

SIMEON ARAMBURO AND CORAZON ARAMBURO KO, SALVACION TAN DE ARAMBURO, JESUS T. ARAMBURO, JULIO T. ARAMBURO, JOSEPHINE T. ARAMBURO, MARY JANE T. ARAMBURO, AUGUSTO T. ARAMBURO, JR.,...

G.R. No. 50711. November 17, 1980

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

In this petition for certiorari, mandamus and prohibition, with prayer for a restraining order filed on May 25, 1979, the petitioners seek to set aside the decision of the Court of Appeals, dated December 28, 1978, in CA-GR No. 41251-R entitled "Concepcion R. Peña vs. Salvacion Tan de Aramburo, et al." and/or to remand the case to the Court of Appeals and order said court to further proceed with the same by requiring the herein private respondent, appellant in said Court of Appeals' case, to furnish the herein petitioners, the appellees in said case, with a copy of the appellant's brief and to allow petitioners-appellees to file their brief within 90 days from receipt of said copy before rendering a new decision on said appeal. Petitioners further pray that the Provincial Sheriff of Albay be restrained from enforcing the writ of execution issued by the Court of First Instance of Albay ordering said Provincial Sheriff to execute the said decision of the Court of Appeals.

The procedural antecedents of this petition are as follow: On January 14, 1963, the herein petitioners filed with the Court of First Instance of Albay an application for registration of lots Nos. 2361 and 4725 of the Cadastral Survey of Malinao. Docketed as Land Registration Case No. 311, the application for registration was opposed by the herein private respondent, Concepcion R. Peña who prayed that she be declared the owner of said lots. On May 23, 1964, said private respondent filed with the same Court of First Instance of Albay an action for reivindicacion with damages seeking to recover from the herein petitioners the two lots covered by the application for registration together with lot No. 2360 of the same cadastral survey. As the latter lot was found to be in the possession of a certain Jose Atadero, the complaint was amended to include said new defendant. Said complaint was docketed as Civil Case No. 2850 and was jointly tried with Land Registration Case No. 311. On February 14, 1968, a decision was rendered by the Court of First Instance of Albay dismissing both cases. From said decision, the herein private respondent appealed to the Court of Appeals. The appeal was docketed in the Court of Appeals as CA-G. R. No. 41251-R. Respondent-appellant filed with said appellate court her appeal brief; petitioners-appellee did not file any brief. Consequently, on September 23, 1971, the Court of Appeals, Special Eight Division (composed of Justices Ramon O. Nolasco, Andres Reyes and Manuel P. Barcelona), issued a resolution considering the case as submitted for decision without appellee's brief. More than seven years thereafter, a decision was rendered by the Court of Appeals, Ninth Division (composed of Justices Carlos L. Sundiam, Samuel F. Reyes and Pacifico P. de Castro - now Associate Justice of the Supreme Court), the dispositive portion of which reads as follows:

"PREMISES CONSIDERED, the plaintiff-appellant having established her ownership over the three parcels of land in issue and her possession, including those of her predecessors-in-interest before the year 1961, the

decision appealed from is hereby REVERSED:

(1)

Declaring plaintiff-appellant the absolute owner of the three lots in question;

(2)

Ordering the defendants to vacate said lots and deliver the possession thereof to the plaintiff - appellant;

(3)

Ordering defendants Aramburos to deliver to plaintiff-appellant 30 sacks of palay from Lot 2361 and 50 sacks of palay from Lot 4725, annually, from 1961 until they vacate or pay their value at P12.00 per sack;

(4)

Ordering defendant Jose Atadero to deliver to plaintiff-appellant 12 sacks of palay from Lot 2360, annually, from 1961 until he vacates said lot or pay its value at P12.00 per sack; and

(5)

Ordering defendants to pay the costs."

Petitioners-appellees now assail the decision of the Court of Appeals on the ground of lack of procedural due process. They contend that they were deprived of their day in court when the appeal was submitted for decision without their brief. Allegedly, they were not able to file their brief because the respondent-appellant did not furnish them with a copy of the appellant's brief. They further contend that they did not receive both the resolution of the Court of Appeals dated September 23, 1971, which considered the case as submitted for decision without appellee's brief, as well as the decision of said court dated December 28, 1978, and that it was only on May 9, 1979, that they learned of the judgment of said court when the Deputy Provincial Sheriff of Albay served upon them a copy of the writ of execution enforcing said judgment.

