

DOMINGO SUMBILLO, MARCELO SUMBILLO, VALERIANO SUMBILLO, AND JULITA SUMBILLO, PETITIONERS, VS. INTERMEDIATE APPELLATE COURT, AMPARO S. TORRES AND DOMINGA S. TORRES, RESPONDENTS.

G.R. No. 75775. August 31, 1988

Ponente: PADILLA, J.

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PADILLA, J.:

Review on certiorari of the decision[*] rendered by the respondent Intermediate Appellate Court (now the Court of Appeals) in AC-G.R. CV No. 04042, entitled: "Amparo S. Torres, et al., plaintiffs-appellants, versus Domingo Sumbillo, et al., defendants-appellees," which reversed and set aside the decision of Judge Natividad G. Dizon, dismissing the complaint filed in Civil Case No. SM-1318 of the Regional Trial Court of Bulacan, as well as the resolution, dated 20 August 1986, which denied the motion for its reconsideration.

The facts, in brief, are as follows:

On 30 September 1982, herein private respondents Amparo S. Torres and Dominga S. Torres filed with the Regional Trial Court of Bulacan, Branch XIII, an action against herein petitioners Domingo Sumbillo, Marcelo Sumbillo, and Julita Sumbillo, for the partition of two (2) parcels of land situated at Minuyan, Norzagaray. The complaint was docketed therein as Civil Case No. SM-1318.

Answering, the petitioners invoked, as an affirmative defense, *res adjudicata*, in that the two (2) parcels of land involved in the case were the same parcels of land that were the subject-matter of two (2) previous cases, Civil Case Nos. SM-511 and 633.

After the pre-trial conference, the petitioners moved for a preliminary hearing on their affirmative defense. In connection therewith, the parties submitted their respective memorandum and documentary evidence, after which the trial court issued an order on 22 March 1984, dismissing the private respondents' complaint.[1]

Counsel for private respondents received copy of the order of dismissal on 6 April 1984, and on 23 May 1984, or after a lapse of forty-seven (47) days, private respondents filed a motion for reconsideration of the order of dismissal. The petitioners filed their opposition thereto on the ground that said motion was filed out of time and the order sought to be reconsidered had already become final.

Resolving the motion for reconsideration, the trial court, in an order dated 1 June 1984, denied the same "it having been filed more than one month from receipt on 6 April 1984 of the Order of 22 March 1984, dismissing the instant case." [2]

Counsel for private respondents received a copy of the denial order on 11 June 1984 and on 25 June 1984, counsel for private respondents filed a second motion for reconsideration, but the same was likewise denied in an order dated 23 July 1984.[3]

Thereupon, the private respondents filed a Notice of Appeal, signifying their intention to appeal the order of 23 July 1984 to the Intermediate Appellate Court.[4] The petitioners filed their opposition thereto,[5] but the trial court, in an order dated 20 August 1984, ordered the elevation of the records of the case to the Intermediate Appellate Court.[6]

On 3 December 1984, the petitioners filed with the respondent appellate court a motion to dismiss appeal, alleging therein that when the notice of appeal was filed on 12 August 1984, the order dismissing the complaint issued on 22 March 1984 had already become final and hence, unappealable.[7] The respondent appellate court, however, denied the motion for lack of merit.[8] Thereafter, the petitioners filed their Appellees' Brief, reiterating therein their contention that the appellate court did not acquire jurisdiction over the appeal of the private respondents because it was not perfected on time.[9]

Then, on 29 July 1986, the respondent appellate court rendered the questioned decision, setting aside the decision of the trial court and ordering the case remanded to the court of origin for further proceedings.[10]

The petitioners moved for reconsideration of the decision, claiming that the respondent appellate court decided the appeal without ruling on the timeliness of the appeal of the private respondents, which was squarely raised as an issue,[11] but the respondent appellate court denied the motion, saying that this issue was earlier resolved when the appellate court denied the petitioners' motion to dismiss the private respondents' appeal.[12]

Hence, the present recourse of the petitioners.

Petitioners maintain that the respondent appellate court acted without jurisdiction and with grave abuse of discretion in not dismissing the appeal of the private respondents notwithstanding the fact that it was filed beyond the reglementary period.

