

**FORTUNATO BORRE, ARTURO SANTOS, ALEJANDRO MANALANG,
JOSE MANALANG, VIRGINIA SANTOS, VIRGILIO GALLARDO,
FRANCISCO FERNANDEZ, GLORIA DE LA FUENTE, DIONISIO
CASTANEDA, SR., YOLY AN...**

G.R. No. 57204. March 14, 1988

Ponente: CORTES, J.

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CORTES, J.:

This petition for review on certiorari seeks to set aside the Decision of respondent Court of Appeals, dated April 22, 1981 in CA-G.R. No. SP-12248 which affirmed the Orders dated February 9 and 23, 1981 of the Court of First Instance of Manila dismissing petitioners' appeal in Civil Case No. 126163, and its Resolution dated June 17, 1981, denying the petitioners' motion for reconsideration.

On August 29, 1979, petitioner filed a complaint against private respondent Manotok Services, Inc. to recover rentals paid by them. They alleged that the land leased to them by the company was actually public land, forming part of the Estero de Sunog-Apo and Estero de Maypajo and did not belong to the company.

On motion of the respondent company, the trial court dismissed the complaint on November 11, 1980 on the ground that the company's ownership of the property was recognized by the State with the passage of Pres. Dec. No. 1670, providing that:

Section 1. The real property along the Estero de Sunog-Apo in Tondo, Manila, formerly consisting of Lots Nos. 55-A, 55-B and 55-C, Block 2918 of the subdivision plan Psd-11746, covered by TCT Nos. 49286, 49287 and 49288, respectively, of the Registry of Deeds of Manila, and formerly owned by the Manotok Realty, Inc., with an area of 72,428.6 square meters, more or less, is hereby declared expropriated. x x x (Underscoring supplied).

The order of dismissal was received by petitioners on November 14, 1980.

On December 13, 1980, petitioners moved for reconsideration arguing that respondent company's titles covered lots which were portions of the Estero de Sunog-Apo and Estero de Maypajo and therefore should not have been included in those titles because these portions are public property which cannot be appropriated and titled by private persons like the respondent company. The trial court denied the motion in its order dated December 22, 1980 which was received by petitioners on January 12, 1981.

A second motion for reconsideration was filed on January 14, 1981 on the ground that a subsequent survey showed that the lots occupied by petitioners are not covered by respondent company's titles, and hence, are neither covered by Pres. Dec. No. 1670. In its order dated January 20, 1981, the trial court denied the second motion. Petitioners received the court order on January 30, 1981.

The next day, January 31, 1981, the last day for perfecting their appeal from the dismissal of their complaint, petitioners filed by registered mail a notice of appeal and a motion for extension of time to file the record on

appeal. However, they did not file their appeal bond until February 2, 1981 for which reason the court dismissed their appeal, the thirty-day period for perfecting appeal having expired.

Petitioners went to the Court of Appeals on certiorari but their petition was dismissed. Hence, this petition for review.

Petitioners contend that the late filing of their appeal bond was due to "excusable negligence" owing to their "honest belief" that the Office of the Clerk of Court of the then Court of First Instance of Manila was closed on January 31, 1981, the last day of the period within which they were to perfect their appeal, said date being a Saturday. They claim "that some courts are opened during Saturdays in the morning only for a few hours, and only for purposes of receiving pleadings." [Rollo, p. 74]. Invoking the policy on liberal application of remedial rules, petitioners insist that their appeal should be allowed.

This is not the first time that this Court is faced with a question on the timeliness of filing the appeal bond, a requirement for perfecting an appeal which had been dispensed with by Section 18 of the Interim Rules of Court [Sarmiento v. Gatmaitan, G.R. No. L-38173, November 12, 1987]. Although this new procedural rule may be given retroactive effect, the extent of its retroactive application is, however, limited to actions pending and undetermined at the time of its approval does not extend to actions which had already become final and executory. [The Municipal Government of Coron, Palawan v. Carino, et al., G.R. No. 65894, September 24, 1987, citing, Alday v. Camilon, G.R. No. 60316, January 31, 1983, 120 SCRA 521).

Before the Interim Rules of Court took effect, the 1964 Rules of Court required the filing with the trial court within thirty (30) days from notice of order or judgment, a notice of appeal, an appeal bond, and a record on appeal. In the case at bar, although the notice of appeal and the motion for extension of time to file the record on appeal were filed within the reglementary period, the appeal bond was filed two days late, or after the period for perfecting an appeal had lapsed. Inasmuch as the appeal was not perfected on time, the decision of the trial court became final and executory on January 31, 1981. The trial judge committed no error in dismissing the appeal. This is clearly set forth in Section 13, Rule 41 of the Rules of Court:

SEC. 13. Effect of failure to file notice, bond, or record on appeal. - Where the notice of appeal, appeal bond or record on appeal is not filed within the period of time herein provided, the appeal shall be dismissed.

