

**LUCIANA M. DE ALINO, BENJAMIN ALINO AND HERMOGINA M. DE UNABIA, PETITIONERS, VS. HON. RAFAEL T. MENDOZA, JUDGE, BRANCH VI, COURT OF FIRST INSTANCE OF CEBU; PROVINCIAL SHERIFF OF...**

*G.R. No. 52081. July 21, 1989*

Ponente: PARAS, J.

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**PARAS, J.:**

This is a petition for certiorari and prohibition with preliminary injunction seeking the annulment of the August 17, 1979 Order of the then Court of First Instance of Cebu, Branch VI, presided over by herein respondent judge, dismissing the appeal for the reason that the judgment sought to be appealed is already final and executory; and granting the motion for the issuance of a writ of execution.

The parties in this case are father and children. Herein private respondent Benedicto Macabale, an illiterate and 78 years old when he testified, is the father of the herein other private respondents and herein petitioners Luciana M. de Alino and Hermogina M. de Umabia, and the father-in-law of petitioner Benjamin Alino. The controversy involves a parcel of land, more particularly described as follows:

"A parcel of land (Lot No. 3925 of the Talisay-Minglanilla Friar Lands Estate, G.L. R.O. No. 3732), situated in the municipality of Talisay, Province of Cebu, Island of Cebu, bounded on the North by Lot No. 3926; on the East by Lot No. 3919; on the South by Lot No. 3924; and on the West by Lot Nos. 3930 and 3929, containing an area of TWO THOUSAND NINE HUNDRED EIGHT (2,908) square meters, more or less, and it is covered by Transfer Certificate of Title No. 2142, in the name of Benedicto Macabale, in the Registry of Deeds for the Province of Cebu, found in Book II, Page 142." (p. 18, Rollo)

acquired by Benedicto and his late wife, Maria Obejero, before Benedicto left for Hawaii in 1931. The controversy arose when herein petitioners claimed ownership over the said land by virtue of Deed of Absolute Sale thumbmarked by Benedicto and his late wife (both of them being illiterates) and acknowledged by Atty. Cesar Larrobis, Jr. on March 20, 1973. Benedicto denied having sold the land, claiming that what he and his late wife thumbmarked is a new tax declaration. Accordingly, Benedicto filed with the then Court of First Instance of Cebu, Branch VI, presided over by herein respondent judge, an action against the herein petitioners for Annulment of Deed of Sale, Reconveyance and Damages. The same was docketed therein as Civil Case No. R--15543.

Respondent judge, after trial, in a Decision dated March 29, 1979 (Rollo, pp. 18-33), ruled in favor of herein private respondents. The decretal portion of the said decision, reads:

"IN VIEW OF THE FOREGOING, judgment is hereby rendered declaring the Deed of Sale covering Lot No. 3925 and the Certificate of Title issued by virtue thereof as null and void; ordering the defendants to reconvey Lot No. 3925 to the plaintiff; ordering defendants to pay solidarily the amount of P5,000.00 as moral damages and P5,000.00 as attorney's fees; ordering the defendants to render accounting of the fruits of Lot No. 3925

from 1931 up to the time plaintiff shall have taken possession of said lot; and defendants to pay the costs of the proceedings." (p. 33, Rollo)

Petitioners, on April 16, 1979, filed their Notice of Appeal and Appeal Bond; and on April 24 1979, their original Record on Appeal.

On April 30, 1979, private respondents filed a Motion for Admission of their Second Amended Complaint (Ibid., pp. 44-48). An opposition was filed by the petitioners (Ibid., pp. 49-50), but in an Order dated June 19, 1979 (Ibid., p. 51), the same was granted by respondent judge and further ordered the petitioners to incorporate in their record on appeal certain motions, orders, pleadings and proceedings which were omitted by the defendants (petitioners) from their record on appeal.

In the order dated August 17, 1975 (Ibid., pp. 34-35), it will be gathered that a motion for approval of the amended record on appeal, an opposition thereto, and a motion for issuance of a writ of execution were filed. Respondent judge, acting on the same, ruling that the judgment sought to be appealed is already final and executory, dismissed the appeal and granted the motion for the issuance of a writ of execution. The dispositive portion of the said order, reads -

"Finding the motion of the plaintiff to be well-taken, the same is hereby granted.

"The Judgment of this Court sought to be appealed by the defendants is hereby declared final and executory and the appeal is dismissed.

"Let a Writ of Execution issue forthwith.

"SO ORDERED." (p. 41, Rollo)

On September 19, 1979, petitioners, thru a new counsel (no formal notice of change of counsel was given to the court), filed a Motion for Reconsideration (Ibid., pp. 36-40), but the same was denied in an Order dated November 5, 1979 (Ibid., pp. 84-86).

On November 15, 1979, public respondent Provincial Sheriff of Cebu caused to be served upon petitioners a writ of execution. Hence, the instant petition.

In a Resolution dated June 11, 1980, the First Division of this Court resolved to give due course to the petition, and to require the parties to submit simultaneous memoranda (Ibid., p. 103). In compliance, private respondents filed their Memorandum on July 31, 1980 (Ibid., pp. 104-114), while petitioners filed their Memorandum on August 14, 1980 (Ibid., pp. 116-124).

