

**ROGELIO B. RAGASAJO, PETITIONER, VS. THE INTERMEDIATE APPELLATE COURT AND THE INTESTATE ESTATE OF FLORENTINO MANUNGAS, REPRESENTED BY ITS ADMINISTRATRIX ENGRACIA N. MANUNGAS, RE...**

*G.R. No. 69129. August 31, 1987*

Ponente: GANCAYCO, J.

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**GANCAYCO, J.:**

This is a petition for certiorari and mandamus seeking the nullification of the Resolutions of the then Intermediate Appellate Court dated August 10, 1984 and September 27, 1984, in AC-G.R. No. CV-0719\* denying petitioner's motion for reconsideration of the Resolution of June 25, 1984, declaring his appeal abandoned, and to command respondent court to admit petitioner's brief.

The issue that emerges in this petition is whether or not the right to appeal which had been declared abandoned for failure to file appellant's brief within the period prescribed by the rules may be revived by the filing of a motion for reconsideration within the reglementary period.

It appears that petitioner filed a civil suit for Cancellation of Titles\*\* against the Intestate Estate of Florentino Manungas represented by Administratrix Engracia Manungas before the then Court of First Instance of Davao, 16th Judicial District.[1] The complaint alleged among others that private respondent unlawfully and wrongfully prepared a survey plan of Lot 866 by including 11,132 sq. m. of petitioner and fraudulently secured title in her favor. Respondent vehemently denied the accusation and alleged otherwise.

After trial on the merits, the court a quo rendered a decision in favor of respondent and against herein petitioner, the dispositive part of which reads as follows:

"WHEREFORE, judgment is hereby rendered:

- 1). Upholding the validity of TCT Nos. T-30203, T-30204, T-30205, T-30206, T-30207 and T-30208 and ordering the cancellation of the notice of lis pendens from TCT No. T-30203;
- 2). Nullifying OCT No. P-12853 and ordering the plaintiff and his privies to vacate and surrender the possession of the lots covered thereby, together with all improvements, free from liens and encumbrances, to Engracia Vda. de Manungas and the Intestate Estate of Florentino Manungas who are the true and lawful owners, it appearing that the said plaintiff was a purchaser and builder in bad faith;
- 3). Ordering the plaintiff to pay to the Manungases nominal damages of P15,000, plus P15,000 moral and P5,000, exemplary damages, and attorney's fees of P5,000.

Costs against the plaintiff."[2]

Petitioner appealed to the respondent Intermediate Appellate Court by filing a notice of appeal. On November 16, 1983, petitioner through counsel, Occena Law Office, received a notice requiring him to pay a docket fee of

P68.00 within fifteen (15) days from notice, which the petitioner complied with on November 24, 1984, by remitting Postal Money Order, F-5166765 under Office Receipt No. 2526531E. On December 9, 1983, a notice requiring petitioner to file the appellant's brief within forty-five (45) days from receipt was mailed by the clerk of court of the Intermediate Appellate Court to the Occena Law Office.[3] On December 29, 1983, petitioner's counsel received the notice to file brief.[4]

On April 24, 1984, without any brief having been filed, and without any motion for extension of time having been sought by petitioner, private respondent filed an ex-parte motion to dismiss the appeal.[5]

In the Resolution of June 25, 1984, respondent court declared the appeal abandoned for failure of petitioner to file the required brief.[6] On July 11, 1984, petitioner's counsel received the notice of dismissal.

On July 26, 1984, petitioner filed with the respondent court a motion for reconsideration of the Resolution of June 25, 1984, and for admission of appellant's brief with one (1) copy of brief attached, through registered mail, under Registry No. 4954 of Davao City Post Office and another copy served upon respondents' counsel under Registry Receipt No. 4953. On the same date, petitioner filed with respondent court six (6) more copies of the brief through air cargo under Airway Bill No. 216733 of the Allied Brokerage Corporation, Davao City. On July 30, 1984, respondent court received petitioner's motion for reconsideration.[7]

On August 10, 1984, respondent court, considering the day of receipt as the date of filing, issued a resolution[8] which reads thus:

"Acting upon the motion for reconsideration filed by counsel for plaintiff-appellant on July 30, 1984, the Court resolved to deny the motion, the same having been filed late."

