

**ANTONIO VILLANUEVA, AND LIGAYA CABARUBIAS, PETITIONERS,
VS. INTERMEDIATE APPELLATE COURT, AMPARO MORENO DE
JESUS, AND EMILIO MORENO, RESPONDENTS.**

G.R. No. 67582. October 29, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review on certiorari seeking to set aside the decision of the trial court which declared the private respondents as absolute owners of the property in dispute and which ordered the petitioners, among others, to vacate the property and remove the improvements thereon.

The private respondents Amparo Moreno de Jesus and Emilio Moreno filed an action for quieting of title and recovery of possession with damages against the petitioners Antonio Villanueva and Ligaya Cabarubias. In their complaint, the private respondents alleged that they are two (2) of the four (4) children of the late spouses Maximino Moreno and Rosa Encarnacion who both died intestate in 1945 and 1972 respectively; that said deceased spouses during their lifetime were absolute owners and possessors of the parcel of land in question; that since their father's death until 1973, the private respondents took possession and control of the property, exercising all rights of ownership thereon and were in actual, open, continuous, adverse and notorious possession of the same in the concept of owners; that sometime in October 1966, the petitioners were given permission to reside and stay on the middle eastern portion of the land and since then up to the present have been in possession thereof; that subsequently, petitioners claimed the whole property as theirs to the exclusion of the respondents and their co-heirs; and that petitioners, aside from exercising acts of possession and ownership thereto adverse to the respondents, even sold a portion of the same property to several persons in utter deprivation of respondents' rights and interests.

The petitioners filed their answer with compulsory counterclaim and as special and affirmative defenses, alleged, among others, that the complaint states no cause of action as the portion which they were cultivating was sold by the private respondents' two other sisters on installment basis to the petitioners who paid the amount of P5,755.00 with the balance of P2,245.00 still remaining and that this portion of the lot occupied by the petitioners was subsequently sold by them to their second cousin Florentino Villanueva who trusted the petitioners, so much so that he bought the land without asking the document of ownership, and paid the amount of P2,000.00 to petitioner Antonio Villanueva.

After both parties had presented their evidence, the trial court made the following findings of facts:

1. Antonio Villanueva (the petitioner) is a second degree cousin of Florentino Villanueva, who are both farmers of a parcel of land owned by Maximino Moreno, bounded on the north by public highways; on the east by Fernando Vilorio and Pantaleon Esteban, on the south by Heirs of Pantaleon Esteban and on the west by Bartolome Cruz and mountain which is a natural boundary;
2. The parcel of land tenanted by Antonio Villanueva, is situated in Manipa, Castillejos, Zambales, wherein he

and Socorro Moreno and Magdalena Moreno, (the private respondents' two other sisters) jointly administered the property in question;

3. As caretaker of the property, Antonio Villanueva pleaded from the surviving heirs of Maximino Moreno that he will pay by installment a portion of the property which he is occupying in the sum of ten thousand pesos (P10,000.00);

4. Antonio Villanueva made installment in the amount of P5,755.000, but still is indebted to the plaintiffs (respondents) in the amount of P2,245.00, although the purchase price was allegedly reduced from ten thousand P10,000.00) to eight thousand (P8,000.00) pesos;

5. That Antonio Villanueva took possession of the property and by his manipulation, he sold the same property to Florentino Villanueva for two thousand pesos, P2,000.00) notwithstanding the fact that he had not completed the installment payment to respondents;

6. Antonio Villanueva was charged in court under Crim. Case No. 2537 for the crime of estafa for selling the property to Florentino Villanueva. Antonio Villanueva, in fact, was convicted by this court on January 30, 1978 in Criminal Case No. 2537 for the said crime of estafa, for which he was sentenced to suffer imprisonment of four (4) months of arresto mayor and to pay a fine of four thousand pesos (P4,000.00) plus the payment of indemnity to the offended party in the sum of P2,000.00 by way of civil liability and the costs of the proceedings; and

7. The two (2) plaintiffs (private respondents) are pro-indiviso owners and possessors of the subject property and together with the two (2) other sisters and their predecessors in interest had been in open, actual, continuous, notorious and adverse possession in the concept of owners, (respondents) allowed the defendants (petitioners) to stay and occupy a portion of the subject property as tenants.

Based on the above findings, the trial court accordingly ruled:

"The sole issue to be determined in the case at bar is whether or not the plaintiffs and their two (2) other co-heirs are the absolute owners of the property left by their late father Maximino Moreno.

Reassessing the situation as it now stands, and taking into consideration the various tax declarations issued in the name of the plaintiffs and their co-heirs and tax receipts for which they had been paying the land and realty taxes in the concept of an owner, the Court is of the opinion and so holds that the defendants have no legal right to claim ownership of the whole subject property. In the first place, the defendant Antonio Villanueva is still indebted to the plaintiffs in the amount of Two Thousand Two Hundred Forty Five Pesos (P2,245.00) and it is undeniable that the title to the property has not yet passed to him nor had he that right to dispose of the same knowing fully well that the land was encumbered at the time of the disposal. Defendant Antonio Moreno (sic) was a mere tenant at the time and such being the case, his occupation of the property (sic) and legal basis to claim the whole of the property involved in this litigation.

