deal with the issue raised by private respondent that mandamus and not certiorari is the proper remedy.

It is clear from Rule 41, Section 15 that "when erroneously a motion to dismiss an appeal is granted or a record on appeal is disallowed by the trial court, a proper petition for mandamus may be filed in the appellate court."

We will thus treat this petition for certiorari of petitioners as one for mandamus as We have done in previous decisions in the interest of justice.^[3]

Now to the main issue.

The trial court dismissed the appeal on the following grounds: (1) that the fourth amended record on appeal was filed out of time; (2) that majority of the heirs of the deceased had desisted from appealing; and (3) that the appeal was manifestly frivolous and interposed merely for delay.

On the first ground, it is petitioners' argument that the fourth amended record on appeal was filed on time citing *Vda. de Oyzon v. Vinzon*.^[4]

In *Vda. de Oyzon*, it was held that an appeal is deemed perfected although the amended record on appeal was filed after the 30-day period for perfecting an appeal because the amended record on appeal is deemed filed on the presentation of the original which was done within the reglementary period.

This ruling has been reiterated in later decisions.^[5] Thus, it has been held that amendment presupposes the existence of something to be amended and, therefore, the tolling of the period should relate back to the filing of pleading sought to be amended.

In the instant case, the order of the court requiring an amendment of the record on appeal reads that the same would be approved ipso facto upon compliance within reasonable time. The petitioners had been required by respondent judge to amend their record on appeal four times upon opposition of private respondents. By the time of final compliance by petitioners, it was already beyond the reglementary period for appeal. Nevertheless, since the original record on appeal was seasonably filed, the fourth amended record on appeal should have been deemed filed on time.

As regards the majority of the heirs of the deceased having desisted from appealing, there was no basis for the respondent judge to consider this as a ground for denying the appeal of the rest of the heirs.

The truth of the matter is that one half of the heirs, namely Corona, Lucila and Bernarda, all surnamed Sabanal, have desisted while the other half, herein petitioners, chose to pursue their appeal. The heirs who desisted

presumably wanted to get their share immediately. There being P24,000.00 available, they thought it better to withdraw their share of P12,000.00. With the desistance of these heirs, it did not follow that the petitioners had lost their right to appeal. Nor is this an indication that the appeal of petitioners was merely interposed for delay. The interest of the petitioners in the subject is separate and distinct from the interest of the other heirs so that judgment may still be rendered as regards the claim of petitioners to the subject property.

Finally, the trial court opined that the appeal of petitioners is manifestly frivolous and interposed merely for delay because it found them to have already lost any registerable right to the property subject of the registration proceedings.

It is petitioners' argument that it is not for the respondent judge to determine whether an appeal from its own decision is frivolous or dilatory. This rightfully pertains to the appellate court.

In *Republic v. Gomez*,^[6] the trial judge denied the appeal interposed by the Solicitor General on the ground that the same was frivolous although it was filed on time. In the petition for the issuance of a writ of mandamus brought before this Court, We held that it is not within the province of the lower court to determine at that stage of the proceedings whether an appeal is frivolous or not. Such duty devolves upon the appellate courts. Where an appeal is presented on time, attended by the requirements of law, the same should be given due course. Otherwise, the way would be opened for trial courts to forestall review or reversal of their decisions by higher courts, no matter how erroneous or improper such decisions should be.^[7]

Thus, sections 13 and 14 of Rule 41 of the Revised Rules of Court clearly establish that, unless the appeal is abandoned, the only ground for dismissing an appeal in the trial court is the failure of the appellant to file on time the notice of appeal, appeal bond, or record on appeal.^[8]

Private respondents, however, invoke *Manila Railroad Company v. Ballesteros*,^[9] cited by the court a quo in its questioned order, to bolster their argument that even the lower courts may deny frivolous appeals.

