

DESTILERIA LIMTUACO & CO., INC., PETITIONER, VS. THE COURT OF APPEALS (NOW INTERMEDIATE APPELLATE COURT), HON. EDUARDO C. TUTAAN, AS PRESIDING JUDGE OF BRANCH V, COURT OF FIRST ...

G.R. No. 63053. July 22, 1986

Ponente: FERIA, J.

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FERIA, J.:

This is a petition for certiorari and prohibition with a prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order, to annul and set aside the decision of respondent Court of Appeals (now Intermediate Appellate Court) which dismissed the petition for certiorari and prohibition with preliminary injunction against respondent Judge.

Actually, this is a petition for review on certiorari under Rule 45 of the Rules of Court seeking the reversal of the decision of the Court of Appeals and the consequent annulment of the trial court's order of April 13, 1982. In fact, petitioner originally filed two motions for extension of time to file a petition for review, which would not have been necessary if it were a petition for certiorari and prohibition under Rule 65 of the Rules of Court.

The record shows that on August 18, 1981 private respondent Maysilo Estate, represented by Arturo Q. Salientes, in his capacity as court-appointed receiver, filed a complaint with the Court of First Instance of Rizal, Branch V, Quezon City (now Regional Trial Court, Branch LXXXIV) against petitioner Destileria Limtuaco & Co., Inc., praying, inter alia, that Transfer Certificates of Title Nos. 32930, 32931, 32932, 32933 and 32937 all registered in the name of petitioner be declared null and void on the main ground that the lands covered by said titles are actually part of the lands covered by a prior Original Certificate of Title No. 994 registered in 1912 and belonging to said respondent.[1]

Acting upon petitioner's motion for a bill of particulars and/or for joinder of proper parties,[2] respondent Judge issued an order[3] dated October 2, 1981 directing private respondent "to amend the complaint and to include as party plaintiffs the names of all the alleged heirs of Maysilo Estate within ten (10) days from notice hereof." For failure to comply with the said order, respondent Judge issued on December 24, 1981 an order[4] dismissing the case with prejudice.

Private respondent, through its principal counsel, Atty. Julio B. Piquet, received the order of dismissal on January 29, 1982,[5] and on March 1, 1982, filed its Notice of Appeal, Appeal Bond and Record on Appeal.[6] On the other hand, Atty. Lino Añover, a former judge of the Court of First Instance, who filed his appearance as collaborating counsel for private respondent on October 13, 1981,[7] claims to have received the order of dismissal on February 15, 1982, and on March 16, 1982, filed a motion for reconsideration of the order of dismissal, alleging that private respondent had complied with the order of October 2, 1981 by filing on November 5, 1981 a Bill of Particulars, which was probably overlooked by respondent Judge.[8] Petitioner filed an opposition to the Notice of Appeal and Record on Appeal and Motion for Reconsideration,[9] and also a motion

to expunge or strike out the "Bill of Particulars" on the grounds alleged in its opposition to the Notice of Appeal and Record on Appeal, to wit: (a) that the so-called "Bill of Particulars" was not duly filed; and (b) that it is not really a bill of particulars but a motion for reconsideration of the order dated October 2, 1981, and not having been set for hearing, the same is a mere scrap of paper.[10]

Considering the foregoing pleadings of the parties, respondent Judge on March 26, 1982 issued an order[11] giving private respondent "a period of five (5) days from today within which to manifest in writing which remedy they are pursuing, furnishing copy thereof to counsel for the defendants who is given a period of five (5) days from receipt therefrom within which to file his comment thereto."

Thereafter, private respondent through collaborating counsel, Atty. Lino Añoover, filed on March 30, 1982 a Motion for Reconsideration and Withdrawal of Appeal.[12] On April 13, 1982, respondent Judge issued an Omnibus Order,[13] granting the motion for reconsideration and lifting and setting aside the order of dismissal dated December 24, 1981. On April 28, 1982, petitioner complied with the Omnibus Order by filing an Amended Complaint enumerating fifty-six (56) heirs of the Maysilo Estate.[14] Petitioner moved to reconsider the Omnibus Order but the same was denied by respondent Judge in his order dated May 5, 1982.[15]

Hence, petitioner filed with respondent Court a petition for certiorari and prohibition with a prayer for the issuance of a writ of preliminary injunction, to annul and set aside the order of April 13, 1982 setting aside the order of December 24, 1981 dismissing the case with prejudice as well as the order of May 5, 1982 denying its motion for reconsideration, claiming that in issuing the said orders respondent Judge committed a grave abuse of discretion amounting to excess of jurisdiction.[16] On September 15, 1982, respondent Court promulgated a decision,[17] dismissing the petition for lack of merit.

