

TIMOTEO POJAS, PETITIONER, VS. THE HONORABLE MERCEDES GOZO-DALOLE, REGIONAL TRIAL COURT JUDGE, CITY OF TAGBILARAN, IRENEA POJAS, CESARIA LAGROSA AND CORNELIA BETINOL, RESPONDENTS.

G.R. No. 76519. December 21, 1990

Ponente: PARAS, J.

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PARAS, J.:

In a petition for certiorari and mandamus with preliminary injunction, petitioner seeks the annulment of the July 15, 1986 Order of the Regional Trial Court of Tagbilaran, Branch I, presided by herein respondent judge, denying the Notice of Appeal in Civil Case No. 3430 for being filed out of time; and the July 29, 1986 Order of the same court denying the motion for reconsideration.

On March 26, 1981, private respondents filed with the Regional Trial Court of Tagbilaran, Branch I, a complaint for recovery of possession with writ of preliminary mandatory injunction, against herein petitioner. The same was amended several times until a Second Amended Complaint dated July 12, 1981 was filed and admitted by the court in its order of August 12, 1981 (*Ibid.*, pp. 15-20). On August 20, 1981, petitioner filed his Answer to the second amended complaint (*Ibid.*, 21-23).

Respondent judge, after trial, in her decision of March 12, 1986, ruled in favor of private respondents. The said decision, among others, declared that private respondents Ireneas Pojas and Cesaria Logrosa, are the lawful owners of parcel no. 1 and one-half portion of parcel no. 2 of the questioned property, and ordered petitioner to vacate and deliver the possession thereof to private respondent Cornelia Betinol, being the vendee-a-retro of the same (*Ibid.*, p. 30). The said decision was received by petitioner's counsel on April 15, 1986 (*Ibid.*, p. 4).

Petitioner's motion for reconsideration (*Ibid.*, pp. 35-37) was denied in the Order of May 8, 1986 for failure to mention the day the motion is to be resolved, which was considered violative of Section 5, Rule 15 of the New Rules of Court and therefore, a mere scrap of paper (*Ibid.*, p. 38).

His second motion for reconsideration dated April 25, 1986 (*Ibid.*, p. 39) was denied in respondent judge's order of June 20, 1986 for lack of merit (*Ibid.*, p. 86).

On July 2, 1986, petitioner, after receipt of said order of June 20, 1986, on July 1, 1986 (*Ibid.*, p. 4) filed a Notice of Appeal (*Ibid.*, p. 42); but the same was denied in an order dated July 15, 1986, for being filed out of time (*Ibid.*, p. 9) on the ground that the motion for reconsideration which the Court ruled as pro-forma did not stop the running of the 15-day period to appeal.

On July 22, 1986, petitioner filed a Motion for Reconsideration of the July 15, 1986 order and a supplemental pleading thereto (*Ibid.*, pp. 12-13), but respondent judge in her order of July 29, 1986, denied the same (*Ibid.*, p. 14). Hence, the instant petition.

The sole issue in this case is whether or not the public respondent judge acted in grave abuse of discretion amounting to lack or in excess of jurisdiction in denying petitioner's Notice of Appeal.

The answer is in the negative.

Section 4 of Rule 15 of the Rules of Court requires that notice of motion be served by the movant on all parties concerned at least three (3) days before its hearing. Section 5 of the same Rule provides that the notice shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion. A motion which does not meet the requirements of Sections 4 and 5 of Rule 15 of the Rules of Court is considered a worthless piece of paper which the clerk has no right to receive and the court has no authority to act upon. Service of copy of a motion containing notice of the time and place of hearing of said motion is a mandatory requirement (*Fecundo v. Berjame*, G.R. 88015, December 18, 1989), and the failure of the movant to comply with said requisites renders his motion fatally defective (*New Japan Motors, Inc. v. Perucho*, 74 SCRA 14 [1974]; *Filipinas Fabricators & Sales, Inc. v. Magsino*, 157 SCRA 469 [1988]).

Hence, petitioner's motion for reconsideration filed on April 23, 1986 which failed to mention the day the motion is asked to be resolved, is a mere scrap of paper, being violative of Section 5, Rule 15 of the Rules of Court (*Rollo*, p. 38), and as such, did not stop the running of the period of appeal. Without such notice, the motion is pro forma, and hence, does not suspend the running of the period of appeal (*Sembrano v. Ramirez*, G.R. 45447, September 28, 1988).

Likewise untenable is petitioner's contention that respondent judge in refusing to entertain the April 25, 1986 Motion for Reconsideration for being violative of Section 5, Rule 15 of the Rules of Court and later denying said motion for lack of merit is now estopped from declaring the same motion as pro-forma. As ruled by this Court, in the case of *Filipinas Fabricators & Sales, Inc. v. Magsino* (157 SCRA 469, 475 [1988]) -

"x x x, the fact that the court had taken cognizance of the defective motion first, by requiring the parties to set it for hearing and second, when it denied the same for lack of merit in its omnibus motion, did not cure the defect nor alter the nature of the defective motion. xxx."

PREMISES CONSIDERED, the instant petition is DISMISSED for lack of merit.

SO ORDERED.

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

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