

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. ASOCIACION BENEVOLO DE CEBU, ENGRACIA UROT, HIPOLITO BOLABOLA, BASILIO BOLABOLA, HONORATO RUBEN BOLABOLA, PORFERIO BOLABOLA, FILOME...

G.R. No. 77243. October 26, 1989

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a special civil action for Certiorari and Mandamus with Prayer for Preliminary Injunction, seeking to set aside as null and void the orders of the respondent judge of the Regional Trial Court of Cebu City, Branch VI, dated September 16, 1986 and January 20, 1987, disallowing the appeal of the government, and enjoining the respondent judge from executing the decisions dated October 29, 1973 and July 10, 1975 and/or from taking further proceedings in LRC Case N-633, LRC Record N-29324, entitled "Asociacion Benevola de Cebu, Applicant v. Pablo Enolpe, et. al., Oppositors."

The pertinent facts of the case are as follows:

On October 8, 1965, a petition was filed by the Asociacion Benevola de Cebu, Inc. before the Court of First Instance of Cebu (Land Registration Case No. N-633) praying that a parcel of land situated in Cebu City, specifically Lot 108 of the Banilad Estate, be registered in its name.

On June 21, 1966, the court, entered an order of general default as against the whole world, except for the several groups of oppositors who filed their opposition to the petition.

On July 22, 1966, or more than one month after the order of general default was entered, the court received a letter from the Solicitor General, accompanied by a mimeographed opposition of the Director of Lands. There also appears in the records of the case, a copy of the letter of the Solicitor General to the Provincial Fiscal of Cebu requesting the latter to represent the Office of the Solicitor General at the hearing of the registration case. However, it appears that the Provincial Fiscal of Cebu never entered his appearance for the government.

On October 29, 1973, the court rendered a partial decision awarding to the applicant Asociacion Benevola de Cebu Lots 108-C and 108-D, and to oppositor Engracia Urot the ownership of Lots 108-F, 108-I, 108--G, 108-H-I and 108-B-I.

On July 10, 1975, the court rendered a follow-up decision adjudicating to Bolabola and company certain other specific portions of Lot 108, and to the heirs of Isidro Guivelondo, the remaining portion of the land subject matter of the case. The court further declared the other oppositors-claimants Victorino Vda. de Ramos, Sebastian Yap, Ana Dondoyano, Osmundo Novela, Melchor Novela, Pablo Enolpe, Alfonso Londres and Juanita Herico owners of their family houses erected on the respective lots. The claims of the rest of the oppositors were ordered dismissed for lack of merit.

Not satisfied with the decision of the land registration court, the oppositors-appellants Pablo Enolpe, et. al., appealed the decision to the Court of Appeals. On March 30, 1984, the Court of Appeals rendered a decision which states, inter alia:

"This may well explain the government's disinterest to pursue the case after filing an initial opposition to the petition for registration. Be that as it may, in the absence of any gross or patent error committed by the court a quo in the appreciation of the evidence submitted, We can only uphold its judgment.

"WHEREFORE, finding the appealed decision supported by law and evidence, the same is hereby AFFIRMED in toto with costs against the appellants.

"SO ORDERED (p. 62, Rollo).

The aforesaid decision of the Court of Appeals was elevated on appeal to this Court thru a Petition for Review on Certiorari by appellants Pablo Enolpe, et al. in G.R. No. 67692, entitled "Pablo Enolpe, et al. v. Intermediate Appellate Court, et al." In a Resolution dated June 27, 1984, in said case, this Court denied the petition for lack of merit. The decision became final and executory as per entry of judgment dated September 14, 1984.

On July 31, 1985, the court a quo granted the issuance of a writ of possession in favor of the Guivelondo heirs, and ordered the Provincial Sheriff of Cebu on October 23, 1985 to proceed with the writ of possession.

In the meantime, other oppositors to the registration case in the trial court filed a petition for certiorari and prohibition with this Supreme Court, docketed as G.R. No. 72568, entitled, "Monena Almendras, et al. v. Judge Ramon AM. Torres, etc., et al." This Court required the respondent Guivelondo heirs, who were among the awardees of the land in the trial court, to file their comment on the petition. On January 22, 1986, this Court dismissed the petition for lack of merit in view of the previous denial of a similar petition in G.R. No. 67692.

On May 8, 1986, the trial court ordered the Land Registration Commission to issue the decrees of registration and the certificates of title to private respondents. It appears, however, that such documents have not yet been issued to private respondents at present.

