

ANTHONY SY, SR., WAYNE T. SY, LORY T. NGAN, ANTHONY SY, JR., JESUS SAMIO SON, AND V & M COMMERCIAL COMPANY, INC., PETITIONERS, VS. THE HONORABLE INTERMEDIATE APPELLATE COURT (4T...*G.R. No. 66741. June 16, 1988*

Ponente: GUTIERREZ, JR., J.

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The main issue in these consolidated petitions is whether or not formal notice of a counsel's change of address was indispensable in the trial court's telling the right of the losing parties to appeal its decision.

In G.R. No. 66741, the petitioners alleged that eight (8) hectares of land along the South Superhighway in Muntinlupa, Metro Manila, valued at more than P50 million is involved in these cases. They question the decision which, through a technicality, would nullify their titles, deprive them of their properties, and validate titles allegedly defective on their faces alone.

Henry Munar Chan applied for the registration of a parcel of land located in Muntinlupa, Metro Manila. The case was docketed as LRC Case No. Q-335 of the Court of First Instance of Rizal, Quezon City Branch. On February 21, 1974, a decision was rendered approving Chan's application. Since Chan, even before the approval of his application had already disposed of several parcels of the subject lot, corresponding decrees of registration and original certificates of title were issued in 1974 in favor of Chan and his various assignees. After the issuance of the decree, Chan continued to make several assignments and transfer of portions of the subject parcel of land. Corresponding certificates of title were issued to his assignees.

On February 2, 1979, Teoville Development Corporation (Teoville for short) filed a complaint for quieting of title and damages with preliminary injunction against Henry Munar Chan and his assignees. It alleged among others that: (1) Teoville Development Corporation is the owner of parcels of land in Muntinlupa, Metro Manila, covered by Transfer Certificates of Title Nos. 268165, S-27367, S-27368, 188445, 188447 and 188347, all of the Registry of Deeds, of Rizal; (2) said parcels of land are part of a large parcel of land acquired from its predecessor-in-interest, the Villonco Realty Company; (3) said parcels of land were originally registered as Original Certificate of Title No. 2553 of the Registry of Deeds for Rizal issued in G.L.R.O. Rec. No. 10766, Case No. 34 of the Court of First Instance of Rizal on May 7, 1919 in favor of El Colegio de San Jose; and (4) that the boundaries of the registered parcels of land of Henry Munar Chan overlap those covered by the corporation's transfer certificates of title. The corporation prayed that the decrees of registration, original certificates of title, and transfer certificates of title issued to Chan and his assignees be declared as null and void. The case was filed with the Court of First Instance of Rizal, Pasay City Branch and was docketed as Civil Case No. 6966-P.

On April 30, 1981, Philippine Machinery Parts Manufacturing Company, Inc., (hereinafter referred as Phil. Machinery) one of the assignees of Henry Munar Chan filed a complaint for quieting of title with preliminary injunction and damages against Teoville with the same court where Civil Case No. 6966-P was pending. The case

was docketed as Civil Case No. 9055-P.

In 1981, Phil. Machinery entered into the parcels of land covered by its transfer certificates of title, started digging them up, and removing soils therefrom. Upon learning of such activities, Teoville protested against the intrusion on the ground that the same properties were covered by its own transfer certificates of title.

The two cases were tried jointly by the court¹ s Branch XXIX presided by the same judge.

After trial on the merits, the trial judge promulgated two separate decisions in the two cases. The dispositive portion of the decision dated November 25, 1982 in Civil Case No. 6966-P states:

"WHEREFORE, judgment is hereby rendered upholding the plaintiff s better right to the properties in question, declaring as null and void Decrees of Registration Nos. N-150479 to N-150484, inclusive, Original Certificates of Title Nos. 10161 to 10166, inclusive, and all transfer certificates of title emanating therefrom, and sentencing the defendants Henry Munar Chan and the Sy Family, Anthony D. Sy, Sr., Anthony Sy, Jr., Lory T. Ngan and Wayne T. Sy, jointly and severally, to pay the plaintiff the sum of P100,000.00 for attorney's fees, plus costs of suit.

