

VIRGINIA TONIO VELASCO, SALVACION TONIO LIZASO, JOSE TONIO, MARIA TONIO, SERAFIN TONIO, JR., AND JOSEFINA TONIO, PETITIONERS, VS. HON. JUDGE GRACIANO P. GAYAPA, JR., EDUARDO OGE...

G.R. No. 58651. July 30, 1987

Ponente: PARAS, J.

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PARAS, J.:

The instant petition for certiorari and mandamus seeks to annul the Order of Branch I of the Court of First Instance[1] of Catanduanes in Civil Case No. 857, dismissing the appeal interposed by the palintiffs (now petitioners) because the notice of appeal and the appeal bond were not filed within the reglementary period.

Civil Case No. 857 entitled "Virginia Tonio Velasco, et al., vs. Eduardo Ogena, et al., is an action for quiet-ing of title and ownership over a parcel of unregistered land located in the town of Viga, Catanduanes.

The herein petitioners (plaintiffs in Civil Case No. 857) are descendants of the spouses Juan Tonio and Juliana Vda. de Tonio both of whom were already deceased before the filing of this case on August 27, 1975.

The subject parcel of land was purchased by private respondents Eduardo Ogena and his wife Guillerma Conde Ogena on June 16, 1965, evidenced by a private document of sale (Exh. "1") from Juliana vda. de Tonio. This document of sale was witnessed by petitioner Salvacion T. Lizano. After the purchase, the spouses Ogena constructed a rice mill thereon and on November 12, 1972, they sold said land together with the improvements including the rice mill to the spouses Jose Alberto and Rosita Ubalde Alberto (the other private respondents) who thereupon took possession of the same and continued the operation of the rice mill.

Alleging that the subject parcel of land was acquired by them by intestate succession from the late Juan Tonio who died sometime in March 1936, petitioners filed Civil Case No. 857 on August 27, 1975.

After trial, the lower court rendered a decision on June 18, 1981 dismissing the complaint.

A copy of the decision was received by petitioners on June 18, 1981 as shown by the certification issued by the postmaster of Virac, Catanduanes. On July 10, 1981 petitioners' counsel filed a Motion for Extension of Time to Perfect Appeal, praying that an extension of fifteen (15) days from July 18, 1981 be granted.

The said Motion for Extension was heard on July 17, 1981 wherein petitioners' counsel attended. Acting on the motion, the lower court issued an order in open court di-recting the petitioners to file their notice of appeal and appeal bond within the reglementary period, meaning up to the next day, July 18, 1981. The court however granted petitioners an extension of fifteen (15) days from July 18, 1981 to file record on appeal.

On August 7, 1981, the respondent court issued its now assailed Order dismissing the appeal, the notice of appeal and the appeal bond having been filed out of time.

Petitioners filed a motion for reconsideration claiming that the notice of appeal and the appeal bond were filed on July 17, 1981, which is within the reglementary period as the expiry date for filing was July 18, 1981. They further claimed that the cash amount of P120.00 was actually received by Mr. Jose Molina, the stitcher of Branch II of the Court on July 17, 1981.

The respondent court denied the motion for reconsideration ruling that the notice of appeal and the appeal bond were actually filed in Branch I where the case is assigned on July 20, 1981 at 8:30 a.m., beyond the expiry date of the appeal. The payment of the P120.00 cash bond and the filing of the notice of appeal with Mr. Jose Molina, even if true, is not valid because Mr. Molina is not an employee of Branch I.

In this petition, the petitioners maintain that the lower court committed grave abuse of discretion in holding that they have lost their right to appeal.

In the case of *Castro vs. Court of Appeals* (123 SCRA 782) We stressed the importance and real purpose of the remedy of appeal and ruled:

"An appeal is an essential part of our judicial system. We have advised the courts to proceed with caution so as not to deprive a party of the right to appeal (*National Waterworks and Sewerage Authority V. Municipality of Libmanan*, 97 SCRA 138) and instructed that every party-litigant should be afforded the amplest opportunity for the proper and just disposition of his cause, freed from the constraints of technicalities (*A? One Feeds, Inc. v. Court of Appeals*, 100 SCRA 590).

"The rules of procedure are not to be applied in a very rigid and technical sense. The rules of procedure are used only to help secure, not override substantial justice. (*Gregorio v. Court of Appeals* 72 SCRA 120). Therefore, we ruled in *Republic v. Court of Appeals* (83 SCRA 453) that a six-day delay in the perfection of the appeal does not warrant its dismissal. And again in *Ramos v. Bagasao* 96 SCRA 395), this Court held that the delay of four (4) days in filing a notice of appeal and a motion for extension of time to file a record on appeal can be excused on the basis of equity."

We should emphasize however, that We have allowed the filing of an appeal in some cases where a stringent application of the rules would have denied it, only when to do so would serve the demands of substantial justice in the exercise of our equity jurisdiction. The present case does not warrant such liberality because the decision of the lower court is satisfactorily supported by the record. Aside from the fact that petitioners herein are barred by prescription, there is no evidence, presented by them that they have any right of ownership over the subject parcel of land. Neither have they presented evidence showing that they have been in possession of the said land in the concept of owner, the fact being that petitioners never stayed in Viga, Catanduanes since they left for Mindanao in 1939. On the other hand, private respondent Eduardo Ogena clearly testified with respect to his acquisition of the land by purchase from Juliana Vda. de Tonio, and his possession of said land after he purchased it until he sold the same to the other private respondents Jose Alberto and Rosita Ubalde Alberto.

Since the main case is manifestly without merit, the order of the lower court dismissing the appeal cannot be impugned. As was held in *Castro vs. Court of Appeals*, (supra), "a remand for further proceedings, therefore, would only result in needless delays - a few more years perhaps of a tortuous journey through new proceedings in the trial court, an intermediate appeal and another resort to this Court through a petition for review to finally achieve the same result."

WHEREFORE, the petition is hereby DISMISSED. Costs against petitioners.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Padilla, and Sarmiento, JJ., concur.

[1] Penned by Judge Graciano P. Gayapa, Jr.

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