

SPOUSES ELIGIO GUNDAYAO AND CRESENCIA BALUYUT, SPOUSES PORFIRIO BALUYUT AND NATIVIDAD TUMANG, SPOUSES CARLOS FLORENTINO AND FLORENCIA BALUYUT, AND DIRECTOR OF LANDS, PETITIONERS...*G.R. No. 77459. May 21, 1990*

Ponente: REGALADO, J.

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This petition for review on certiorari impugns the resolution of the Court of Appeals dated January 14, 1987 in AC-G.R. CV No. 61652 denying petitioners' motion for new trial "(c)onsidering that an entry of judgment had already been made,"[1] the judgment referred to having been promulgated on November 19, 1985.[2] The judgment in said case entitled "Heirs of Pompelo Baluyut, et al., Plaintiffs-Appellees, versus The Director of Lands and Spouses Eligio Gundayao, et al., Defendants-Appellants," affirmed the decision of the court a quo in favor of said plaintiffs-appellees,[3] the correctness whereof can be gauged from the discussion that follows, in the light of petitioners motion for new trial.

For reasons hereinafter shown, this petition was given due course, and to appreciate the action of the Court of Appeals, the antecedents of the controversy which led to the filing of the action in the court a quo are hereinunder quoted as found in the decision of respondent court:

"The four (4) parcels of land covered by Original Certificates of Title Nos. P-4041, P--4183, P-4261 and P-4184 (Exhibits 'R', 'S', 'T' & 'U') of the land records of Tarlac in the names of Cresencia Baluyut, Natividad Tumang, Florencia Baluyut and Ricardo Baluyut, respectively, were originally a single parcel of land with an entire area of 2 1/2 hectares situated in Bo. Aranguren, Capas, Tarlac, and covered by Tax Declaration No. 213 with Pompelo Baluyut as the declared owner (Exh. 'A').

"Defendants Cresencia, Florencia and Porfirio, all surnamed Baluyut, are the sisters and brother, respectively, of Pompelo Baluyut and that in 1963, this original entire parcel of land was subdivided by Surveyor Francisco Agustin into four (4) lots (Annex 'A' to Complaint), to wit:

- 1) Lot, Plan Psu-201565 with an area of 8,077 square meters allotted to Natividad Tumang;
- 2) Lot, Plan Psu-201566 with an area of 2,282 square meters allotted to Cresencia Baluyut;
- 3) Lot, Plan Psu-201567 with an area of 9,715 square meters allotted to Florencia Baluyut; and
- 4) Lot, Plan Psu-201568 with an area of 4,900 square meters allotted to Ricardo Baluyut.

"On October 19, 1968, applications for free patent of the said lots were filed with the Bureau of Lands of Tarlac by Cresencia, Natividad, Florencia and Ricardo (Exhs. 'F', 'G', 'H' & 'I') and Original Certificates of Titles were issued to them, to wit: No. P-4041 to Cresencia Baluyut on January 22, 1971 (Ext. 'R'); No. P-4183 to Natividad Tumang on Sept. 30, 1971 (Exh. 'T'); No. P-4261 to Florencia Baluyut on November 29, 1971 (Exh. 'S'); and No. P-4184 to Ricardo Baluyut with no date of issue indicated in the title (Exh. 'U').

"The plaintiffs claim that original parcel of land covered by Tax Declaration No. 213 was owned solely by Pompelo Baluyut having been purchased by him from Celestino de Lara on January 9, 1930 as evidenced by a Deed of Sale of Land executed by Celestino de Lara and witnessed by Marciano Campos and Luis Ramos (Exh. 'D' and 'D-1') and since then Pompelo Baluyut had been in possession of the same until his death on May 31, 1942. Plaintiffs had been paying regularly the real estate taxes of the said land (Exhs. 'C', 'B', 'B-1', & 'B-2'). Upon the death of Pompelo Baluyut, his widow and children, plaintiffs herein, inherited the same and took possession thereof. On September 3, 1968, one Vicente Frias called for Ricardo Baluyut who asked him if he wanted the land left by his father titled and referred him to Eusebio Pasamonte who would help him. Eusebio Pasamonte asked Ricardo Baluyut to sign blank forms for the titling of the whole land after which he was asked to pay P120.00 but he did not have enough money at that time so he gave him only P50.00. After Ricardo Baluyut signed those blank forms, he tried to contact Pasamonte several times but failed to see him anymore but instead he was informed that Pasamonte was able to secure a title which he gave to Cresencia Baluyut. And upon verification from the Bureau of Lands in Tarlac plaintiffs found that the land in question was partitioned into four parts in the names of Ricardo Baluyut, Cresencia Baluyut, Florencia Baluyut and Natividad Tumang. Plaintiffs claim that they had neither knowledge nor consented to said partition and they were never informed of the subdivision survey of said land by Surveyor Francisco Agustin. During the Japanese occupation and before Pompelo Baluyut's death in 1942, the private defendants asked him to let them stay in said land promising to leave as soon as peace and order were restored and to help in paying the taxes of the said land. Pompelo Baluyut allowed them to construct their respective houses on said land, however, after the war, they refused to leave the land in spite of repeated demands made by the plaintiffs.

