

ENRIQUE T. JOCSON, BIENVENIDA JOCSON-LAGNITON, PERLA T. JOCSON, CARLOS T. JOCSON, JESUS T. JOCSON, RODOLFO T. JOCSON, AND CONRADO T. JOCSON, PETITIONERS, VS. HON. JUDGE ALFONSO ...

G.R. No. 61466. November 22, 1989

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

Presented for resolution are three consolidated petitions, all relating to petitioners' effort to recover one-half (1/2) interest in five lots which they claim belonged to their late father, Agustin Jocson, and now to them as the latter's heirs, but which respondents hold adversely.

Their claim is embodied in a complaint for "rescission, reconveyance, and/or partition with damages" filed with the then Court of First Instance of Bacolod City and docketed as Civil Case No. 16374 (now 680), entitled "Bienvenida Jocson-Lagniton, et al. v. Sps. Ester Jocson Vinson, et al." This complaint was dismissed by the trial court on motion of the defendant, herein respondent Norma N. Vda. de Jocson, on the ground that petitioners' claim is unenforceable, barred by prior judgment, had prescribed, and that petitioners were guilty of laches. One of the plaintiffs, Enrique Jocson, questioned the order directly to this Court and whose petition for review was docketed as G.R. No. 74757. The other plaintiffs filed an amended notice of appeal with the trial court signifying their intention to appeal to the Court of Appeals. Their notice of appeal remains up to the present unacted upon. They come to this Court by way of petition for mandamus to compel respondent Judge Quirico Calasara "to act on their notice of appeal" and to cause the transmittal of the records of Civil Case No. 680 to the Court of Appeals. Their petition was docketed as G.R. No. 79555. On February 1, 1988, this Court gave due course to both petitions.

Meantime, subsequent to the filing of the complaint, petitioners also filed a "Motion in Intervention" in the testate estate proceeding of the deceased Ramiro Jocson of which a portion of the land they are claiming ostensibly forms a part. On January 4, 1982, the probate court issued an order denying petitioners' motion to intervene on the ground that their claimed right is already fully protected considering that they had already filed Civil Case No. 680. Reconsideration of the above order having been denied they filed with this Court a petition for certiorari docketed as G.R. No. 61466 which was given due course on January 7, 1983.

In G.R. No. 79555, petitioners argue that upon the trial court's receipt of their amended notice of appeal, it was its ministerial duty to forward the records of Civil Case No. 680 to the Court of Appeals, and its failure to do so is correctible by mandamus.

While the principle invoked is correct, this Court finds the same inapplicable to petitioners' situation. As pointed out by respondents the amended notice of appeal was filed out of time. The records show that the order (G.R. No. 79555, pp. 53-55, Rollo) of respondent judge, dated April 22, 1986, dismissing Civil Case No. 680 was received by petitioners on May 6, 1986. On May 15, 1986, they filed with the trial court their notice of appeal (p. 59, Ibid) signifying their intention to elevate the questioned order to this Court "on the ground that said Order is contrary to

law and jurisprudence.” On May 28, 1986, they filed an amended notice of appeal (p. 60, *Ibid*) where they informed the trial court that they would be appealing instead to the then Intermediate Appellate Court, again on the same ground above quoted.

It is true that the notice of appeal to this Court was filed on time. This, however, has no significance and did not suspend the running of the 15-day period to appeal (*Pamantasan ng Lungsod ng Maynila v. Intermediate Appellate Court*, No. L-65439, July 31, 1986, 143 SCRA 311; *Santos, Jr. v. Court of Appeals*, No. L-56614, July 28, 1987, 152 SCRA 378). It is to be remembered that the correct mode of appeal from decisions or decrees of Regional Trial Courts to this Court on pure questions of law is by petition for review. Briefly, under the amendment introduced by Republic Act No. 5440, a 1968 law, a litigant who invokes the exclusive jurisdiction of this Court (Sec. 2, R.A. No. 5440) to review decisions or decrees of inferior courts, in cases in which only errors or questions of law are involved, must do so by filing a petition for review by certiorari in the form and in the manner required for petitions for review by certiorari of decisions of the Court of Appeals (Sec. 3, *Ibid*), outlined in Rule 45 of the Rules of Court (Sec. 25, Interim Rules and Guidelines), and not by ordinary appeal under Rule 42.

