

HEIRS OF MANUEL OLANGO, REPRESENTED BY PEDRO OLANGO (DECEASED) AND NOW SUBSTITUTED BY MR. LIBRADO OLANGO, CANDIDA O. TURCULAS AND PABLO OLANGO, PETITIONERS, VS. THE COURT OF FIR...

G.R. No. 55864. March 28, 1983

Ponente: VASQUEZ, J.

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VASQUEZ, J.:

A closer look at the Petition for Certiorari and Mandamus in the light of the Motion for Reconsideration filed by the petitioners of the Decision in this case promulgated on April 12, 1982 and the comment of the private respondents thereon has led us to realize the merits of the petition and accordingly to grant the aforementioned motion for reconsideration.

Our Decision dismissed the Petition for Certiorari and Mandamus and sustained the questioned Orders of the respondent Court which disapproved the record on appeal and appeal bond filed by the petitioners in connection with the appeal they were taking from a decision of the respondent Court in Land Registration Case No. N-306 which denied their application for registration and ordered the registration of the said parcel of land in favor of the herein private respondents, who were the oppositors in the said land registration case. That the denial of the petitioners' appeal by the respondent Court is characterized by capriciousness and grossly erroneous application of the pertinent rules can readily be seen from the following facts which are not disputed:

The petitioners received a copy of the decision of the court a quo on December 29, 1978. On January 25, 1979, the petitioners filed a notice of appeal, a cash appeal bond and Motion for Extension of Time to File Typewritten Record on Appeal. Petitioners set their Motion for Extension of Time to File Typewritten Record on Appeal for hearing on January 29, 1979. The said hearing was not held due to the non-appearance of the counsel for the petitioners. The respondent Court *motu proprio* ordered that the said motion be reset on "the next available date of the calendar of this Court." The hearing was eventually set on March 2, 1979. A day earlier, or on March 1, 1979, the petitioners filed their typewritten record on appeal. At the hearing held on March 2, 1979, the counsel for the petitioners was again not present, but the counsel for the oppositors (herein private respondents) manifested that he received a copy of the petitioners' record on appeal on March 1, 1979, and moved that the said record on appeal be disapproved on the ground that it was filed out of time.

The respondent Court resolved the matter of the approval of the record on appeal filed by the herein petitioners by declaring in its order dictated in open court on March 2, 1979 the following:

"Considering that Atty. Galdino Jardin for the second time was not again present, the record on appeal and the appeal bond are hereby disapproved." (Rollo, page 36).

A motion for reconsideration filed by the petitioners on March 22, 1979 was denied by the respondent Court in the Order dated November 21, 1980. Such denial led to the filing of this petition.

From the foregoing admitted facts, it could be seen that the disallowance by the respondent Court of the appeal sought to be taken by the petitioners does not conform with the spirit of liberality and fairness which courts are expected to manifest under the circumstances herein obtaining. The petitioners may not be faulted with any vital transgression of the applicable rules in connection with their intention to appeal the adverse decision rendered against them. They filed their notice of appeal and cash appeal bond within the reglementary period. Also, before the period of appeal had expired, they filed a motion for extension of time to file their typewritten record on appeal. There is nothing unusual in filing such a motion, it being done in almost all cases under similar circumstances. The petitioners even scheduled their Motion for Extension of Time to file their Typewritten Record on Appeal for hearing, although it is hardly necessary to do so (*Commercial Union vs. Lepanto Consolidated Mining Co.*, 86 SCRA 79). Instead of denying the said motion outright, the respondent Court reset it for hearing on March 2, 1979. Such act on the part of the respondent Court by itself could have readily induced a belief in the mind of the petitioners that their motion for extension of time would be favorably considered. Petitioners did not wait for the hearing or resolution of their motion for extension and filed their record on appeal on March 1, 1979. Considering that the original period of appeal expired on January 28, 1979, the filing of the Record on Appeal on March 1, 1979 was only one (1) day beyond the thirty day period of extension that they prayed for. The respondent Court possibly realized that it could not disapprove the record on appeal on the ground that it was filed out of time without being challenged as acting arbitrarily, it having been held by the Supreme Court that such circumstance is not by itself reason to deny due course to an appeal (*Galdo vs. Rosete*, 84 SCRA 238). It resorted to a reason which is neither legal nor valid for disapproving the record on appeal, to wit, the failure of the counsel for the petitioners to appear at the hearing for the approval of the record on appeal.

There is no rule or jurisprudence that requires the record on appeal to be set for hearing for the purpose of securing the approval thereof by the Court. On the contrary, We have held in "*Olvido vs. Ferraris*", 90 Phil. 555, December 17, 1951, that "it is not necessary for the appellant to set a date for the hearing of the record on appeal and to serve notice thereof on the appellee because upon its filing, the record on appeal is deemed submitted for approval, modification or disapproval as the case may be". (See also 2 Moran, *Comments on the Rules of Court*, 1970 Ed., page 433). It was therefore, plainly erroneous for the respondent Court to make capital of the failure of the counsel for the petitioners to appear for the hearing of the record on appeal and utilize such non-appearance as a ground for the disapproval thereof. It was also a manifest mistake to disapprove a cash appeal bond (Section 5, Rule 41, Rules of Court).