"The counterclaim of the defendants is hereby dismissed.

"The Third Party Complaint filed by the defendants Nussalt Industries Corporation and Sheridan Manufacturing Industries Corporation against See Eng Huy, Jesus Samio Son and Rodolfo Sy which was admitted pursuant to the Order of this Court on June 25, 1979 is hereby dismissed for lack of evidence.

"The preliminary injunction issued is made permanent and the surety bond posted by the plaintiff is ordered cancelled.

"Let copies of this Decision be furnished the Register of Deeds for Rizal, Pasig, Metro Manila."

The dispositive portion of the decision dated November 29, 1982 in Civil Case No. 9055-P states:

"WHEREFORE, judgment is hereby rendered dismissing the complaint, with costs against the plaintiff, and, conformably with the judgment of this Court in Civil Case No. 6966-P, Decree of Registration No. N-150482, OCT No. 10162 and TCT Nos. 29684, 103210 and 103219, and all succeeding transfer certificates of title covering former Lot F, are hereby declared null and void. The plaintiff is hereby ordered to pay the defendant corporation the sum of P162,800.00, as actual damages, and P100,000.00 for attorney's fees."

Copies of the decisions were sent to Nemesio Diaz, counsel for the defendants in C.C. No. 6966-P and for the plaintiff in C.C. No. 9055-P, at his address of record at No. 202 Medalla Building, Cubao, Quezon City. The copies were returned to the court on December 11, 1982 unserved with annotations from the post office on their respective envelopes that the addressee had moved out of the stated address.

On February 1, 1983, Teoville, as plaintiff in C.C. No. 6966-P, and defendant in C.C. No. 9055-P, filed in both cases an ex-parte motion for a writ of execution stating that the decisions in both cases had become final and executory. It alleged that although there was a failure to deliver the copies of the decision, this did not suspend the running of the period for the losing parties to either move for a new trial or to appeal from the decisions for the reason that their counsel, Nemesio Diaz did not file a formal notice of a change of address. Teoville cited the case of Philippine Suburban Development Corporation v. Court of Appeals, et al. (100 SCRA 109) and states that had not Atty. Diaz moved out of his address of record, he could have received the copies of the decision on December 11, 1982. Therefore, the parties represented by Diaz had 30 days or until January 10, 1983 to either file a motion for a new trial or a motion for reconsideration or to perfect an appeal. Teoville stated that such an omission resulted in the judgment becoming final.

On February 3, 1983, the lower court granted both motions.

Atty. Nemesio Diaz, in motions filed February 16 and March 1, 1983, questioned the propriety of the Order considering that he had not received copies of the subject decisions.

On March 21, 1983, Diaz, in behalf of the losing parties in the two cases filed a joint motion for reconsideration of the two subject decisions.

The lower court denied all the motions in both cases on the ground that the decision had long become final and executory and, hence, it had no more jurisdiction to entertain the motions except to deny them.

The defendants in Civil Case No. 6966-P and plaintiff in C.C. No. 9055-P then filed separate petitions for certiorari, prohibition, and/or mandamus with the Intermediate Appellate Court challenging the lower court's orders.

The petition of the defendants in Civil Case No. 6966-P was docketed as AC G.R. No. SP-OO813 while that of the plaintiff in Civil Case No. 9055-P was docketed as AC-G.R. No. SP-00803.

In separate decisions of two Divisions, the appellate court advanced the view that service of copies of the decisions on counsel Atty. Nemesio Diaz at his address on record was valid and effective and his failure to receive them did not stop the running of the period to appeal. The court ruled that formal notice of a change of address of counsel is indispensable for the court to take cognizance of such change. It upheld Teoville's citation of the dictum in *Philippine Suburban Development Corporation v. Court of Appeals* (supra). Both petitions were denied for lack of merit.

A motion for reconsideration filed by the petitioners in CA-G.R. No. 00813 was denied. On the other hand, the petitioner's motion for reconsideration in CA-G.R. No. 00803 was granted. The dispositive portion of the resolution in AC-G.R. No. 00803 reads:

"WHEREFORE, the decision of July 31, 1984 is hereby reconsidered and set aside. The writs of certiorari and mandamus are granted. The orders of February 3, 1984 and April 19, 1984 as well as all proceedings pursuant to the order of execution complained of are declared null and void. Respondent court is hereby directed to allow petitioner to file its contemplated appeal from the decision dated November 29, 1982 within TEN (10) DAYS from petitioner's receipt of copy of this resolution."