There is, therefore, no cogent reason to reverse the findings of the Court of Appeals. This Court has repeatedly held that perfection of an appeal in the manner and within the period laid down by law is not only mandatory but jurisdictional. [Reyes v. Carrasco, G.R. No. L-28783, March 31, 1971, 38 SCRA 296; Republic v. Reyes, G.R. No. L-36610, June 18, 1976, 71 SCRA 450]. As Justice J.B.L. Reyes has pointed out, "The right to appeal is not a natural right nor part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law." [Bello v. Fernando, G.R. No. L-16970, January 30, 1962, 4 SCRA 135, citing Santiago v. Valenzuela, 78 Phil. 397 (1947)].

Unless there is a showing of excusable negligence justifying the failure to file the appeal bond on time, the period within which to perfect an appeal cannot be extended to accommodate the appellant. [Crisostomo v. Bustos, G.R. Nos. L-57511-13, April 27, 1982, 113 SCRA 785]. Petitioners' mistake in believing that the Office of the Clerk of Court would be closed on Saturdays does not constitute "excusable negligence" which would justify a liberal application of the pertinent rules on the perfection of an appeal. Petitioners' counsel, a practitioner in the Metro Manila area, should have known or exerted effort to inquire about office hours in courts on Saturdays instead of assuming that Saturdays are not working days. No abuse of discretion, much less a grave one at that, as alleged, was committed by respondent Judge in dismissing petitioners' appeal in Civil Case No. 126163.

Moreover, the Court upholds the dismissal of petitioners' complaint, not on the basis of Pres. Dec. No. 1670

which was declared null and void ab initio in the recently decided case of *Manotok et al. v. National Housing Authority and Republic of the Philippines* [G.R. Nos. L-55166-67, May 21, 1987], but on the basis of failure to state a cause of action.

Note that petitioners' complaint is based on the theory that the lands they occupy do not belong to the private respondent, but to the State. They themselves, however, admitted in their complaint that they were leasing the property from Manotok Services, Inc. In fact, their action was for recovery of the rentals they paid.

A "tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation of landlord and tenant between them." This is a conclusive presumption. [Rules of Court, Rule 131, Sec. 3 par. (b)].

A review of the cases applying this rule shows that the tenant is estopped from asserting a better title not only in himself but also in some third person including the State. In the case of *Zobel v. Mercado* [108 Phil. 240 (1960)], Mercado interposed the defense that the fishpond he was leasing from Zobel was not really Zobel's, but that it formed part of the public domain. The Court held that Mercado, as tenant, was estopped from questioning the title of Zobel. [See also *Reyes v. Vilaflor*, 112 Phil. 181 (1961), 2 SCRA 247; *Ora-a v. Hon. Augustia*, 119 Phil. 9 (1963), 9 SCRA 703.]

The rule on estoppel against tenants is subject to a qualification. It does not apply if the landlord's title has expired, or has been conveyed to another, or has been defeated by a title paramount, subsequent to the commencement of lessor-lessee relationship [VII Francisco, *The Revised Rules of Court in the Philippines* 87 (1973)]. In other words, if there was a change in the nature of the title of the landlord during the subsistence of the lease, then the presumption does not apply. Otherwise, if the nature of the landlord's title remains as it was during the commencement of the relation of landlord and tenant, then estoppel lies against the tenant.

Not one of the circumstances referred to above exists in this case. Petitioners do not claim that from the time they entered into a lease agreement with Manotok to the time the complaint was filed, the latter's title was transferred or conveyed or had expired. Petitioners' claim is that the property they have been occupying and which they leased from Manotok has all along been part of the public domain. In other words, in asserting that the land they leased from Manotok belongs to the State, the petitioners as lessees now deny the title of the lessor from the commencement of their tenancy relationship. This the Rules of Court does not permit [Rule 131, sec. 3. par. (b)].

In view of their express admission that they leased the property from Manotok, petitioners are now estopped from asserting that there is a title better than their landlord's outstanding in another person.

WHEREFORE, the petition is DENIED. The Decision and the Resolution of the Court of Appeals dated April 22, 1981 and June 17, 1981, respectively, are hereby AFFIRMED.

SO ORDERED.

Fernan, (Chairman), Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

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