On July 1, 1986, the Office of the Solicitor General was furnished by the Branch Clerk of Court, Branch VI, Regional Trial Court of Cebu City, copies of the decisions in the registration case N-633 dated October 29, 1973 and July 10, 1975.

On July 16, 1986, the Solicitor General filed a notice of appeal with the trial court. This was opposed by private respondents and the Guivelondo heirs, who were among the adjudicatees in the registration case.

On September 16, 1986, the respondent judge issued an Order denying the government's appeal, the dispositive portion of which states:

"WHEREFORE, finding that the decisions of the court sought to be appealed from have long become final and executory, and in fact, have already been executed, and, therefore, are no longer subject to any appeal, the court hereby declares that the Notice of Appeal filed by the Solicitor General cannot and should not be given due course. Accordingly, the same is hereby ordered disregarded and stricken out from the records.

"SO ORDERED" (pp. 35-36, Rollo).

From these orders, the Solicitor General moved to reconsider. On January 20, 1987, respondent judge denied the said motion for reconsideration.

On February 5, 1987, this petition for certiorari under Rule 65 was filed, assailing respondent judge's Orders dated September 16, 1986 and January 20, 1987. On February 18, 1987, this Court issued a Temporary Restraining

Order enjoining the respondent judge from executing the said decisions and/or from taking further proceedings thereon.

The only issue in this case is whether or not respondent judge acted with grave abuse of discretion in disallowing the appeal of the government.

The government thru the Solicitor General alleges that its appeal on July 16, 1986 was filed on time, which is within the prescribed period of fifteen (15) days from its receipt of the copies of the decisions; and that insofar as the government is concerned, the decisions have not yet become final and executory. The petition also argues that the property in question is public land and therefore, substantial justice requires that such appeal be allowed.

The foregoing contentions of the petitioner are impressed with merit.

Section 39 of BP Blg. 129 provides:

"Sec. 39. Appeals. - The period for appeal from final orders, resolutions, awards, judgments or decisions of any court in all cases shall be fifteen (15) days counted from the notice of the final order, resolution, award, judgment or decision appealed from; x x x. (Emphasis ours)

There is no question that it was only on July 1, 1986 or more than ten (10) years from the date of judgments that the Solicitor General became cognizant of the decisions of the lower court when it was furnished by the Branch Clerk of Court copies of the two decisions dated October 29, 1973 and July 10, 1975. This fact was not denied nor refuted by respondents herein. Thus, when the Solicitor General filed its notice of appeal on July 16, 1986, the appeal was perfected well within the fifteen (15)-day mandatory period to file an appeal.

Moreover, Sec. 23 of the Interim Rules of Court provides that in "case where appeal is taken, the perfection of the appeal shall be upon the expiration of the last day to appeal by any party." As long as any of the parties may still file his, her, or its appeal, the court does not lose jurisdiction over the case (*Associated Bank v. Gonong*, G.R. No. 77353, July 30, 1987, 152 SCRA 478).

The respondents contend that appeal is no longer possible as the judgments appealed from, having been rendered more than ten (10) years ago, are already final and executory.

It has been held that a judgment becomes final and executory by operation of law and not by judicial declaration. Thus, finality of judgment becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected (*Munez v. Court of Appeals*, G.R. No. L-46010, July 23, 1987, 152 SCRA 197). If ever there was an entry of judgment in this case dated September 14, 1984, this had the effect of finally disposing and putting an end to the controversy with regard to the private respondents herein as among themselves and not insofar as the government's interest on the land is concerned. As to it, the judgments have not yet attained finality because its appeal was perfected on time, before the lapse of the period within which to appeal.

It is also worthy to note at this point that the adjudication of the land in a registration or cadastral case does not become final and incontrovertible until the expiration of one year after the entry of the final decree. As long as the final decree is not issued, and the one year within which it may be revised has not elapsed, the decision remains under the control and sound discretion of the court rendering the decree, which court after hearing, may set aside the decision or decree or adjudicate the land to another party (*Afalla v. Rosauo*, G.R. No. L-42315, Sept. 19, 1934, 60 Phil. 622; *Capio v. Capio* G.R. No. L-5761, December 21, 1953, 94 Phil 113; emphasis ours).

The argument of respondents that the appeal should not be allowed because the judgments granting the registration have already been executed thru the writ of possession and the order for the issuance of the title, has no legal basis. In the case of *Republic v. Mendoza*, GR. No. L-49891, October 31, 1983, 125 SCRA 539, We

ordered the land registration court to give due course to the appeal of the government notwithstanding the fact that a decree of registration was already issued by the Land Registration Commission and a Certificate of Title was issued by the Register of Deeds. Such circumstances were not considered to be a bar to the government's right to appeal.