In *Manila Railroad Company*, the trial court dismissed the appeal on the ground that it was manifestly frivolous and interposed for delay. This Court did not disturb the order of dismissal of the trial court since this Court found the appeal to have been interposed ostensibly for delay.^[10]

In said case, this Court, quoting *Dela Cruz, et al v. Blanco, et al.*,^[11] held:

"x x x Although, as a general rule, an appeal should not be dismissed on a ground which goes to the merits of the case or to the right of plaintiff or defendant to recover, yet, in exceptional instances, an appellate court may order the dismissal when the appeal appears to be manifestly and palpably frivolous. And where, as in the instant case, the dismissal has been ordered by the trial court, it will not be disturbed in the appellate court if the latter finds the appeal to have been interposed ostensibly for delay. It has been held that a frivolous appeal is one presenting no justiciable question, or one so readily recognizable as devoid of merit on the face of the record that there is little, if any, prospect that it can even succeed. x x x"

In the case at bar, the court a quo considered the appeal to be one devoid of merit because it had already ruled that the petitioners had already lost any registerable right over the property since the original petitioner in the land registration case, petitioners' predecessor-in-interest, had already sold subject property to a third party from whom the private respondent corporation derived its rights. The court a quo further pointed out that the appeal was taken manifestly for delay to serve as leverage to get additional money from the private respondent corporation.

It was not proper for the court a quo to find that the appeal of petitioners was frivolous and consequently to disapprove it since the disallowance of the appeal by said court constitutes a deprivation of the right to appeal.^[12] As We have already stated, the authority to disapprove an appeal rightfully pertains to the appellate court. More

so in this case, where there appears to be a justiciable controversy which needs to be settled.

Nevertheless, since the undisputed facts as well as the issues are before Us, and considering that this case had already undergone a protracted trial for 16 years and has been pending with this Court for more than 9 years, it will serve no purpose to delay the resolution of this case by remanding it to the appellate court. We deem it best in the interest of justice to decide the case on the merits once and for all.

Gavino Sabanal, petitioners' predecessor-in-interest, sold subject property to Lilia Marfori on August 28, 1963 under the following terms: "That it is further agreed and covenanted that should the VENDEE fail to pay the balance of Thirty Thousand Pesos (P30,000.00)* in full within seven (7) months as stipulated in the preceding paragraph, the VENDOR shall have a right to redeem the parcel of land herein conveyed, by paying back to the said VENDEE any and all sums of money which the VENDOR may have received by virtue of this contract." (p. 36, Rollo)

Gavino Sabanal received the amount of P11,000.00 from Marfori as evidenced by a receipt he executed on December 9, 1963, while a balance of P24,000.00 remained unpaid.

The court a quo interpreted the aforequoted provision of the Deed of Conditional Sale to mean that Sabanal's right of redemption was conditioned upon his paying back to the vendee Marfori whatever sum of money he may have received under the contract. Sabanal never attempted to return to the vendee the sum of P11,000.00 he had received under the contract nor indicated his desire to redeem the property. Neither did Sabanal make any demand, judicial or extra-judicial, for the payment of the purchase price nor for rescission of the contract. Sabanal likewise refused to withdraw the sum of P24,000.00 consigned by respondent corporation with the court a quo and treat the same as payment for the balance. The court, therefore, reached the conclusion that as Sabanal failed to redeem the property, there is no bar to the subsequent acquisition of the property by respondent corporation. Besides, the court added, even if Sabanal chose to exercise the right of redemption, the same is now barred by prescription by the lapse of 10 years pursuant to Articles 1141 and 1144 of the Civil Code.

Petitioners, however, point out that the vendee, by his failure to pay the balance of P24,000.00 in seven months as provided for in the contract, violated the condition of the sale so that the sale was never consummated. There was, therefore, no transfer of rights over the property to Marfori nor subsequently to respondent corporation.

The root of the controversy is the aforequoted provision in the Deed of Conditional Sale.

The vendee Lilia Marfori was given 7 months to pay the balance of the purchase price; otherwise, the vendor, Gavino Sabanal, may redeem the property by paying back the P11,000.00 which he had received as partial payment. At the end of the seventh month, no payment for the balance was made by Marfori thereby giving rise to the right of redemption of Sabanal. Sabanal however did not redeem the property. In fact, he did not pursue any course of action in connection with this sale, whether it be for collection of the balance of the purchase price or for rescission of the contract of sale.

Petitioners, however, claim that Sabanal treated the sale to Marfori as cancelled when he still considered the land as his own property by filing the application for its registration in his own name.

