

**PEDRO M. ESTELLA AND FE K. ESTELLA, PETITIONERS, VS.
HONORABLE COURT OF APPEALS, THIRD DIVISION, HON. CORONA
IBAY SOMERA, PRESIDING JUDGE, BRANCH XXVI, REGIONAL TRIAL
COURT OF M...**

G.R. No. 76884. May 28, 1990

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

Petitioner-spouses Pedro and Fe Estella pray that this Court overturn the resolution of the Court of Appeals dated September 12, 1986 in C.A.-G.R. No. 10255-UDK which dismissed petitioners' appeal for failure to prosecute.

The antecedent facts are as follows:

Rosario N. Concepcion was the original owner of the disputed residential land with a three-door apartment thereon, situated in Sta. Cruz, Manila, covered by TCT No. 80786 and declared under Tax Declaration No. 2048. On May 6, 1970, Concepcion sold the property to herein petitioners who registered the sale with the Register of Deeds of Manila which then issued TCT No. 100990 in their favor. However, petitioners failed to secure a new tax declaration or assessment in their name, for which reason said property remained for taxation purposes in the name of vendor Concepcion.[1]

Seven years after, or on April 11, 1977, the City Treasurer of Manila, Jesus Calleja, sent to the declared owner on record, meaning Concepcion, a first notice of tax delinquency covering the second and fourth quarters of 1970, 1972, 1973, 1974, 1975 and 1976. Since no payment was made after the first notice, a final notice which included her 1977 tax delinquency was sent on April 28, 1978 to Concepcion, giving her another ten (10) days to settle her account. Despite the final notice sent, no payment was made. Consequently, as a warning, the City Treasurer sent Concepcion a notice of publication dated June 7, 1978 stating therein that the notice would be published in the Times Journal and Balita on July 15, 22, and 29, 1978, after which if said property still remained delinquent of taxes, it would be sold at public auction on August 29, 1978.[2]

In the public auction held on August 29, 1978, the Sta. Cruz property was awarded to herein private respondent Ricardo Perez as the highest bidder for P6,100.00. After the auction sale, another notice was sent to delinquent taxpayer Concepcion informing her of her right to redeem the property pursuant to Section 78 of P.D. 464 (Real Property Tax Code). The one-year period having lapsed without any redemption, Perez registered the certificate of sale with the Register of Deeds of Manila on September 25, 1979 and had it annotated at the back of TCT No. 100990.

In a letter dated September 27, 1979, the Register of Deeds of Manila advised petitioner Fe Estella to surrender their TCT No. 100990 for the purpose of annotating the certificate of sale in favor of Perez. Petitioner-spouses replied that the tax sale was without legal basis and that they were never delinquent in the payment of the realty taxes.

On September 20, 1979 and October 11, 1979, petitioners paid their real estate taxes for the years 1970-1978.[3] For his part, Perez, after one year from the auction sale, applied for the final deed of sale and updated his realty taxes for 1978, 1979 and 1980. The final deed of sale was executed on December 1, 1980.[4]

On December 22, 1980, petitioners sued private respondents, City Treasurer Calleja, the members of the Auction Bidding Committee and the Register of Deeds of Manila for quieting of title, annulment of public auction sale, certificate of bill of sale, transfer certificate of title, damages, with prayer for the issuance of a writ of preliminary injunction and/or restraining order.[5]

On February 11, 1985, the Regional Trial Court of Manila, Branch 26, presided by respondent Judge Corona Ibay Somera, rendered judgment against the petitioners. The dispositive part states:

"WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered against the plaintiffs, dismissing the complaint against all the defendants, declaring the auction tax sale dated August 29, 1979 and the final deed of sale dated December 1, 1980 valid; declaring defendant Ricardo M. Perez and Lolita Diaz absolute owners of Lot No. 2-E, Block 59, at 2559 BC. L. Rivera, San Lazaro II covered by TCT No. 100990; ordering the plaintiffs to surrender TCT No. 100990 to the Register of Deeds, Manila, to register the final deed of sale executed by the City Treasurer in favor of Ricardo M. Perez and a new Certificate of Title be issued in the names of defendant spouses Ricardo M. Perez and Lolita Diaz; orders the plaintiffs to pay the defendant spouses Ricardo M. Perez and Lolita Diaz the amount of P10,000.00 as moral damages, P2,500.00 as Attorney's Fees and to pay the costs of the proceedings." [6]

Petitioners received a copy of the decision on March 25, 1985 and filed a notice of appeal on March 29, 1985.[7] On April 11, 1985, the trial court ordered the records of the case forwarded to the Intermediate Appellate Court.[8] But up to the time when private respondent Perez filed his motion to dismiss the appeal of petitioners on June 3, 1986 or after a period of one (1) year, one (1) month and twenty-two (22) days from April 11, 1985, no records were received by the appellate court.[9] As a matter of fact, the expediente was actually transmitted to the appellate court on October 13, 1986 as attested by Atty. Cesar P. Javier, the branch clerk of court.[10]

In the assailed resolution of September 12, 1986, the Court of Appeals granted respondents' motion to dismiss appeal for failure of the appellants (petitioners) to prosecute.[11] Hence, this recourse.