Under the present set up, no notice of appeal is required. Instead, within 15 days^[1] from receipt of the decision or decree assailed, a petition for review shall be filed directly with this Court, paying within the same period of time docketing fees. The petition, however, shall not be acted upon without proof of service of a copy thereof on the trial court (Sec. 1, Rule 45, Revised Rules of Court). Review of the decision or decree is not a matter of right, but of sound judicial discretion, and will be granted only when there are special or important reasons therefor (Sec. 4, *Ibid*).

In the case at bar, petitioners allowed the 15-day period to lapse without having filed a petition for review nor paid the docketing and legal research fund fee with this Court, which acts are necessary for perfecting their appeal. Instead they filed their amended notice of appeal with the trial court signifying their intention to appeal to the Court of Appeals beyond the reglementary period. This Court has consistently ruled that the perfection of an appeal within the statutory period is a jurisdictional requirement and failure to do so renders the questioned decision or decree final and executory and no longer subject to review (*Garcia v. Echiverri*, No. L-44455, October 23, 1984, 132 SCRA 631 citing *Acda v. Minister of Labor*, No. L-51607, December 12, 1982, 119 SCRA 309; *Agricultural and Industrial Marketing, Inc. v. Court of Appeals*, No. L-39515, November 2, 1982, 118 SCRA 49; *Santos v. Court of Appeals*, No. L--60577, October 11, 1983, 125 SCRA 22). While this Court had relaxed this rule in a number of instances where to do so would serve substantial justice (*Director of Lands v. Romamban*, No. L-36948, August 28, 1984, 131 SCRA 431; *Vina v. Court of Appeals*, No. L-39498, December 23, 1983, 126 SCRA 782; *Castro v. Court of Appeals*, No. L-47410, July 29, 1983, 123 SCRA 782), there appears no reason to apply the exception to this case.

Firstly, the delay was not excusable. It was incumbent upon petitioners to utilize the correct mode of appeal of decisions or decrees of trial courts to this Court. In the mistaken choice of their remedy, they can blame no one but themselves (*Yucuanseh Drug Co. v. NLU*, 101 Phil. 409). They should have known that the filing with the trial court of a notice of appeal to the Supreme Court was a useless act which could not arrest the running of the reglementary 15-day period. An erroneous application of the law or rules is not an excusable error.

Secondly, there appears no dispute as to the material facts of the case. The allegation of facts contained in respondent Norma N. Vda. de Jocson's motion to dismiss was not refuted by petitioners in their opposition thereto. Instead their attack was focused on the legal consequences thereof. Being so, there is no factual issue which petitioners intend to raise. In a pleading (G.R. No. 79555, p. 76, Rollo) they filed with this Court, petitioners manifested that they seek to appeal to the Court of Appeals because they "believe there are questions

of facts to be resolved ultimately, like the area of the property sought to be recovered, the damages, cost, and attorney's fees claimed." But these questions of facts have no relation at all to the question of the correctness of the order granting the motion to dismiss on the ground of unenforceability, bar by prior judgment, prescription or laches. In view of the foregoing, it would be superfluous, and indeed erroneous for this Court to order the records of Civil Case No. 680 to be forwarded to the Court of Appeals since We have exclusive jurisdiction to review on certiorari decisions or decrees of trial courts which involve only errors or questions of law.

Thirdly, and most importantly, on the merits, We see no reason to disturb the order of dismissal of Civil Case No. 680. Clearly, from the given facts petitioners' cause of action had prescribed.

