

TEOFILO MAGNO, ISIDRO CABATIC, HERMINIO CABATIC, FELICITAS CABATIC, ASSISTED BY HER HUSBAND, JOSE CARINO, TOMAS MAGNO, ELPIDIO MAGNO, AURORA MAGNO, ASSISTED BY HER HUSBAND, ODEL...

G.R. No. 58781. July 31, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is a special civil action for Certiorari seeking to declare void ab initio the Resolution of respondent Court of Appeals dated September 22, 1981 which ordered the issuance of an Entry of Judgment in CA-G.R. No. 52655-R. The petition also prays for the issuance of a preliminary injunction to temporarily maintain the status quo by ordering the provincial sheriff of the province of Pangasinan to desist from enforcing the writ of execution issued in Civil Case No. A-413 pursuant to the said Entry of Judgment.

Civil Case No. A-413 is an action for Partition of Certain Properties and for Damages, filed by private respondents against petitioners in the Court of First Instance of Pangasinan, Branch VII thereof. In a Decision* dated October 5, 1972, the lower court ordered the partition of the properties subject of the complaint in accordance with the schedule there-in appearing. It also ordered the petitioners to pay jointly and severally unto the private respondents the amount of P3,000.00 as attorney's fees.

Petitioners appealed to the Court of Appeals which appeal was docketed as CA-G.R. No. 52655-R. On June 30, 1981, the said court promulgated its Decision** affirming the decision of the lower court.

Notice of the decision was sent to petitioners' counsel Atty. Atinidoro B. Sison at his given mailing address which is 33 BMA Ave., Tatalon, Quezon City. The same, however, was returned to the court with the certification of the postmaster - "Return to sender, Reason - moved."

On September 14, 1981, respondent Court of Appeals issued the following Resolution: -

"Considering that the copy of Decision dated June 30, 1981 addressed to Atty. Atinidoro B. Sison fo 33 BMA Tatalon, Quezon City, counsel for the appellants was returned unclaimed with the notation on the envelope "MOVED", the Court Resolved to resend the said copy of the Decision to the appellants themselves at Alaminos, Pangasinan, and the appellants are hereby informed that the fifteen (15) days period within which to file for reconsideration will be counted from the receipt of the decision herewith attached. (Annex "5-A" p. 54, Rollo)

A copy of this Resolution was sent to petitioners themselves addressed as follows - Mr. Teofilo Magno et al., Patri-cio, Alaminos, Pangasinan. It is not disputed that this address is the address on record of petitioners. But again the envelope addressed to them was returned to the court with the notation - deceased.

On September 22, 1981, the respondent court issued its now assailed Resolution ordering the issuance of the entry of judgment.

Petitioners' motion for reconsideration was denied hence, they filed the present petition, which We find to be without merit.

It is well-settled that when a party is represented by counsel, notice should be made upon the counsel of record at his given address to which notices of all kinds emanating from the court should be sent in the absence of a proper and adequate notice to the court of a change of address. (Cubar vs. Mendoza, 120 SCRA 768).

In the case now before Us, the records show that the notice and copy of the decision of respondent Court of Appeals were sent to petitioners' counsel of record Atty. Atinodoro E. Sison at his given mailing address which is 33 B.M.A. Avenue, Tatalon, Quezon City. The first notice to him by the Postmaster to claim his mail was on July 9, 1981. The rule is that service of notice becomes effective at the expiration of the five-day period upon failure of the addressee to claim his mail within five (5) days from the date of first notice (Sec. 8, Rule 13 Rules of Court (Feraren vs. Santos, 113 SCRA 707). Therefore in this case the service became effective five days after July 9, 1981 which is July 14, 1981. The decision became final on August 13, 1981. A xerox copy of the said envelope properly addressed appears on page 52 of the Rollo. This fact is further shown by the certification issued by the then Acting Clerk of the Court of Appeals, Atty. Cesar M. Marzan. (p. 51, Rollo). If Atty. Sison moved to another address without informing the respondent of his change of address the omission or neglect will not stay the finality of the decision. The notice sent to petitioners themselves, under the circumstances is not even necessary. (Francisco vs. Puno, 108 SCRA 427) It may be stated though that while petitioners claim that Teofilo Magno to whom the notice to the petitioners was addressed is already dead, it is not explained why their present petition before this Court still includes the name Teofilo Magno. There is no indication in the record that he has been duly substituted by his legal representative.

The decision in this case having become final on July 29, 1981, there being no appeal taken therefrom, respondent court committed no error in issuing its resolution dated September 22, 1981 ordering the issuance of the corresponding entry of judgment.

WHEREFORE, for lack of merit, this petition is hereby DISMISSED. The restraining order earlier issued is lifted.

SO ORDERED.

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

* Penned by Judge Magno B. Pablo

** Penned by Justice Porfirio V. Sison, and concurred in by Justices Elias B. Asuncion and Juan A. Sison.

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