The motion for reconsideration of the above resolution filed by respondent Teoville was denied.

The crucial issue in these two petitions is whether or not a formal notice of a change of address is indispensable for the court to take cognizance of such change of address.

Nemesio Diaz, counsel of the petitioners in G.R. No. 66741 and private respondent in G.R. No. 75011 reiterates his earlier stand in the lower courts that there was no need for him to file a formal change of address because the lower court already had actual knowledge of his change of address.

In the *Philippine Suburban Development Corporation* case, the petitioner, after losing in the then Court of First Instance of Manila, filed a timely appeal to the then Court of Appeals. The appellate court sent thru registered mail a notice to the petitioner at its counsel's address on record requiring it to file the appellant's brief within 45 days from receipt of said notice. The notice was not claimed. The 45-day period lapsed. The appellate court dismissed the appeal and final judgment was entered in accordance with Section 9, Rule 13 of the Rules of Court which provides that service of said notices is deemed completed upon the expiration of five days from the date of the first notice of the postmaster. Notices of the dismissal of the appeal and the entry of judgment which were sent to the counsel's address on record were not also claimed. The court of origin issued the corresponding writ of

execution which was served at the counsel's new office in Makati where he was traced. It turned out that the petitioner's counsel had changed his address without informing the court. The counsel filed a motion to lift the order of dismissal, set aside entry of judgment and reinstate appeal. The motion was denied. A petition challenging the denial of the motion before the Court of Appeals was also denied. Hence the petitioner came to this Court. In dismissing the petition, we stated:

"Counsel claims that when he vacated his old office and transferred to the 8[th] Floor, PLDT Building, Makati, he filed several pleadings (an extension of time to file comment on March 14, 1969 and the comment filed on April 15, 1969) wherein he indicated his address to be at the 8[th] Floor, PLDT Building, Makati and contends that this should have put respondent court and adverse counsel on notice. This is untenable. We have held time and again that notices to counsel should properly be sent to his address of record in the absence of due notice to the court of a change of address. As held in *Lopez v. de los Reyes*, (31 SCRA 214 [1970], per former Chief Justice Querube C. Makalintal; *Marquez and Noza v. Panganiban*, 109 Phil. 1121 [1960]; and *People v. Manangan*, 56 SCRA 817 [1974], per now Chief Justice Fernando) the fact that counsel used a different address in later pleadings 'should not be taken as notice to the court of either a change of address or of another address in addition to that which was already of record.'

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"Counsel cannot presume that respondent court will take cognizance of any other addresses that he may use in his pleadings, or assume that a given address is his residence, for unless he files a notice of change of address, his official address remains to be that of his address of record. It may well be a temporary address or just one of the many offices maintained by counsel. At most, it merely indicates (as was held in *Lopez*, supra) that the pleading was prepared in and mailed from said place and therefore does not supersede his address of record. Moreover, notices of court processes are ordinarily taken care of by clerks, who are naturally guided by addresses of record. To require the court and its personnel before sending out the notices, to be continuously checking the record and the various addresses from which a counsel may have filed his pleadings and sending them to such address(es) instead of his address of record which is duly recorded on the cover of the Rollo is to show confusion and add an intolerable burden which is not permitted by the Rules of Court. (*Juane v. Garcia*, 25 SCRA 801 [1968], per Sanchez, J. [retired]; see Rule 7, Sec. 5; Rule 13, Sec. 5.)

"Counsel pleads for a liberal interpretation of the Rules of Court to allow the reinstatement of his appeal. The failure of counsel to file brief within the reglementary period and the dismissal of his appeal was of his own doing, x x x."

There are circumstances which differentiate these petitions from the Philippine Suburban Development Corporation case. In the instant petitions, it is not a mere failure of the trial court to take notice of changes of address indicated in subsequent pleadings. The trial judge was informed in open court and had already taken cognizance of the change. He had, in fact, acted in accordance with the change of address.