In dismissing the petition, respondent Court ruled that since private respondent's record on appeal had not yet been approved, respondent Judge had still the authority to reconsider its order dismissing the case. It cited the ruling in *Alkuino vs. Arrieta* (9 SCRA 458) and *Prisco vs. Castelo* (87 Phil. 714) regarding the jurisdiction of a trial court to grant a motion for execution before the perfection of the appeal. It also cited the ruling in *Cabungcal vs. Fernandez* (April 30, 1964, 10 SCRA 731) to the effect that even after the perfection of the appeal but prior to the transmittal of the record on appeal, it is still within the power of the court to set aside its order approving the record on appeal with a view to correcting or completing the same. It concluded that under the circumstances private respondent had the right to withdraw its notice of appeal and the trial court could reconsider its order dismissing the complaint and resolve to try the case on the merits.

In its main assignment of error, petitioner questions the above ruling of respondent Court and the applicability of the decisions cited in support thereof. Petitioner's learned counsel emphasizes that as far as he knows, there is yet no clear-cut jurisprudence on the question of whether a trial court may validly entertain a motion for reconsideration filed after an appeal has been taken and the period of thirty (30) days from receipt of a decision or final order has expired. He points to the seemingly ambiguous language of Section 1 of Rule 37 which reads thus:

"Within the period for perfecting an appeal, the aggrieved party may move the trial court to set aside the judgment and grant a new trial x x x."

This provision may give the erroneous impression that a motion for new trial or reconsideration may be filed with the trial court even after the lapse of thirty (30) days from service of the judgment as long as the appeal has not been perfected.

On the other hand, Section 3 of Rule 41 reads as follows:

"Appeal may be taken by serving upon the adverse party and 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. x x x"[18]

It is clear that the word "perfecting" in Section 1 of Rule 37 should be construed as "taking". There is a well-known difference between the taking of an appeal and the perfection of an appeal. An appeal is taken by filing and serving a notice of appeal, an appeal bond and a record on appeal (*supra*), while the appeal is perfected upon the approval of the record on appeal and of the appeal bond other than a cash bond (Section 9 of Rule 41).[19]

We, therefore, rule that respondent Judge could not validly entertain private respondent's motion for reconsideration after the lapse of the period for taking an appeal.

However, inasmuch as private respondent's belated motion for reconsideration has been disallowed, its appeal from the order of December 24, 1981 dismissing its complaint with prejudice should be given due course.

There is no question that the notice of appeal, appeal bond and record on appeal which were filed by the principal counsel of private respondent on March 1, 1982 were filed on time since February 28, 1982 was a Sunday. But petitioner claims that the appeal was filed late because the collaborating counsel of private respondent received a copy of the order one day before its principal counsel received his copy. On the other hand, the collaborating counsel claims that he received said copy only on February 15, 1982. Petitioner further claims that the former rules required service on the adverse party as well as filing of the appeal papers within the reglementary period, and its counsel received the appeal papers after the lapse of said period. We do not consider these technical objections sufficient to deprive private respondent of its right of appeal.

This Court had previously ordered that the original record of Civil Case No. Q-33174 of the Regional Trial Court and the original record of CA-G.R. No. SP-14302 of the Intermediate Appellate Court be forwarded to it. Inasmuch as the only issue in this appeal is whether or not respondent Judge erred or acted with grave abuse of discretion in dismissing the complaint with prejudice, this Court resolved to follow its procedure in previous cases[20] of deciding the appeal on the merits instead of remanding the case to the lower courts for further proceedings.

The complaint filed by private respondent Maysilo Estate represented by the Court-Receiver involves the validity of five (5) transfer certificates of title issued in the name of petitioner, which were allegedly fraudulently issued inasmuch as the parcels of land covered by said titles are part of the Maysilo Estate. Petitioner filed a Motion for Bill of Particulars and/or For Joinder of Proper Parties. Although the original record does not show proof of service of said motion on counsel for private respondent before the hearing thereof, respondent Judge issued an order on October 2, 1981 directing private respondent to amend the complaint and to include as party plaintiffs the names of all the alleged heirs of Maysilo Estate within ten (10) days from notice thereof.

The original record shows that on November 5, 1981 private respondent filed a "Bill of Particulars". Petitioner argues that said pleading was actually a motion for reconsideration which should be considered a mere scrap of paper because it had no notice of hearing and proof of service. Petitioner even claims that such a pleading was not filed on the said date, but this claim is belied by an examination of the record which shows the stamped date of filing and the consecutive numbering of the pages.

Be that as it may, the fact remains that on December 24, 1981 respondent Judge issued *motu proprio* the disputed order dismissing the complaint with prejudice. If the trial court had not acted on its own motion and had awaited the filing of a motion for dismissal by petitioner, the issue of the filing and sufficiency of the "Bill of Particulars" would have been properly resolved at the hearing of such a motion. As it was, the effect of the disputed order was to decide the issue of the validity of the torrens titles in question without a hearing on the merits.