There is merit in the petitioners' contention. The record shows that counsel for private respondents received a copy of the order, dated 22 March 1984, dismissing the complaint, on 6 April 1984. They had, therefore, fifteen (15) days from said date, or up to 21 April 1984 within which to appeal or file a motion for reconsideration.[13] The private respondents, however, filed their motion for reconsideration only on 23 May 1984, or fortyseven (47) days after receipt of the order dismissing the complaint. Clearly, the order dismissing the complaint was already final when the private respondents filed their motion for reconsideration, so that the respondent appellate court had no jurisdiction to entertain the appeal, except to dismiss the same.

To be sure, the respondent appellate court cannot be said to have exercised its exclusive original jurisdiction over actions for the annulment of judgments of the regional trial courts[14] when it entertained the appeal of the private respondents, since the notice of appeal filed by the private respondents is definitely not an action for the annulment of the order dismissing their complaint. In fact, no discussion is made of annulment of judgments in the decision and resolution issued by the respondent appellate court.

What counsel for private respondents should have done was to file a petition for relief under Rule 38 of the Rules of Court and not to appeal from the order denying his second motion for reconsideration, for even if the appeal were allowed, as in this case, the appeal would be futile because there would be no evidence upon which the relief could be based.[15] Besides, no party is allowed to file a second motion for reconsideration of a final order or judgment.[16]

But even if we were to consider the second motion for reconsideration as a petition for relief, the negligence of counsel in not filing the motion for reconsideration within the reglementary period is not excusable as to warrant a reopening of the case. The reason for the failure of counsel for the private respondent to file the motion for reconsideration on time was that he personally received a copy of the order dismissing the complaint only on 17

May 1984. He said:

"g) Counsel for private respondents was allowed by Atty. Jesus Blanca to use the latter's office address at 431 Madrigal Bldg., Escolta, Manila, for mailing purposes, as the former was one of Atty. Blanca's clients in Civil Case No. 6840 now pending before Branch IX of Regional Trial Court at Malolos, Bulacan;

"h) While the order dated March 22, 1984 (Annex '1') issued in Civil Case No. 1318 dismissing said case was delivered to the office of Atty. Blanca at No. 431 Madrigal Bldg., Escolta, Manila, yet the same was not personally received by counsel for private respondents on April 6, 1984 as shown by the Registry Return Card (Annex '1-D', p. 172, Records) but only on May 17, 1984 from the wife of Atty. Blanca as stated in paragraph 7 of the Second Motion for Reconsideration (Annex '2', p. 185, Records) and in paragraph 7 of the Affidavit of the wife of Atty. Jesus Blanca (Annex '2-E', p. 190, records)."[17]

Such excuse cannot be accepted inasmuch as an attorney owes it to himself and to his clients to invariably adopt a system whereby he can be sure of receiving promptly all judicial notices during his absence from the address of record.[18] If a final order or judgment can be reopened everytime an attorney makes similar allegations, the end to litigations would be speculative, if not dependent upon the will of the parties and/or their lawyers.

WHEREFORE, the judgment appealed from is REVERSED and SET ASIDE and another one entered AFFIRMING the dismissal of the complaint in Civil Case No. SM-1318 of the Regional Trial Court of Bulacan. With costs against private respondents in both instances.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Sarmiento, and Regalado, JJ., concur.

[*] Penned by Justice Jose C. Campos, Jr. concurred in by Justices Crisolito Pascual, Serafin E. Camilon and Desiderio P. Jurado.

[1] Rollo, p. 10

[2] Id., p. 14

[3] Id., p. 15, 87

[4] Id., p. 16

[5] Id., p. 17

[6] Id., p. 19

[7] Id., p. 20

[8] Id., p. 22

[9] Id., p. 38

[10] Id., p. 24

[11] Id., p. 31

[12] Id., p. 36

[13] Batas Pambansa Blg. 129, Sec. 39; also Interim Rules and Guidelines, Sec. 19(a)

[14] Batas Pambansa Blg. 129, Sec. 9(2)

[15] Salva vs. Palacio, G.R. No. L-4247, 30 January 1952 90 Phil. 731

[16] Interim Rules and Guidelines, Sec. A(4)

[17] Rollo, pp. 83, 85

[18] Enriquez vs. Bautista, G.R. No. L-1443, 9 September 1947, 79 Phil. 220; Garganta vs. CA, G.R. No. L-12104, 31 March 1959, 105 Phil. 412, 417

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