"On the other hand, defendants claim that the land in question was inherited by their father. Aquilino Baluyut, from Celestino de Lara whose sister was the grandmother of Aquilino Baluyut as evidenced by the Agreement of Partition of the Properties left by the deceased Don Celestino de Lara and Dña. Monica Capul among their heirs executed on July 11, 1913 (Exh. '14' & '15'). Upon the death of Aquilino Baluyut in 1916, the private defendants and their brother, Pompelo Baluyut, took possession of the land in question, and they all shared in paying the taxes thereon (Exhs. '16' to '16-W'). Their houses had been in said land long before the war and it was Ricardo Baluyut who invited all of them to partition the land in question into four lots. It was their uncle, Vicente Frias, who directed the surveyor to partition said land and it was Eusebio Pasamonte who helped them apply for a free patent in 1968 for the lots allotted to them.

"Defendant Director of Lands presented Rogelio Ilagan (as one of its two witnesses), Deputy Public Lands Inspector in 1968 who testified that Cresencia Baluyut, Florencia Baluyut, Natividad Tumang and Ricardo Baluyut personally and simultaneously filed their application for free patent with his office on October 19, 1968. He was the one who filled up their applications while they gave the necessary data and it was in his office where the applicants signed or thumbmarked their applications. He went to investigate the land applied for but he did not verify anymore from the office of the Municipal Treasurer of Tarlac who the declared owner was and he did not bother to ask who were the persons occupying the same, because he did not actually inspect it. He talked only to Natividad Tumang during his investigation and the applicants did not tell him that they inherited the land they were applying for. He did not send any notice to the applicants one (1) week before he conducted his investigation as required by the Land Circular No. 16 but he just informed them that he was going to conduct an investigation. During his investigation, he found only one (1) house in each of the four lots applied for. He posted the notices of said applications for free patent at the Municipal Building of Capas and gave copies of the same to Eusebio Pasamonte to be posted in the barrio where said lots were located but he did not know if said notices were posted in the barrio hall of the said barrio." [4]

On October 20, 1976, the trial court rendered its decision with the following dispositive portion:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendants:

1) Declaring plaintiffs Ricardo Baluyut, Anicia Baluyut and Gloria Baluyut the true owners of the land in question;

2) Declaring Original Certificate of Title Nos. P-4041, in the name of Cresencia Baluyut, P-4261, in the name of Florencia Baluyut, P-4183, in the name of Natividad Tumang, and P-4184, in the name of Ricardo Baluyut, all of the land records of Tarlac null and void, and ordering the Register of Deeds of Tarlac to cancel the same, and

3) Ordering the private defendants as well as their representative, administrators, and/or assigns to vacate the portions of the land in question they are occupying and to allow the plaintiffs to take possession of the same and to desist from molesting the plaintiffs in their possession thereof.

"No pronouncement as to damages, attorney's fees, and costs." [5]

On appeal, respondent court in its decision dated November 19, 1985 affirmed in toto the decision of the trial court after finding no reversible error therein. A copy of the decision was received by counsel for petitioners on November 25, 1985. [6]

On December 10, 1985, which was the last day of the reglementary period to appeal, Atty. Arturo L. Serrano filed a motion to enter his appearance as counsel for petitioners attaching thereto a manifestation of the latter's consent and the motion by Atty. Augusto C. Castañeda withdrawing his appearance as counsel for petitioners. [7] The records show that respondent court received the aforesaid motion on December 16, 1985. [8]

Under the same date of December 10, 1985, a motion for reconsideration was filed by Atty. Serrano in behalf of petitioners. The resolution of the Intermediate Appellate Court of January 15, 1986 denying said motion for reconsideration shows, however, that despite Atty. Serrano's appearance, the copy of said denial resolution was sent to petitioners' former counsel, Atty. Augusto C. Castañeda. [9]

On November 10, 1986, petitioners filed a motion for new trial with prayer for preliminary injunction on the ground of newly-discovered evidence allegedly acquired by them on October 30, 1986. This motion was accompanied by another motion for the entry of appearance of Atty. Isabelo C. Salamida, in place of Atty. Serrano. [10]

As earlier stated, the motion for new trial was denied by respondent court on the ground that an entry of judgment had already been made in the case, hence the instant petition.