In his order denying the appeal, the respondent judge pointed out that an order of general default which was issued in the initial hearing of the registration case, barred all other persons including the government from pursuing their claims.

The rule is established that in land registration cases, the appellant must show that his rights or interests have been prejudiced by the decision appealed from; and that he challenged the application for registration, or participated in the proceedings before his appeal may be properly entertained (*Cabanas v. Director of Lands*, G.R. No. L-4205, March 16, 1908, 10 Phil. 393). This has been complied with in this case.

Records disclose, and this is admitted by respondent judge in his order, that there was a written opposition from the government thru the Solicitor General and the Director of Lands (p. 33, Rollo). Although this was received by the trial court one month after the order of general default was entered, there was no evidence showing when the opposition by the government was filed. In the absence of such evidence, it is presumed that the opposition was filed on time and was not covered by the order of general default. It is clear that the government has challenged the application for registration since the very start of the proceedings.

Assuming in *gratia argumenti* that the opposition was not filed on time, nevertheless, an oppositor is still allowed to present evidence to prove ownership of the disputed land despite the declaration of general default against him provided that a decision has not been rendered or that a decree of registration has not been issued in this case. (*Lee v. Punzalan*, G.R. No. 50236, August 29, 1980, 99 SCRA 567; *emphasis ours*).

Furthermore, the private respondents also argue in their Comment that the Provincial Fiscal which represents the Office of the Solicitor General in land registration cases, had official notice of the decisions as early as May 28, 1985 when the Asst. Provincial Fiscal filed a "Manifestation/Omnibus Motion" in court whereby she admitted the existence of said decisions; and that this fact should now bar the Solicitor General from filing a late appeal.

We disagree. Section 1 (e) of PD 478, defining the powers and functions of the Office of the Solicitor General provides:

"Section 1. Functions and Organizations. x x x.

e) Represent the Government in all land registration and related proceedings. Institute actions for the reversion to the Government of lands of the public domain and improvements thereon as well as lands held in violation of the Constitution."

In one case, it was held that, strictly speaking, the city fiscal did not directly represent the Government. He was merely a surrogate of the Solicitor General whose office, "as the law office of the Government of the Republic of the Philippines", is the entity that is empowered to "represent the Government in all land registration and related proceedings" (*Republic v. Mendoza*, G.R. No. L-49891, October 31, 1983, 125 SCRA 539; *Republic v. Polo*, G.R. No. L-49247, March 13, 1979, 89 SCRA 33).

Thus, the request of the Solicitor General for the fiscal to represent the former and to appeal did not make the fiscal counsel of the Republic. We have held in many cases that the reglementary thirty-day period for appeal (now 15 days) should be reckoned from the time the Solicitor General's Office was apprised of the decision or order and not from the time the special counsel or fiscal was served with the decision. These representatives of the Solicitor General had no power to decide whether an appeal should be made. They should have referred the matter

to the Solicitor General (Republic v. Court of Appeals, G.R. No. 56077, February 28, 1985, 135 SCRA 156; Republic v. Mendoza, G.R. No. L-49891, October 31, 1983, 125 SCRA 539; Republic v. dela Cruz, G.R. No. L-35718, November 19, 1982, 118 SCRA 409).

Lastly, the admission of petitioner government's appeal is more in keeping with the ends of substantial justice. To dismiss the Republic's appeal merely on the alleged ground of late filing is not proper considering the merits of the appeal. The Solicitor General alleges the existence of indubitable evidence of official records showing that the property subject of the registration is public land, which was covered by decree 4666 previously issued in favor of the government on October 4, 1910. To ignore the importance of this alleged document would defeat the time-honored Constitutional precepts and the Regalian doctrine that all lands of the public domain belong to the State, and that the State is the source of any asserted right to ownership in land and charged with the conservation of such patrimony (Republic v. Intermediate Appellate Court, G.R. No. 71285, November 5, 1987, 155 SCRA 412).

ACCORDINGLY, the writ of certiorari is hereby GRANTED and the assailed orders of the respondent judge dated September 16, 1986 and January 20, 1987 disallowing the petitioner's appeal is REVERSED and SET ASIDE. The respondent court is directed to certify the appeal and transmit the records to the appellate court.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Griño-Aquino, JJ., concur.

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