Whatever shortcomings may be attributed to the petitioners and their counsel insofar as compliance with procedural requirements in taking their appeal is concerned, as had been manifested herein, they cannot be deemed sufficient to deprive them of a chance to secure a review by a higher tribunal of the unfavorable decision rendered against them by the respondent Court. There is not enough showing under the facts found that they are taking their appeal merely for purposes of delay or some other motivation extraneous to the merit of their cause. The liberality which the rules exhort to be extended under the herein circumstances becomes more compelling if taken in the light of the ostensible merit of their case. Adequate grounds appear to necessitate that the decision of the respondent Court be subjected to a more thorough scrutiny. Aside from the alleged procedural missteps committed by the respondent Court, petitioners have complained that the decision awarding the registration of the land in the names of the oppositors, who are the herein private respondents, deprived them of their lawful share in the property which appears to have been owned by a common predecessor-in-interest of both the petitioners and the private respondents. The truth or falsity of this assertion does not appear to have been adequately passed upon in the decision sought to be reviewed.

WHEREFORE, the motion for reconsideration is hereby granted and the Decision promulgated on April 12, 1982 reconsidered and SET ASIDE. The Petition is hereby GRANTED and the Orders issued by the respondent Court

dated March 2, 1979 and November 21, 1979 are SET ASIDE. The respondent Court is ordered to approve the record on appeal filed by the petitioners and to give DUE COURSE to the appeal being taken by them.

SO ORDERED.

Plana, Relova and Gutierrez, Jr., JJ., concur.

Teehankee, J., (Chairman), took no part.

Melencio-Herrera, J., see separate opinion.

CONCURRING IN THE RESULT

MELENCIO-HERRERA, J.:

The principal reason for the disapproval of the Record on Appeal by respondent Judge was because it was filed beyond the thirty-day extended period prayed for by petitioners. It was filed two days (not one day) late. It was due on February 27, 1979 but was filed only on March 1, 1979. If petitioners could not file their Record on Appeal within the 30-day period that they had requested, they should have prayed for further extension.

The absence of petitioners' counsel on the date the Record on Appeal was set for hearing for the second time was only the secondary reason. The portion of respondent Judge's Order quoted in the main opinion was preceded by another paragraph showing that he had considered that the Record on Appeal was filed out of time. To quote:

"When the motion for approval of the record on appeal was called at 10:57 in the morning, movant counsel, Atty. Arturo Jardin, was not around. Atty. Arturo Legaspi, for the oppositors-appellees, informed the Court that he was only furnished a copy of the record on appeal yesterday, March 1, 1979, and he has no time to make a written opposition to the approval of the record on appeal, but in open Court he argued that the motion for the approval of the record on appeal be denied because the record on appeal was filed out of time.

"Considering that Atty. Galdino Jardin for the second time was not again present, the record on appeal and the appeal bond are hereby disapproved.

"SO ORDERED.

". . ." (p. 36, Rollo) (Italics supplied)

In fact, in denying petitioners' Motion for Reconsideration of the Order disapproving the Record on Appeal, respondent Judge stated more explicitly:

"On January 25, 1979 the applicants, through counsel, filed a 'Notice of Appeal, And With Cash Appeal Bond, With Motion for Extension of Time to file Typewritten Record on Appeal' and set it for hearing on January 29, 1979 at 9:00 A.M. The request for extension of time to file record on appeal mixed up into the notice of appeal and the filing of the cash bond was not resolved on January 29, 1979 as set because neither movant counsel nor his clients were around, while the oppositors through counsel were. The Court ordered the motion to be reset to the next available date (p. 216, records). On March 1, 1979 the applicants through counsel filed their Record on Appeal and set it for approval on March 2, 1979 at 9:00 A.M. Again neither the applicants nor their counsel was around when the record on appeal was called for approval on March 2, 1979 and the counsel for the oppositors was allowed to argue and point out that the record on appeal was filed out of time. For this reason and considering that movant counsel then seemed not to mind the calendar of the case for two times already, the Court disapproved the record on appeal and entered its said order of March 2, 1979.

".....

"But even granting, *arguendo*, that the motion for extension of time should be deemed granted, yet the record on appeal filed on March 1, 1979 is still out of time. For, as pointed out by Atty. Arturo Legaspi, counsel for the oppositors, in his opposition to the motion for reconsideration,' . . . the 30 day extension period by applicants . . . should be computed from January 28, 1979, the last day of the original 30 day period from December 29, 1978 when applicants received the decision. Therefore, when applicants filed the record on appeal on March 1, 1979, 32 days had already elapsed. . . ." (pp. 45-46, Rollo) (*Italics supplied*)

The Trial Court had made a finding that the private respondents have "been in actual, physical, open, public, adverse, peaceful, notorious, continuous and in actual possession and cultivation over Lot 2161 in the concept of owner for more than fifty (50) years including that of their predecessors-in-interest." This is a factual finding that should not be disturbed on appeal absent recognized exceptions (*Javier vs. Concepcion*, 94 SCRA 212 [1979]; *Santana vs. Mariña*, 94 SCRA 853 [1979]).

If I am concurring, in the result, in the reversal of the previous Decision of this Court, it is out of a spirit of liberality invoked by petitioners, and not because the act of disapproval of the Record on Appeal by respondent Judge was "capricious" or "grossly erroneous".

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