The complaint (G.R. No. 74757, pp. 23-29, Rollo) was filed on December 3, 1981. There they alleged that in 1933, their father, Agustin Jocson, together with his sister, Natalia Jocson, inherited five lots pro-indiviso; that Agustin Jocson entrusted to Natalia Jocson and her husband, Ramiro Jocson, possession of his share in the lots for the spouses' use and enjoyment during their lifetime on condition that they pay for the taxes thereon; that as a consequence, the spouses and their successors-in-interest have been in possession of the lots in dispute since 1933; that it was further agreed that upon the spouses' demise, the interest of Agustin in the lots would revert to him or his successors-in-interest; that Agustin Jocson predeceased the spouses in 1954, his wife died much earlier in 1931; that with Agustin's demise the petitioners, being the only compulsory heirs, became the owners of the one-half undivided interest of Agustin on the lots; that further, based on the foregoing, a trust relationship was created between the spouses Natalia Jocson and Ramiro Jocson on the one hand and the petitioners on the other, the former having the obligation to deliver to the latter Agustin's share; that thereafter Natalia Jocson died; that contrary to the above described arrangement, Ester Jocson (married to Demetrio Vinzon), the adopted daughter of Natalia Jocson and Ramiro Jocson, together with the latter, caused the transfer of the tax declaration of the properties in their names; that it was only at the wake of Ramiro Jocson, who died in July 1981, when petitioners came to know of the above described circumstances and of the fraud committed against their father and to them as heirs.

Petitioners prayed inter alia that they be declared the legal owners of one-half of the five lots and entitled to possession thereof, and that they be awarded rentals for the use of the property, and damages.

The complaint was directed against the private respondents - the spouses Ester Jocson and Demetrio Vinzon with Norma N. Vda de Jocson (the second wife of Ramiro Jocson) representing the testate estate of Ramiro Jocson, being the named executrix thereof. As aforementioned, defendant executrix filed a Motion to Dismiss (pp. 30-37, Ibid) on the ground that petitioners' cause of action being based on express trust (between Agustin Jocson and Natalia Jocson) is unenforceable under Article 1443 of the Civil Code; that it is barred by prior judgment because one-third (1/3) of the five lots which the petitioners are claiming was adjudicated to Ramiro Jocson and the remaining two-thirds (2/3) thereof were adjudicated to Ester Jocson-Vinzon in the intestate estate proceeding of Natalia Jocson (SP No. 6650), where the lots were reported to be the paraphernal properties of the deceased, and in which proceeding the petitioners themselves sought to intervene, though unsuccessfully, not as adverse claimants to the estate but as heirs of Natalia Jocson; that it is barred by prescription (citing Article 1141, Civil Code) and laches because the lots had been registered in the name of Natalia Jocson since 1935 while petitioners' complaint was filed only in 1981, and further considering that the properties were "claimed in absolute registered ownership" by the estate of Natalia Jocson in 1961 and later by Ramiro Jocson and Ester Jocson Vinzon who partitioned the lots with the intestate court's approval.

An opposition (pp. 57-61, Ibid) was filed by petitioners where they pointed out that there was no express trust alleged by them but rather implied trust; that their claim is not barred by prior judgment because Special Proceeding No. 6650 has a different subject matter and cause of action than Civil Case No. 680; that the

registration by Natalia Jocson of the realties in her name was illegal, and the defense of laches and prescription is a confession of wrongdoing or guilt; that trustees are disabled to acquire the property under trust; and they are not guilty of laches because they had no previous knowledge of the fraud committed by respondents.

Based on the foregoing undisputed facts, the trial court, as aforementioned, dismissed petitioners' complaint in an order (pp. 4-5, *Ibid*), dated April 22, 1986, the essential part of which reads, to wit:

"Records show that after the death of Natalia Jocson in 1961 an Intestate proceedings was instituted in court to settle her estate (S.P. No. 6650). In said special proceedings the heirs of Agustin Jocson attempted to intervene, which was however dis-allowed because the intervenors were not heirs of Natalia Jocson. It is worthwhile to note in this proceedings that Lot Nos. 572, 571, 2215, 410 and 579 (now Lot Nos. 579 A[2214] and 579 B[2215]) transfer certificates of titles were transferred in the name of Natalia Jocson way back in 1933. The aforesaid real properties which comprise the bulk of the estate of Natalia Jocson are the same properties subject of this reconveyance suit. Further when this case was filed on December 3, 1981 there was a lapse of 46 long years after Natalia transferred the titles in her name. Plaintiffs have never been in possession of the land and the trustee, if any, never recognized the alleged trust relationship, so that the doctrine in *De Buencamino vs. De Matias* (16 SCRA 489) is not applicable. Besides Express trust concerning an immovable cannot be proved by parol evidence and action based on express trust also prescribed [sic] and the property held in trust may be acquired by adverse possession from the moment the trust is repudiated. The prescriptibility of an action for reconveyance based on implied or constructive trust, is now a settled question in this jurisdiction. It prescribes in ten years (*Escay vs. CA*, 61 SCRA 371). The filing of this case in 1981 long after the death of Natalia Jocson in 1961 and other person involved renders it difficult to determine with certitude whether plaintiff had really been defrauded. 'Fraud or breach of trust, ought not lightly to be imputed to the living, for, the legal presumption is the other way; as to the dead, who are not here to answer for themselves, it would be the height of injustice and cruelty to disturb their ashes, and violate the sanctity of the grave, unless the evidence of fraud is clear, beyond reasonable doubts' (*Prevost vs. Grants*, 6 Whest. (US) 481, 498).