On June 15, 1979, We required the respondents to comment on the petition and issued an order temporarily restraining the Provincial Sheriff of Albay from enforcing the writ of execution issued by the Court of First Instance of Albay.

Respondents filed their comment on the petition on August 3, 1979. Denying petitioners' claim of lack of procedural due process, respondents allege that the counsel for the petitioners-appellees were furnished with copies of the appellant's brief per registry receipts nos. 6724 and 6725 (Quiapo, Manila) dated January 20, 1971, which were filed with the Court of Appeals along with the appellant's brief and were attached to the rollo of the appealed case. Respondents further noted that the counsel for petitioners-appellees likewise received copies of the Court of Appeals' resolution dated September 23, 1971, and of its decision dated December 28, 1978, per registry return cards attached to the rollo of the case which show receipt by the authorized representatives of the petitioners-appellees' counsel of the said resolution and decision on October 7, 1971, and January 10, 1979, respectively. Respondents finally contend that since the petitioners-appellees did not appeal from the decision of the Court of Appeals nor move for reconsideration thereof, said decision became final and executory and that,

consequently, the execution of said decision is in order and should not be restrained by this Court. Accordingly, respondents pray that the temporary restraining order be lifted and that the petition be denied for lack of merit.

On December 7, 1979, We required the petitioners to file a reply to the comment of the respondents. Petitioners, through their counsel, Atty. Delfin de Vera, filed their reply on January 17, 1980, wherein they reiterated their claim that their former counsel, Atty. Antonio C. Alfane, never received a copy of the appellant's brief and of the Court of Appeals' resolution and decision dated September 23, 1971 and December 28, 1978, respectively.

On April 30, 1980, We required the Court of Appeals to ascertain carefully the allegations of the petitioners regarding the non-service of the appellant's brief and of the resolution and decision of the said court and to report on the same without unnecessary delay. In compliance therewith, the Division Clerk of Court of the Ninth Division of the Court of Appeals, Atty. Arturo A. Marave, submitted a report on May 27, 1980, stating that:

"1. The brief for the plaintiff-appellant filed with this Court on January 26, 1971 does not have a registry return receipt from petitioners' counsel attached to it. Said brief bears only the registry return receipt from Atty. Jose Atadero. However, attached to the same brief are two (2) registry receipts bearing numbers 6724 and 6725, both dated January 26, 1971, ostensibly for the two opposing counsels. (p. 90, Rollo).

"2. The Resolution of this Court dated September 23, 1971 considering the case submitted for decision without defendants-appellees' brief was received by Attys. Antonio Alfane and Delfin de Vera on October 7, 1971 per registry return receipt attached to the back of said resolution (p. 100, Rollo). Copy of said registry return receipt is attached hereto as Annex 'A' and made an integral part hereof.

"3. The decision of this Court, incidentally, was received by counsel for petitioner on January 10, 1979, as evidenced by the registry return receipt, copy of which is attached hereto and made an integral part hereof as Annex 'B'."

On June 11, 1980, We required the Division Clerk of Court of the Court of Appeals to submit his report over the signature of Justice Carlos L. Sundiam, the ponente of the assailed decision of the Court of Appeals.

On June 19, 1980, Atty. Delfin de Vera, counsel for the petitioners, filed a manifestation stating that Atty. Antonio Alfane was the counsel for the petitioners in the Court of Appeals and that neither he nor said Atty. Alfane received the registered communications (resolution and decision) covered by annexes "A" and "B" of the report of the Division Clerk of Court of the Court of Appeals. Noting said manifestation, We ordered Justice Carlos L. Sundiam on July 16, 1980, to submit a comprehensive and reasoned report as required in the resolution of June 11, 1980, in relation to the resolution of April 30, 1980, taking into consideration the statements contained in the manifestation. In compliance therewith, Justice Carlos L. Sundiam filed on September 1, 1980, his comment. He reproduced in said comment the report of the Division Clerk of Court and noted further that since the resolution and decision of the Court of Appeals were sent to the petitioners-appellees' counsel thru a government agency, the postal services of the country, it may be presumed, pursuant to Sec. 5(m), Rule 131 of the Rules of Court that the postmaster of Legaspi City performed his official duties and delivered the mail matter to the authorized representatives of the addressees.

The only issue to be resolved in this special civil action for certiorari, mandamus and prohibition is whether or not the herein petitioners were deprived of procedural due process when the Court of Appeals decided CA-G. R. No. 41251-R without their briefs as the appellees therein.