One preliminary point. While petitioners have raised as a principal issue the propriety of the appellate court's summary dismissal of their appeal, they have also asked the Court, in the alternative, to rule on the legality of the auction sale which deprived them of their property allegedly without due process of law. Considering that there are sufficient records available before us for an adjudication on the merits, we have acceded to petitioners' request.

On the matter of the disallowance of the appeal, the Court of Appeals anchored its ruling on the following provisions of the Revised Rules of Court, to wit:

"Section 1. Grounds for dismissal of appeal. - An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

"xxx xxx xxx

"c) Failure of the appellant to prosecute his appeal under Section 3 of Rule 46;

"xxx xxx xxx" (Rule 50)

"Section 3. Order of transmittal of record. - If the record on appeal is not received by the Court of Appeals within thirty (30) days after the approval thereof, the appellee may, upon notice to the appellant, move the court to grant an order directing the clerk of the lower court forthwith to transmit such record on appeal or to

declare the same abandoned for failure to prosecute." (Rule 46; underscoring supplied.)

This is error. The record on appeal as a requisite for the perfection of an appeal has been eliminated under Section 39 of BP Blg. 129 (Judiciary Reorganization Act of 1980) and Sections 18, 19 and 20 of the Interim Rules and Guidelines which were already in force when respondent appellate court handed down its dismissal resolution on September 12, 1986. Thus:

"Sec. 39. Appeals. - x x x. No record on appeal shall be required to take an appeal. In lieu thereof, the entire record shall be transmitted. x x x." (BP Blg. 129)

"18. Elimination of record on appeal and appeal bond. - The filing of a record on appeal shall be dispensed with, except in the cases referred to in sub-paragraph (b) of paragraph 19 hereof.

"No appeal bond shall be required for an appeal." (Interim Rules and Guidelines)

"19. Period of Appeal. --

"(a) all appeals except in habeas corpus cases and in the cases referred to paragraph (b) hereof, must be taken within fifteen (15) days from notice of the judgment, order, resolution or award appealed from.

"(b) In appeals in special proceedings in accordance with Rule 109 of the Rules of Court and other cases wherein multiple appeals are allowed, the period of appeal shall be thirty (30) days, a record of appeal being required." (Interim Rules and Guidelines)

"20. Procedure for taking appeal. - An appeal x x x from the regional trial courts to the Intermediate Appellate Court in actions or proceedings originally filed in the former shall be taken by filing a notice of appeal with the court that rendered the judgment or order appealed from." (Interim Rules and Guidelines)

Since the appellate court based its outright dismissal of petitioners' appeal on the non-transmittal of the record on appeal pursuant to Section 3, Rule 46 of the Revised Rules of Court, then clearly, said dismissal was erroneous.

This Court is puzzled as to how the appellate court could have overlooked Such a major innovation introduced in the 1980 Reorganization Act and in the Interim Rules which did away with the requirement of a record on appeal, the notice of appeal being sufficient for the purpose. Be that as it may, the appeal by petitioners should have been disallowed for a different reason: petitioners' gross inaction for a period which exceeded one year.

Records show that the trial court had ordered the records of the case forwarded to the appellate court as early as April 11, 1985 and since that date, up to the filing of private respondents' motion to dismiss appeal dated June 3, 1986, "nothing appear(ed) to have been done about the said appeal."

We cannot subscribe to petitioners' gratuitous statement that "as the rule now exists, the appellant is justified if he merely 'folds his hands' after the trial judge has ordered that the records of the case be transmitted to the appellate court." [12]

Conceding to the point that it is the clerk of court who primarily responsible for seeing to it that the records of appealed cases are properly sent to the appellate court without delay (and having failed to do so subjects him to administrative liability), it behooves the litigants to be more vigilant of their rights. They should take it upon themselves to call the attention of the trial court as to any delay in action over their cases. [13]

The rule that it is the duty of the appellant to prosecute his appeal with reasonable diligence is still a sound rule. He cannot simply "fold his hands" and say that it is the duty of the clerk of court to have his case promptly submitted to the appellate court for the disposition of his appeal.

This absence of an awareness or regard on the part of the defeated litigant to personally see to it that the needed

records are forthwith sent to the appellate court is one major cause of delays in litigation. Thus, in an effort to do away with the litigant's complacency and to spur him into taking the initiative, the Court of Appeals has placed on the appellant and his counsel the prime responsibility of seeing to it that the appealed case shall be ready for decision as soon as practicable. They must take appropriate and timely steps to ensure that the record of the case is complete and seasonably transmitted to the Court of Appeals.[14]

Proceeding now to the controversial auction sale of the disputed residential land by the City Treasurer for delinquency in the payment of realty tax, petitioners maintain that said sale was irregular because they were never personally notified of their tax delinquency, the distraint made on the subject property and the auction proceedings, since all the notices were sent to Concepcion who was no longer the registered owner as of May 4, 1970.