"x x x.

"WHEREFORE, in view of the foregoing premises, and finding the motion to dismiss well-taken the same is hereby granted. The other issues raised in this case being too technical are brushed aside. This case is hereby DISMISSED without pronouncement as to cost."

It is not necessary to discuss the propriety of each and every basis of the trial court in dismissing petitioners' complaint, it being sufficient to focus attention on the matter of prescription.

In G.R. No. 74757, petitioner Enrique Jocson argued that there could be no prescription in this case because respondents' predecessors-in-interest had kept from him and his co-plaintiffs knowledge that they have a participation in the five lots and that it was only during the wake of Ramiro Jocson, who died in 1981, that petitioners came to know of the fraud committed against them as described in their complaint. Further, petitioner pointed out that by filing a motion to dismiss, respondents, in effect, admitted "wrong-doing and fraud" on their part.

We find this argument unavailing. Hypothetically admitting that the petitioner's predecessor-in-interest, Agustin Jocson, inherited the herein disputed five lots together with Natalia Jocson, the accepted fact is that the latter registered the lots in 1935 as her exclusive properties. By that registration, Natalia announced to the whole world that the five lots were hers alone and effectively renounced whatever claim Agustin might have over the properties (*Lopez v. Gonzaga*, No. L-18788, January 31, 1964, 10 SCRA 167; See also *Pangan v. CA*, No. L-39299, October 18, 1988). The fact of repudiation is not here contested. Petitioners called the act of Natalia as illegal and in violation of the will of her father. This may be so, and petitioners may call Natalia's registration of

the lots by any other name but from that time, she held the property adverse to Agustin Jocson. Any trust relationship, either express or resulting trust, which Natalia and Agustin intended to bind themselves with respect to the lots was renounced. And any constructive trust which might have arisen by Natalia's fraudulent act cannot anymore be enforced considering that before the present Civil Code, the longest period of prescription is 10 years (*Diaz v. Gorrido*, 103 Phil. 261 [1958]), and Agustin Jocson never filed an action for reconveyance. Whatever right he might have had over the five lots was extinguished 10 years after 1935, either because Natalia had acquired the properties by acquisitive prescription or Agustin's cause of action had prescribed. For these reasons, petitioners clearly have no claim over the disputed lands. Whatever claim they might have had, they derived as heirs of Agustin but as Agustin's right over the lots was extinguished way back in 1945 so was petitioners'.

In view of the foregoing, petitioners clearly have no claim against the estate of Ramiro Jocson, and, therefore, have no reason to intervene in the testate estate proceeding of the deceased. G.R. No. 61466, thus, has become moot and academic.

ACCORDINGLY, the petition in 1) G.R. No. 61466 is DENIED for having become moot and academic; 2) G.R. No. 74757 is DENIED for lack of merit and the order of the respondent court, dated April 22, 1986, dismissing civil case no. 16374 (now civil case no. 680) is AFFIRMED; and 3) G.R. No. 79555 is DISMISSED.

SO ORDERED.

Narvasa, Cruz, Gancayco, and Griño-Aquino, JJ., concur.

[1] Section 3 of Republic Act 5440 provides that the petition shall be filed within the period fixed in the rules of court for appeals in criminal or civil cases or special civil actions or special proceedings, depending upon the nature of the case, which period has been uniformly fixed under section 39 of B.P. Blg. 129 at 15 days (*See Mania v. Vda. de Segarra*, No. L-48257, August 24, 1984, 131 SCRA 330)

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