The application for registration was filed by Sabanal on April 12, 1962 prior to the sale to Marfori on August 28, 1963. The seven month period given to Marfori to pay had not yet lapsed when Sabanal filed an amended application on January 8, 1964. It is evident that he intended to transfer the property to Marfori as he sold it only after the application for registration had already been filed. In fact, possession of the property had already been delivered to Marfori and as early as November 22, 1963, respondent corporation was already in possession of the property and had been paying the real estate taxes over the same.

Moreover, even though Sabanal had continued with the registration proceedings, this would not automatically rescind the sale. There being no provision in the contract for the automatic rescission of the sale in case of non-payment, he should have brought an independent action to rescind the sale.[13] But even assuming that such rescission may be had in the registration proceedings,[14] Sabanal never questioned his sale of the property to Marfori nor even the subsequent acquisition by respondent corporation. He just simply refused to withdraw the balance of P24,000.00 which was consigned by respondent corporation to the court after he refused to accept its tender of payment. Petitioners admittedly even turned down offers by respondent corporation to settle the case on the ground that such offers were way below the value of the property now worth more than a million pesos. Petitioners now back out of the transaction entered into by their predecessor-in-interest on the ground of inadequacy of price.

It is much too late for petitioners to question the sale of the property by Sabanal to Marfori. Whatever cause of action Sabanal or petitioners may have against Marfori and her successor-in-interest had prescribed considering that more than 10 years had already elapsed from the time the right of action accrued, which was on March 28, 1964, the expiration of the seven-month period given to Marfori.[15]

We, therefore, agree with the court a quo that the subject property had been validly acquired by respondent corporation and consequently it has registerable title thereto.

WHEREFORE, the instant petition is hereby DISMISSED.

SO ORDERED.

Narvasa, Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] p. 32, Rollo.

[2] p. 10, Rollo.

[3] *Cajefe, et al. v. Fernandez, et al.*, Oct. 19, 1960, 109 Phil. 743; *Makabenta v. Bocar*, 95 Phil. 634; *Tambunting de Tengco v. San Jose, et al.* 97 Phil 491; *Concepcion v. Vera, et al.*, 67 Phil. 122; *San Agustin v. Barrios, et al.*, 66 Phil. 173.

[4] 8 SCRA 455.

[5] *Trans World Airlines, Inc. v. CA*, 106 SCRA 566, citing *NAWASA v. Municipality of Libmanan*, 97 SCRA 138; *Vda. de Oyzon v. Vinzon*, supra; *Philippine Independent Church v. Mateo, et al.*, 111 Phil 752; *Rodriguez v. CA*, 68 SCRA 262.

[6] 5 SCRA 368. See also *ITT Philippines v. CA*, 67 SCRA 435; *Vanguard Assurance Corp. v. CA*, 64 SCRA 148; *Republic v. Rodriguez*, 28 SCRA 378; *Icasiano v. Icasiano*, 3 SCRA 300.

[7] *Republic v. Rodriguez*, supra.

[8] 2 Moran, *Comments on the Rules of Court*, 1979 Ed., p. 433.

[9] 16 SCRA 641.

[10] See also *Vanguard Assurance Corp. v. CA*, supra; *Ferinion v. Sta. Romana, et al.*, 16 SCRA 370; *Paner v. Yatco*, 87 Phil. 271; *Dela Cruz v. Blanco and Quevedo*, 73 Phil. 596.

[11] Supra.

[12] Fernandez v. Caluag, 3 SCRA 857.

[*] The balance then owing Gavino Sabanal at the time of the execution of the Deed of Conditional Sale.

[13] Article 1191, Civil Code: Escueta v. Pando, 76 Phil 256; Guevara v. Pascual, 12 Phil. 311.

[14] See RFC v. Alto Surety & Insurance Co., 107 Phil. 386; Castillo v. Ramos, 78 Phil. 809; Bank of the Philippine Islands v. Ty Camco Sobrino, 57 Phil. 801, as to the limited jurisdiction of a Court of First Instance sitting as a land registration court.

[15] Art. 1144. Civil Code. The following actions must be brought within ten years from the time the right of action accrues:

"(1) Upon a written contract.

"xxx."

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