We are inclined to believe petitioners' allegation that they were not served with a copy of the appellant's brief. For it must be observed that the duty of proving service of the appellant's brief upon the appellee lies with the appellant, the private respondent herein, who, regrettably, failed to comply with the same. Section 10, Rule 14 of the Rules of Court provides:

"SEC. 10. PROOF OF SERVICE. - Proof of personal service shall consist of a written admission of the party served, or the affidavit of the party serving, containing a full statement of the date, place and manner of service, x x x If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon receipt thereof by the sender, or in lieu thereof the letter unclaimed together with the certified or sworn copy of the notice given by the postmaster to the addressee."

Conformably with the foregoing provision, sufficient proof of service of the appellant's brief upon the appellees, which was allegedly effected thru registered mail, consists of: (1) the affidavit of the party serving, containing a full statement of the date, place and manner of service; (2) the registry receipt issued by the mailing office; and (3) the registry return card or, in lieu thereof, the letter unclaimed together with the certified or sworn copy of the notice given by the postmaster to the addressee. The records of the case, however, reveal that only the registry receipts allegedly issued by the mailing office were presented by the respondent-appellant as proof of service of her brief upon petitioners-appellees. Such registry receipts cannot be considered as sufficient proof of service of the appellant's brief. Firstly, to hold otherwise would be to disregard the explicit requirements of the aforementioned provision of the Rules of Court. Secondly, said registry receipts are evidence of the posting of the mail matter with the post office of the sender - not of the delivery of said mail matter by the post office of the addressee. Thirdly, the date of actual delivery to the addressee cannot be ascertained from such registry receipts. And, finally, the possibility of presenting registry receipts covering mail matters different from those involved in the litigation cannot be discounted. (See: resolution of the Supreme Court, Second Division, dated May 21, 1980, in G.R. No. 51378 entitled "American President Lines vs. The Honorable Court of Appeals, et al.")

Since respondent-appellant had not sufficiently proven service of the appellant's brief upon the petitioners-appellees, it was, there-fore, an error on the part of the Court of Appeals to consider the appeal as submitted for decision without appellees' brief. But such procedural defect was not fatal when, as in this case, the party adversely affected thereby had sufficient opportunity to seek correction of such error. For, here, the petitioners-appellees' counsel were notified of the resolution of the Court of Appeals which considered the case as submitted for decision without appellees' brief more than seven years before the rendition of the decision. (The registry return card attached to page 100 of the rollo of CA-G.R. No. 41251-R shows receipt by the authorized agent of petitioners-appellees' counsel, Attys. Antonio Alfane and Delfin de Vera, of the subject resolution of the Court of Appeals on October 7, 1971; the decision of the Court of Appeals was promulgated on December 28, 1978.) Certainly, such length of time was more than sufficient for petitioners-appellees to seek reconsideration of the resolution of the Court of Appeals. But, this, they failed to do. And such failure could only be construed as a waiver by petitioners-appellees of their right to file their brief in said appeal and their consent to have the case decided on the basis of the records thereof which were elevated to the appellate court and of whatever pleadings already filed with said court.

Petitioners-appellees counsel had persistently denied having received the subject resolution of the Court of Appeals and claimed that the signature appearing on the registry return card, purportedly that of their authorized agent, was unknown to them. But such naked denials cannot stand in the face of the presumption established in Sec. 5(m) of Rule 131 of the Rules of Court that official duties had been regularly performed and that, accordingly, the postmaster of Legaspi City performed his official duties and delivered the subject resolution to the authorized representative of petitioners-appellees' counsel.

As the foregoing observations likewise hold true with respect to the decision of the Court of Appeals which appears to have been received by the authorized representative of petitioners-appellees' counsel on January 10, 1979, per registry return card attached to page 101 of the rollo of CA-G.R. No. 41251-R, it follows that said decision became final and executory on January 25, 1979. Consequently, the execution of said decision is in

order.

WHEREFORE, the temporary restraining order issued on June 15, 1979, is hereby lifted and the petition for certiorari, mandamus and prohibition is hereby denied for lack of merit. Costs against petitioners.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., and Guerrero,[*] JJ., concur.
De Castro, J., did not take part.

[*] Justice Juvenal K. Guerrero was designated to sit temporarily in the Second Division in lieu of Justice Pacifico P. de Castro who did not take part in this case.

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