On August 25, 1984, petitioner filed a motion for reconsideration of the Resolution of August 10, 1984,[9] while private respondent filed a timely opposition thereto.[10]

On September 27, 1984, respondent court denied petitioner's motion of August 25, 1984.[11] On October 12, 1984, the Resolution of June 25, 1984, became final.

Hence, on October 26, 1984, petitioner filed the present petition.\*

A perusal of the petition shows that the petitioner's cause of action is predicated upon the respondent court's denial of his motion for reconsideration of the Resolution of June 25, 1984, declaring petitioner's appeal abandoned. It is the position of the petitioner that with the said denial, respondent court unlawfully deprived him of his right to appeal considering that his motion for reconsideration was filed in due time. Petitioner maintains further that the respondent court acted with grave abuse of discretion in considering the day of receipt, July 30, 1984, as the date of filing, and thus denying his motion for reconsideration, whereas, he filed his motion on July 26, 1984 through registered mail.

The right to appeal is not a natural right nor part of due process but merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of the law.[12] It is the rule in this jurisdiction that an appeal from the Court of First Instance\* to the Court of Appeals may be taken by filing with the trial court within thirty (30) days[13] from notice of order, or judgment a notice of appeal, an appeal bond and a record on appeal.[14] Upon receipt of the printed copies of the record on appeal, the clerk shall ascertain whether or not the transcript or exhibits have been elevated and if not, shall cause this to be done.[15] Upon receipt of the transcript and exhibits, the clerk shall notify both parties that all evidence, oral or documentary is already attached to the record.[16] From the notice of the Clerk of Court to the effect that all evidence, oral or documentary is already attached to the record, it is the duty of the appellant to file the printed brief with the Court of Appeals.[17]

The record before Us shows that petitioner failed to comply with respondent court's order of December 9, 1984, requiring the filing of appellants' brief within forty-five (45) days from receipt thereof, the notice of which was received by petitioner's counsel on December 29, 1984, as per registry return card,[18] a xerox copy of which was made part of the record of this case with a corresponding certification issued by respondent court's clerk of court.[19] Petitioner, instead of asking of this Court and that of the respondent court for liberality by stating that his failure to do so was due to excusable oversight, asserted that in fact no such notice to file brief was received in his office. This pretension must fall for as above stated said counsel received said notice to file brief on December 29, 1983 as shown by the registry return card.

Under Rule 50 of the Rules, one of the grounds by which the Court of Appeals may, on its own motion or that of the appellee, dismiss the appeal is the failure on the part of appellant (or his printer) to serve and file the required number of copies of his brief within the time prescribed by these rules.[20] Under the said provision, the Court of Appeals has a discretion to dismiss or not to dismiss the appeal having in mind the circumstances obtaining in each case. In the present case, from the date of receipt of notice to file brief on December 29, 1983, there being no extension of time sought, the forty-five (45) days lapsed on February 12, 1984. Thus the Resolution of respondent court of June 25, 1984 declaring the appeal abandoned is in order.

It is however the position of the petitioner that his motion for reconsideration should not have been denied as it was filed in due time.

The petitioner's motion was filed through registered mail on July 26, 1984, which was the last day of the 15-day period of appeal since petitioner received notice of the order of dismissal on July 11, 1984. The date of mailing shall be considered as the date of filing[21] Contrary to the finding of respondent court, the said motion was filed on time.

In the motion for reconsideration the petitioner failed to show that it was due to excusable negligence or oversight that the brief was not filed on time no did petitioner demonstrate the merit of his appeal. The respondent court therefore did not err in denying the motion for reconsideration even if We overlook its error in considering the motion to have been filed out of time.

The court would like to stress that the attempt of counsel for petitioner to mislead the court by denying he ever received the notice to file brief when in fact he did is noted with disapproval by the court. As an officer of the court he must conduct himself with candor and sincerity towards the courts. His dedication to the cause of his client is no excuse. He does more damage to his client and to his standing as a member of the Philippine Bar in so doing. Let this serve as a warning.