In the previous cases of *Bautista vs. Teodoro*[21] and *Santos vs. Liwag*,[22] this Court affirmed the dismissal of the complaints because of plaintiffs' failure to comply with the orders to submit a bill of particulars, but in these cases the lower court acted on motions of the defendants. In the case at bar, private respondent filed a "Bill of Particulars" although it was in reality a request for reconsideration. That the trial court subsequently realized the undue harshness of its order is shown by its subsequent, though belated, order dated April 13, 1982 wherein it granted private respondent's motion for reconsideration and reiterated its order requiring the filing of an amended complaint. This order was complied with by private respondent when it filed an Amended Complaint on April 28, 1982 including as plaintiffs fifty-six heirs of the Maysilo Estate.

In the analogous case of *Piramide vs. Go Guioc Sian*,[23] the trial court dismissed the complaint on motion of the defendants, because of the refusal of the plaintiff to comply with its order to amend his complaint by joining as defendants Pedro Piramide and Pilar Piramide who were indispensable or necessary parties. On appeal, this Court ruled that to avoid injustice, the dismissal should not operate as an adjudication on the merits. This ruling may properly be applied to the case at bar.

WHEREFORE, the decision of the Court of Appeals (Intermediate Appellate Court) is reversed; the trial court's order of April 13, 1982 is set aside, but its order of December 24, 1981 dismissing the complaint with prejudice is modified and the dismissal is hereby made without prejudice. There is no pronouncement as to costs.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Melencio-Herrera, Alampay, Gutierrez, Jr., Cruz, and Paras, JJ., concur.

[1] Rollo, p. 28.

[2] Rollo, p. 36.

[3] Rollo, p. 39.

[4] The order of December 24, 1981, reads as follows:

"In an order dated October 2, 1981, the plaintiff was directed to file an amended complaint to include all the alleged heirs of the estate. To this date no such amended complaint is filed.

"WHEREFORE, for failure to comply with the order this case is hereby dismissed with prejudice.

"SO ORDERED." (Rollo, p. 40)

[5] Rollo, p. 41.

[6] Rollo, pp. 41, 42.

[7] Original Record, CC No. Q-33174, p. 22.

[8] Rollo, p. 60, Original Record, CC No. Q-33174, p. 40.

[9] Rollo, pp. 54, 64.

[10] Rollo, p. 69.

[11] Original Record, CC NO. Q-33174, p. 56.

[12] Rollo, p. 75.

[13] The Omnibus Order dated April 13, 1982 reads as follows:

"The Notice of Appeal together with the Record on Appeal filed by plaintiff in this case on March 1, 1982 are hereby considered withdrawn.

"In the greater interest of justice, the Motion for Reconsideration filed by the plaintiff on March 16, 1982 is GRANTED and the order of this Court dated December 24, 1981 dismissing the complaint is lifted and set aside.

"However, the plaintiff is still directed to comply with the order of this Court dated October 2, 1981 and is given a period of ten (10) days from notice hereof within which to file an amended complaint including as party plaintiffs the names of all the alleged heirs of the Maysilo Estate. Failing so, the Court may again be constrained to dismiss the complaint and at that time, the dismissal will be final." (Rollo, p. 79)

[14] Original Record, CC No. Q-33174, pp. 69-78.

[15] Rollo, pp. 80, 84.

[16] Rollo, p. 85.

[17] Rollo, p. 116.

[18] Under BP 129 and the Interim Rules, the period is now fifteen (15) days and only a notice of appeal is required; except in appeals in special proceedings under Rule 109 of the Rules of Court and in other cases wherein multiple appeals are allowed, in which cases the period is thirty (30) days and a record on appeal is also required. (Sec. 39 of BP 129 and Section 19 of the Interim Rules; See also the Resolution in *Habaluyas Enterprises Inc. vs. Japson*, G.R. No. 70895, May 30, 1986.)

[19] Under the present procedure, an appeal is taken by filing a notice of appeal (Section 20 of the Interim Rules), and the appeal is perfected upon the expiration of the last day to appeal by any party. (Section 23 of the Interim Rules; See also *Yabut vs. Intermediate Appellate Court*, G.R. No. 69208, May 28, 1986.)

In cases where a record on appeal is required, an appeal is taken by filing a notice of appeal and a record on appeal, and the appeal is perfected upon approval of the record on appeal (Sec. 23 of the Interim Rules).

[20] Cf. *Quimson vs. Philippine National Bank*, November 24, 1970, 36 SCRA 26; *Quisumbing vs. Court of Appeals*, June 23, 1983, 122 SCRA 703.

[21] 101 Phil. 701 (1957).

[22] November 28, 1980, 101 SCRA 327.

[23] November 4, 1976, 74 SCRA 9.

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