By and large, plaintiffs have made out their case against the defendants by overwhelming preponderance of evidence.

WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendants, as follows:

- a) Declaring the plaintiffs as absolute owners of the property described in paragraph 2 of the complaint, in co-ownership with the other co-heirs;
- b) Defendants are ordered to vacate the premises they are illegally occupying and to remove their improvements therein;
- c) Defendants are sentenced to pay the sum of One Thousand Five Hundred P1,500.00) per year of their occupancy of the land in question since 1973, representing average annual harvest of palay produced on the

subject property, until they vacate the same and return the possession thereof to the plaintiff;

d) Defendants are ordered to reimburse the amount of Sixty Thousand Pesos (P60,000.00) representing the value of the sand and gravel extracted from the property and sold by them;

e) Ordering the defendants to pay the plaintiffs the sum of Seven Thousand Pesos (P7,000.00) by way of attorney's fees; and

f) To pay the costs of the suit.

The above decision was rendered on January 14, 1983.

The petitioners appealed to the then Intermediate Appellate Court, now Court of Appeals.

On August 8, 1983, the office of the petitioners' counsel received an order from the appellate court dated August 1, 1983 to file the corresponding brief. No brief was filed. Hence, on November 23, 1983 the appellate court issued a resolution dismissing the petitioners' appeal for having failed to file the appellants' brief within the reglementary period. This order was received by petitioners' counsel on December 5, 1983.

On January 20, 1984, the counsel for petitioners filed an "Explanation And Motion to Allow Appellant to File Brief" alleging excusable neglect. According to the counsel, the appellate court's resolution dismissing the petitioners' appeal was discovered by the secretary of the counsel only on January 18, 1984 because it was misplaced and mixed with other papers at the secretarial pool, and as of that date, the petitioners' lawyer had not located the appellate court's order to file brief.

On February 27, 1984, the appellate court issued a resolution denying the petitioners' motion for lack of merit, adding that the Court had lost jurisdiction over the case. The petitioners filed a motion for reconsideration.

On March 23, 1984, the appellate court issued another resolution expunging from the records, the appellants' brief which was filed on March 3, 1984.

On May 23, 1984, the petitioners, through their counsel, filed a "Notice of Appeal" before this Court. In said notice, the petitioners sought to justify the filing of their "intended petition for review" by stating that "[p]urely questions of law specifically on jurisdiction deserve a review by the highest court" and that "the reasons and grounds why the brief was not submitted on time were meritorious enough to far outweigh the technicality that the Court (IAC) lost jurisdiction over the case." And thus, they contended that the "acts of the Appellate Court (IAC) amounted to grave abuse of discretion, amounting to lack of jurisdiction."

On June 6, 1984, the petitioners filed an "Appellants' Petition" assailing the trial court's (not the Court of Appeals') decision based on the following assignments of errors:

I

IN THE ASSAYING OF FACTS AND LAW ON THE PRINCIPAL ISSUE OF OWNERSHIP, THE TRIAL COURT ERRED BY INTERJECTING EXTRANEOUS AND COLLATERAL MATTERS RESULTING TO A GLARING MISAPPREHENSION OF FACTS AND LAW.

II

IN THE CALIBRATION OF THE TOTALITY OF PROFFERED EVIDENCES, THE TRIAL COURT ERRED BY MISAPPREHENSION OF EVIDENCE AND IT HAS PLAINLY OVERLOOKED CERTAIN FACTS OF SUBSTANCE AND VALUE, THAT IF CONSIDERED MIGHT AFFECT RESULT OF CASE.

Apparently, the petitioners had a change of mind in that while in their "Notice of Appeal, they alleged grave abuse of discretion on the part of the appellate court for dismissing the appeal, in their present petition, petitioners opted to attack the decision of the trial court on the basis of alleged misapprehension of facts and law.

This procedure adopted by the petitioners is highly irregular, to say the least, for instead of dealing with the issue of the propriety of the appellate court's dismissing the appeal for their failure to file an appellants' brief and to seasonably move to reconsider such dismissal, they chose to file what seems to be a petition for review under Rule 45 of the Rules of Court, assailing instead, the decision of the trial court.