As stated by Diaz:

"a) Atty. Nemesio P. Diaz as counsel for defendants (herein petitioners) in Civil Case No. 6966-P had been placing his new address in all the pleadings, motions and papers he has filed in Court as of November 27, 1981 (Annex E-I hereof) and prior thereto;

"b) Counsel for respondent Corporation actually knew of Atty. Diaz' change of address. It was he who invited

the attention of respondent Judge to such change of address and respondent Judge directed an attending Clerk of Court to indicate such change in the expediente of Civil Case No. 6966-P;

"c) After November 27, 1981 and before November 25, 1982, notices and orders of respondent judge have always been sent to the new address of Atty. Nemesio P. Diaz at Suite 202-210 Isabel Building, España Street, Manila (Annex E-2 hereof);

"d) Likewise, after November 27, 1981, all the pleadings, motions and papers filed by counsel of respondent Corporation was addressed and furnished to Atty. Nemesio P. Diaz at his new address at Suite 202-210 Isabel building, Espana Street, Manila (Annexes J and K hereof);

"e) It is only the Decision of respondent Judge dated November 25, 1982 that was sent to the old address of Atty. Diaz (Annex M hereof)- There must be a thousand reasons for sending that decision to said old address despite circumstances indicated in pars, (a), (b), (c) and (d) above;

"f) As a matter of fact, the order granting the writ of execution issued by respondent Judge was sent to the new address of Atty. Diaz at Suite 202-210 Isabel Building, Espana Street, Manila (Annex O hereof; Annexes A, B and C of Annex S hereof)."

Teoville denies the allegation in paragraph b above, even as Philippine Machinery and the petitioners in G.R. No. 66741 insist on its truth. The others are not in dispute and are sustained by the records. We quote with approval the appellate court's resolution in CA-G.R. No. 00803, now G.R. No. 75011, to wit:

"In the case at bar, there are circumstances worthy of serious consideration and which compel a 'second look.' For instance, Our attention is called to the fact that respondent court furnished counsel for petitioner a copy of the order dated December 21, 1981 at his new address at 202-210 Isabel Building, Espana Street, Manila. Again after the decision of November 29, 1982 was rendered, respondent court sent a copy of its order of February 3, 1983 granting an ex-parte motion for execution to petitioner's counsel at his same new address. These circumstances lend credence to petitioner's assertion that the attention of respondent court had been previously called upon in open court that petitioner's counsel has been using his new address in his pleadings, to which manifestation respondent court responded with an order to have the new address of said counsel noted on the cover of the rollo. We said in Our decision of July 31, 1984 that such notation is not sufficient compliance of notice to the court of counsel's new address as the cover of the expedience shows that the new address of petitioner's counsel is written under the column for plaintiff, private respondent in this case. However, closer examination of said cover of the expediente reveals that the column for defendants on said cover is filled up, down to the bottom part thereof, and there is no available space on which to write the new address of petitioner's counsel in said column and this explains why the new address of counsel is found on the column for plaintiff. The important thing is that respondent court was fully apprised and had actually taken cognizance of such change of address of petitioner's counsel when its orders issued before and after promulgation of the decision of November 29, 1982 were sent to the new address of petitioner's counsel. It is evident that when notices of said orders were sent to the new address of counsel for petitioner, respondent court's personnel were apprised of his new address and had relied on the new address of said counsel recorded on the cover of the rollo. We truly find it strange that of all things, the decision of November 29, 1982 was sent to the old address of counsel for petitioner, when the orders before and after said decision were sent to counsel's new address.

"From all the foregoing, We find that in this particular case there was proper and adequate notice to respondent court of the change of address of petitioner's counsel; accordingly, the sending of notice of the decision of November 29, 1982 to his old and abandoned address was improper and invalid service thereof. (Italics supplied; Rollo of G.R. 75011, pp. 083-085).