Petitioners raised two assignments of error:

## I

THAT THE RESPONDENT JUDGE, HON. RAFAEL T. MENDOZA, IN THE EXERCISE OF HIS JURISDICTION, BY ISSUING THE ORDERS DATED AUGUST 17, 1979 AND NOVEMBER 5, 1979, HAS EXCEEDED HIS AUTHORITY OR JURISDICTION.

## II

THAT BY DISAPPROVING THE AMENDED RECORD ON APPEAL OF THE DEFENDANTS (PETITIONERS HEREIN) AND, INSTEAD, GRANTING THE MOTION FOR ISSUANCE OF THE WRIT OF EXECUTION OF THE PLAINTIFFS (PRIVATE RESPONDENT HEREIN), THE RESPONDENT JUDGE, HON. RAFAEL T. MENDOZA, HAS ACTED WITH GRAVE ABUSE OF DISCRETION

## AMOUNTING TO LACK OF JURISDICTION.

The main issue in this petition is whether or not respondent judge erred in holding that the judgment sought to be appealed is already final and executory because the amended record on appeal was filed six (6) days late.

This issue has already been laid to rest as early as 1963 in the case of *Vda. de Oyzon vs. Vinzon* (8 SCRA 455, 458) where it was held that -

“x x x. The fact that the amended record on appeal was submitted after the reglementary 30-day period, did not render the perfection untimely, because the amended record on appeal is deemed to have been filed on the presentation of the original, which was done within the reglementary period.”

In the instant case, it will be recalled that petitioners filed their Notice of Appeal and Appeal Bond on April 16, 1979, and their original Record on Appeal on April 24, 1979, all within the reglementary period.

This ruling in the said *Oyzon* case was reiterated in the case of *Rodriguez vs. Court of Appeals* (68 SCRA 262, 267 [1975]), and further reaffirmed in the case of *De Mesa Abad vs. Court of Appeals* (137 SCRA 416, 421 [1985]) where it was held that -

"It is a fact that, in reference to the First Appeal, the Amended Record on Appeal was filed beyond the 10-day period granted by the trial Court and that the Orders ordered to be incorporated were still missing. It should be noted, however, that the original Record on Appeal was filed within the reglementary period on January 16, 1974. Consequently, the Amended Record on Appeal should be deemed to have been filed upon the presentation of the original. Failure to comply with the period granted by the lower Court within which to file the Amended Record on Appeal, although not to be condoned, does not necessarily render the appeal untimely. It is the date of presentation of the original Record on Appeal which is controlling. This rule found expression in *Rodriguez, et al. vs. Court of Appeals*, (68 SCRA 262 [1975])."

As to the fact that petitioners' motion for reconsideration was unauthorized for lack of valid substitution of counsel, who filed the same, as he is not their counsel on record, the same may be excused in accordance with the rulings of this Court to afford every party-litigant amplest opportunity to present his case for the proper and just determination of his cause, freed from the constraints of technicalities (*Rama vs. Court of Appeals*, 148 SCRA 496 [1987]). Litigation should, as much as possible, be decided on their merits and not on technicality (*GSIS vs. GSIS Supervisor Union*, 89 SCRA 554 [1979]). Interest of justice may warrant waiver of the rules (*Republic vs. Court of Appeals*, 135 SCRA 156 [1985]).

At this juncture, it is obvious that petitioners' appeal should be allowed. As a general rule, this case should be referred to the Court of Appeals for review of the findings of facts of the trial court, but where the facts are already before this Court, the case can already be decided on the merits. (*Quillan vs. CA, et al.* G.R. No. 55457, January 20, 1989; *Santos vs. Ganayo* 116 SCRA 431 [1982]; *Quisumbing vs. Court of Appeals*, 122 SCRA 703 [1983]).

At issue is whether or not respondent judge erred in holding that the deed of sale covering the questioned property is null and void.

It will be noted that from the March 29, 1979 decision of respondent judge (the decision sought to be appealed the substance of the testimonies of all the witnesses was produced therein. Thereafter, respondent judge made his findings of facts, and from these findings, made his conclusion, clearly stating the reasons for his conclusion.

This case furnishes another occasion to reiterate the settled rule that conclusions and findings of fact by the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons because the trial court is in a better position to examine real evidence, as well as to observe the demeanor of the

witnesss while testifying. (See *Chase v. Buencamino, Sr.*, 136 SCRA 365 [1985]). In the instant case, the allegations of private respondent Benedicto Macabale that he constructed a house worth P20,000.00 in the questioned property (Rollo, p. 19) and petitioners' witness, Plaviano Unabia, claim that such house is only worth P3,000.00 (Rollo, p. 26) are sufficient to create the doubt that the subject property including the said house and other improvements, was sold for only P454.00. Accordingly, respondent judge's conclusion being supported by evidence on record, no cogent reason can be found to disturb the findings and conclusion of the trial court.

However, the portion of the said decision ordering the petitioners to render an accounting of the fruits from 1931, is patently erroneous. Administration of the said property was left to Benedicto's late wife when he left for Hawaii in 1931. Accounting should be from March 20, 1973, when petitioners claimed ownership of the land.

PREMISES CONSIDERED, the March 29, 1979 decision of respondent judge is AFFIRMED, with the modification that the accounting of fruits should start only on March 20, 1973.

**SO ORDERED.**

Melecio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

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