Evidently, the petitioners want this Court to focus its attention more on the decision of the trial court rather than the resolutions of the appellate court which should have been the subject of the instant petition in the first place. If the petitioners wanted to appeal before this Court on a petition for review under Rule 45 of the Rules of Court from the decision of the trial court, they may have been allowed to do so on a showing of a meritorious petition, but in such case, they could only raise questions of law. (See also *Philippine National Bank v. Romillo, Jr.*, 139 SCRA 320)

On the other hand, if the petitioners intended to assail the decision or resolution of the appellate court, they should have filed either a petition for review under Rule 45 raising questions of law or a petition for certiorari under Rule 65 on the ground of grave abuse of discretion or acts in excess of jurisdiction. But the petitioners cannot choose to appeal before the appellate court and then, because of their counsel's own negligence, evade the consequence of a dismissal of said appeal by trying to file a petition for review with this Court assailing this time the decision of the trial court. To add to the confusion, before filing their petition which was captioned as "Appellants' Petition" and with "Amparo Moreno de Jesus, et al., (Plaintiffs-Appellees) v. Antonio Villanueva, et al., (Defendant-Appellants)" as parties, the petitioners filed a "Notice of Appeal" (a pleading not required when filing a petition before this Court). They also made the Intermediate Appellate Court as one of the respondents. In said notice, it was alleged that the appellate court committed grave abuse of discretion amounting to lack of jurisdiction. These procedural maneuvers whether purposely resorted to in order to sow confusion or simply the product of ignorance of counsel cannot be countenanced by this Court.

We cannot pass upon the issues raised in this petition because the proper forum for the same is lodged with the appellate court which has jurisdiction to decide questions of facts and law. Even if we do decide to pass upon the merits of this case and disregard this procedural defect, the petition itself, which is all but four and a half pages, is so poorly written that it is difficult to comprehend the facts surrounding the case without relying on the decision of the trial court. This is not to mention the fact, and it can be readily seen, that the petition was actually the "Appellants' Brief" which was filed by the petitioners below as defendant-appellants which explains why the same was captioned as "Appellants' Petition" and why it referred to the parties as "plaintiff-appellees" and "defendant-appellant."

The counsel for petitioners did not even bother to change the date of the petition because while the same was actually filed on June 6, 1984 before this Court, the petition was dated February 27, 1984. Although this Court does not generally dwell on these minute details, we deem it worthwhile to mention them in this case if only for the edification of lawyers appearing before this Court and also to lend credence and justification to the appellate court's dismissal of the petitioners' appeal based on their failure to file brief. While we, at times, allow a liberal interpretation of the Rules, the petition before us does not merit such liberality. The reason advanced by the petitioners before the appellate court is not sufficient cause for the allowance of their appeal. In *Gregorio v. Court of Appeals*, (72 SCRA 120, 123) we ruled:

"1. It is provided in Section 15, Rule 46 of the Revised Rules of Court that "Extension of time for the filing of briefs will not be allowed, except for good and sufficient cause, and only if the motion for extension is filed

before the expiration of the time sought to be extended." This indicates that if good reasons are shown, the Appellate Court may grant as many extensions as may be allowed if the following requisites are complied with: (1) the motion must state good and sufficient cause; and (2) it must be filed before the expiration of the time sought to be extended. x x x."

In the case at bar, aside from the fact that there was no good and sufficient cause for petitioners' failure to file brief, they subsequently filed the same long after the court had issued the order to dismiss the appeal for having been deemed abandoned. If the counsel for petitioners found himself in a predicament where he could no longer revive the appeal he has only his own negligence to blame. As we have ruled in the case of *Philippine Suburban Development Corporation v. Court of Appeals*, (100 SCRA 109, 113-114):

"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. He failed to receive the notice to file brief because he transferred his law office without giving the proper notice therefor, or making the necessary arrangements to assure that notices sent to his old address (which was likewise that of his client, the petitioner) would be forwarded to his new address. There was also an apparent failure to check periodically, as an act of prudence, the status of the pending case before the Court of Appeals. x x x."

The Court, therefore, finds that the respondent Court of Appeals committed no grave error or abuse of discretion in dismissing the appeal which would justify the exercise of this Court's supervisory powers. Suffice it to state, finally, that even as of this late hour, petitioner has not submitted any pertinent pleading nor copy of the questioned decision nor tendered an appellant's brief that would show a lawful and valid defense and compelling reasons that would justify the issuance of the corrective writ of certiorari."

The exercise of ordinary prudence or foresight should have prompted the petitioners' counsel to check why his office had not received any order from the appellate court in January, 1984 when he had filed the notice of appeal as early as July, 1983. In the case of *Philippine Suburban Development Corporation (supra)* citing *Juane v. Garcia* (25 SCRA 801) we further said:

xxx xxx xxx

"xxx It is only when some such situation comes about that the negligent lawyer comes to realize the grave responsibility that he has incurred to his client and to the cause of justice. It is then that the lawyer is reminded that in his oath of office he solemnly declared that he 'will conduct' himself 'as a lawyer according to the best of his knowledge and discretion.' Too late. Experience indeed is a good teacher. To a lawyer, though, it could prove very expensive."

WHEREFORE, the petition is hereby DISMISSED for lack of merit. The questioned orders of the appellate court are AFFIRMED.

SO ORDERED.

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

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