Such argument is unavailing.

Under the particular circumstances of the case, we hold that the City Treasurer had done everything that was legally incumbent upon him. Not only did he send the pertinent notices to the declared owner, he also caused the mandatory publication of the notice of public auction in two (2) newspapers of general circulation pursuant to Section 65 of P.D. No. 464. The notices were understandably mailed to Concepcion because as far as the City Treasurer was concerned, she was still the "declared owner" since the assessment of the property in question was still in her name. It should be recalled that while petitioners had promptly secured a new transfer certificate of title in their name after the 1970 acquisition, they neglected to effect the necessary change in the tax declaration as then required by Commonwealth Act No. 470 (Assessment Law) and later by P.D. No. 464. Under the Assessment Law then in force on May 6, 1970 when the Sta. Cruz property changed hands, petitioners were obliged to make a new declaration thereof. Section 12 provides:

"Sec. 12. Declaration to be prepared by owner of real property. - It shall be the duty of every owner of real property within a municipality or municipal district or his duly authorized representative, to prepare, or cause to be prepared, and submit to the provincial assessor a declaration of said property stating the value of each parcel thereof which he owns within the municipality or municipal district. Such declaration shall contain a description of the property sufficient in detail to enable the provincial assessor to identify the same.

"It shall also be the duty of any person acquiring at any time real property in any municipality or municipal district or making any improvement on real property belonging to him, to prepare and submit to the provincial assessor, within sixty days after the acquisition of such property or the completion of the improvement, a declaration containing the value of the real property so acquired or of the improvement made. The property and improvement must be so described as to enable the provincial assessor to identify the same on examination. x x x."

Not only were the petitioners remiss in securing a new tax declaration over the Sta. Cruz property but they did not also pay their realty taxes from 1970 to 1977. As the subsequent owners, they should have realized that they were duty-bound to pay the realty taxes because such taxes constitute a lien enforceable against the property itself, regardless of the change in ownership. This is the reason why the City Treasurer can go directly against the delinquent property in order to enforce payment of the taxes due. Had petitioners been more diligent in the annual payment of their real estate taxes, Tax Declaration 2048, which was issued in Concepcion's name and which remained as the basis in the assessment rolls, would have been effectively replaced. But this desired change came much too late on October 9, 1980 when Tax Declaration A 038-00812 was issued in petitioners' favor, a good ten (10) years after they had purchased the disputed property from Concepcion.

All told, if it were really true that petitioners were never given the opportunity to protect their rights, they had only themselves to blame for the catastrophe that befell them. Not having been apprised by petitioners of a change

in ownership of the subject property, the government was never placed in a position to give them that opportunity.[15]

Considering, however, that petitioners finally settled their tax obligations with the City Treasurer on September 20, 1979 and October 11, 1979 for the years 1970 to 1978, the question is raised: Can the payments made (admittedly within the redemption period) be considered as an exercise of petitioners' right of redemption pursuant to Section 78 of P.D. No. 464?

Under Section 78, the exercise of the right of redemption consists in the payment of the following: [1] total amount of taxes and penalties due up to the date of redemption; [2] the costs of sale, and [3] the interest at the rate of twenty (20) per centum of the purchase price.

Evidence shows that petitioners paid only the taxes and penalties due up to 1978 but not the taxes due up to the date of redemption, i.e. the taxes for 1979, the costs of the sale and twenty (20) percent interest on the purchase price. Since not all of the prescribed amounts under Section 78 were paid within the one-year reglementary period, it cannot be said that there was an effective exercise of the right of redemption.

WHEREFORE, in view of the foregoing, the instant petition is hereby DENIED. Considering the branch clerk of court's apparent contributory role in the delay in the transmittal of the records of Civil Case No. R-82-5992 to the Court of Appeals, Atty. (now Judge) Cesar P. Javier is ordered to SHOW CAUSE within ten (10) days from notice why no disciplinary action should be taken against him for such delay.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

[1] Rollo, p. 53.

[2] Rollo, p. 48.

[3] Rollo, p. 44.

[4] Rollo, p. 51.

[5] Civil Case No. R-82-5992; Rollo, p. 22.

[6] Rollo, p. 62.

[7] Rollo, p. 63.

[8] Rollo, p. 65.

[9] Rollo, p. 77.

[10] Rollo, p. 88.

[11] Rollo, p. 80.

[12] Rollo, 110.

[13] *Jumalon v. Montes*, Adm. Matter No. P-2694, March 29, 1982, 113 SCRA 103; *Advincula v. Intermediate Appellate Court*, G.R. No. 75310, January 16, 1987, 147 SCRA 262.

[14] Article VII-C, Court of Appeals Resolution No. 2, dated August 6, 1986.

[15] See: *Paguio v. Ruiz*, 93 Phil. 306.

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