Accordingly, the trial court's sending of copies of its decisions in a P50 million controversy to an old address, knowing fully well that the addressee having already moved would no longer receive them, does not serve to start

the running of the period to appeal. And since the records are not clear as to when the losing parties may be considered to have received copies of the trial court's decision, we rule for purposes of these petitions, that the period to appeal shall commence upon our decision becoming final and executory.

Our decision in these petitions does not, in the least bit, imply that we are encouraging forgetfulness or lapses in the behavior of counsel. No matter how aware a court may be about a change of address, attorneys should never overlook the importance of filing a written notice of the change of address with copies furnished all adverse parties. It is not in all petitions that this Court will permit compelling equitable grounds to overcome the effects of a less than strict observance of the Rules.

The petitioner in G.R. No. 75011 maintains as another issue that a petition for certiorari in the appellate court was not the proper remedy for the private respondent. The petitioner contends that upon denial of the respondent's motion for reconsideration by the lower court, the latter should have attempted to perfect an appeal or it should have filed a motion for relief of judgment under Section 2, Rule 38 of the Revised Rules of Court.

The trial court's April 19, 1983 Order shows that the motions to set aside the order for the issuance of the writ of execution as well as the motions for reconsideration of the adverse decisions were denied on the ground that the lower court no longer had jurisdiction to entertain the subject motions for having become final and executory. In effect, the order foreclosed any other possible relief from the trial court's order of execution which, according to private respondent, had already been partially executed. Under these circumstances, a petition for certiorari is the proper remedy.

On the other hand, the petitioners in G.R. No. 66741 also contend that the complaint of Teoville for quieting of title in Civil Case No. 6966-P is barred by Section 38 of the Land Registration Act (Act No. 496) since it seeks to nullify and void the decrees of registration and the titles issued thereunder pursuant to a valid and final decision of Land Registration Case No. Q-335.

In the case of *Gitgano v. Borromeo* (133 SCRA 437), we interpreted the law as follows:

"The basic rule, therefore, is after the lapse of one (1) year, a decree of registration is no longer open to review or attack, even though the issuance thereof may have been attended by fraud. (Section 55, Act 496; *Arnamento v. Guerrero*, 96 SCRA 178; *Republic v. Court of Appeals*, 89 SCRA 648). After one year from its entry, a decree of registration becomes indefeasible and conclusive. (*Philippine National Bank v. Court of Appeals*, 98 SCRA 207). This does not mean, however, that the aggrieved party is without remedy at law. If the property has not yet passed to an innocent purchaser for value, an action for reconveyance is still available.

"The sole remedy of the landowner whose property has been wrongfully or erroneously registered in another's name is, after one year from the date of the decree, is not to set aside the decree, but respecting the decree as incontrovertible and no longer open to review, to bring an ordinary action in the ordinary court of justice for reconveyance or if the property has passed unto the hands of an innocent purchaser for value, for damages. Such a doctrine goes back to the 1919 landmark decision of *Cabanos v. Register of Deeds of Laguna*, 40 Phil.620.' (*Quiñiano v. Court of Appeals*, 39 SCRA 221)."

Teoville, plaintiff in Civil Case No. 6966-P alleged that the subject parcel of land covered by petitioners' (defendants in Civil Case No. 6966-P) certificates of title are also covered by certificates of titles in its name. With the admission that both parties have certificates of title over the properties, the issue in this case is, as between the parties, who has a better right over the same parcels of land.

The private respondent was correct in filing a complaint for quieting of title pursuant to Article 476 of the Civil Code. This is an ordinary Civil remedy sanctioned by Section 38 of the Land Registration Act. The one year prescriptive clause of Section 38 is not applicable in cases of double registration. (See *Garcia v. Court of Appeals*,

95 SCRA 380).

WHEREFORE, the petition in G.R. No. 66741 is GRANTED. The questioned decision of the respondent court is REVERSED and SET ASIDE. The petition in G.R. No. 75011 is DENIED for lack of merit. The orders dated February 3, 1984 and April 19, 1984 of the trial court and all proceedings pursuant to its orders of execution are declared null and void. The period for the petitioners in G.R. No. 66741 and for the private respondent in G.R. No. 75011 to perfect their respective appeals shall commence from the date this decision becomes final and executory.

SO ORDERED.

Fernan (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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