Nevertheless the court examined the judgment of the lower court sought to be reviewed, wherein the trial court found, among others, that contrary to the claim of petitioner that the transfer certificates of title covering the properties of private respondent had encroached upon the titled properties of petitioner, it is the certificates of title covering the properties of petitioner that encroached into the properties of private respondent by an area of approximately 11,132 square meters.[22] On the assumption that this finding of the lower court is supported by the evidence, and considering the contention of petitioner in his appeal brief filed in the Court of Appeals that his property covered by TCT No. T-12852 has an area of 5,695 square meters while his property covered by OCT P-12853 has an area of 34,118 square meters, or a total of 39,813 square meters for both properties,[23] then the trial court appears to have committed an error in cancelling said OCT. No. P-12853 of petitioner and awarding possession and ownership of the entire property to private respondent. Only the portion of the said property of private respondent encroached upon by petitioner should be returned to said respondent and only to this extent should the title of petitioner be cancelled and nullified.

Unfortunately, since the judgment has now become final, the herein petition may not be given due course under the circumstances of the case so that this apparent injustice that appears to have been committed cannot be corrected in this proceeding. Indeed petitioner did not even raise this issue in the petition. Nevertheless, at the time of enforcement of the judgment petitioner may invoke the power of the lower court to correct the ambiguity in the dispositive part and/or such clerical error therein so that it may conform to the findings and conclusion of the Court as embodied in the body of the judgment.[24]

WHEREFORE, the petition is DISMISSED for lack of merit without pronouncement as to costs.

**SO ORDERED.**

Teehankee, C.J., Narvasa, Cruz, and Paras, JJ., concur.

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\* Penned by Justice Jorge R. Coquia, concurred into by Justices Mariano Zosa and Floreliaana Castro Bartolome.

\*\* TCT Nos. 30203; T-30204; T-30205; T-30206; T-30207 & T-30208.

[1] Docketed as Civil Case No. 1330.

[2] Pages 110-124, Rollo, Decision, Civil Case No. 1330, Appendix 7, Private Respondent.

[3] Pages 98-99, Rollo, Appendix 1, Respondent.

[4] Page 100, Rollo, Xerox copy of the registry return card with corresponding certification issued by the clerk of court.

[5] P. 101, Rollo, Appendix 3, Respondent.

[6] Pp. 32-33, Rollo, Annexes A & B, Petition.

[7] Pp. 13-15, Rollo, Annex A, Petition.

[8] Pp. 107, Rollo, Appendix 5, Respondent.

[9] Pp. 16-18, Rollo, Annex B, Petition.

[10] Pp. 101-102, Rollo, Appendix 3, Respondent.

[11] P. 37, Rollo.

\* After the filing of this petition, antecedent facts followed:

On November 26, 1984, Entry of Judgment and the entire records of the case were sent to the Court of origin (Page 32, Rollo, Annex A, Comment);

On January 23, 1984, the court of origin issued the writ of execution;

On February 4, 1985, petitioner filed a Motion To Set Aside Void and Unwarranted Writ;

On February 15, 1985, respondent filed a comment thereto.

Note: To date, no resolution has yet been issued on this particular matter.

[12] Velasco vs. CA, 51 SCRA 439; Bello vs. Fernando, 4 SCRA 135; Aguilar and Canapao vs. Navarro, 55 Phil. 898, 904.

\* Now the Regional Trial Court, Section 13, Batas Pambansa Blg. 129.

[13] Section 3, Rule 41, has been modified by Section 39 BP Blg. 129, otherwise known as the Judiciary Act of 1981. The period within which an appeal may be taken has been reduced to 15 days, except habeas corpus cases.

[14] Section 3, Rule 41, Revised Rules of Court.

[15] Section 8, Rule 46, Revised Rules of Court.

[16] Section 9, Rule 46, Revised Rules of Court.

[17] Section 10, Rule 46, Revised Rules of Court.

[18] Supra.

[19] Supra.

[20] Section 1(f), Rule 50

[21] Section 1, Rule 13, Revised Rules of Court.

[22] P. 122, Rollo; p. 13, Decision.

[23] P. 36, Brief of Petitioner, p. 189, Rollo.

[24] Ilacad vs. Court of Appeals, August 26, 1977, 78 SCRA 308 citing Padua vs. Robles; Locsin vs. Paredes and Hodges, G.R. No. 45030, March 28, 1936, 63 Phil. 91; Republic vs. De los Angeles, Oct. 4, 1971, 41 SCRA 427, 443 & 444; Filipino Legion Corp. vs. Court of Appeals, G.R. L-22364, April 30, 1974, 36 SCRA 675, 691-692.

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