It is petitioners' submission that the entry of judgment was null and void as the judgment did not become final and executory because the resolution denying petitioners' motion for reconsideration was sent to Atty. Castañeda, the former counsel of the petitioners, and not to their counsel of record at that time. As a consequence, petitioners contend that the denial of their motion for new trial was likewise void for lack of legal basis.

The instant petition is without merit.

As a general rule, where a party appears by attorney in an action or proceeding in a court of record, all notices required to be given therein must be given to the attorney of record; and service of the court's order upon any person other than the counsel of record is not legally effective and binding upon the party, nor may it start the corresponding reglementary period for the subsequent procedural steps that may be taken by the attorney. [11]

There are, however, some peculiar aspects in the case at bar which preclude the unqualified application of the foregoing rule.

Petitioners belabor the fact that the copy of the resolution denying petitioners' motion for reconsideration in AC-G.R. CV No. 61652 was sent to petitioners' former counsel, who had formally withdrawn from the case, instead of their then counsel of record. It is an admitted fact, however, that petitioners received on July 30, 1976 a motion for a writ of execution filed by plaintiffs in the trial court [12] and a copy of the order of the Regional Trial

Court of Tarlac, Branch 64, directing the issuance of such writ in Civil Case No. 4811 as early as August 26, 1986.[13] From this order, petitioners filed in the trial court a motion for reconsideration dated September 5, 1986, alleging therein their non-receipt of any resolution denying their motion for reconsideration filed in respondent court.[14] Pending resolution of said motion, or on September 16, 1986, Atty. Serrano filed an urgent motion withdrawing his appearance as counsel for petitioners.[15] Then, when the motion for reconsideration was called for hearing, Atty. Serrano moved that the same be withdrawn, which motion was granted by the trial court in its order of September 29, 1986.[16]

From September 29, 1986 to November 10, 1986, or a total of 42 days, petitioners did nothing to question the issuance of the writ of execution. Neither did they file a motion for its quashal nor a petition for certiorari to rectify any supposed irregularity. Worse, they instead filed a motion for new trial under date of November 10, 1986 which was denied by respondent court.

Indeed, the relevant portion of Section 1, Rule 53 of the Rules of Court provides that "(b)efore a final order or judgment rendered by the Court of Appeals becomes executory, a motion for a new trial may be filed on the ground of newly discovered evidence x x x" (Emphasis ours). Furthermore, it cannot be gainsaid that copies of the motion and the order for the issuance of the writ of execution served on petitioners constituted ample affirmation of the fact that the decision of respondent court was already final and executory. If there was any irregularity in its issuance, petitioners' first move should have been to oppose said motion and, thereafter, to seasonably question the legality or validity of the writ on the ground that the decision had not become final and executory. Not having done so, and for the reasons already discussed, the motion for new trial was correctly denied by respondent court.

Stated differently, assuming that the reglementary periods for the subsequent procedural steps which petitioners' counsel may have taken did not start to run owing to their alleged non-receipt of the resolution denying their motion for reconsideration, such period should be deemed to have commenced to run when they received the order directing the issuance of a writ of execution which could not but serve the same purpose as a notification that their motion for reconsideration had been denied by respondent court. To hold otherwise would sacrifice substance for form upon the altar of technicalities, not to speak of the merits of private respondents' case justifying the judgment in their favor.

In their reply, petitioners intimated that when the withdrawal of their motion for reconsideration was granted by the trial court, they were threatened with demolition of their houses.[17] With more reason, therefore, should they have acted promptly and vigilantly to question the issuance of the writ. The records, however, clearly show that they utterly failed to do so.

Notably, except as to the transfer of material possession of the questioned lots, the writ issued by the trial court has already been executed, as reported by private respondents in their comment and as shown by the records,[18] to wit:

"1. On October 24, 1986, by virtue of the Writ of Execution issued by the Regional Trial Court of Tarlac, respondents were legally placed in possession of the parcel of land in question but not its physical possession as evidenced by the Placement in Possession dated October 24, 1986 certified to by Cresenciano A. Suarez, Deputy Provincial Sheriff, a certified xerox copy of the same is hereto attached and marked as Annex '2';

"2. In its Amended Order dated January 22, 1987, a certified xerox copy of which is hereto attached and marked as Annex '3', the Regional Trial Court of Tarlac declared, among others, that the duplicate Certificates of Title Nos. P-4041, P-4261, P-4183 and P-4184 as null and void and cancelled and directed the Register of Deeds to issue corresponding new owner's duplicate copies of said certificates of titles in favor of the respondents; and

"3. On January 22, 1987, the Acting Register of Deeds of Tarlac cancelled OCT Nos. P-4041 in the name of Cresencia Baluyut, P-4261 in the name of Florencia Baluyut, P-4183 in the name of Natividad Tumang and P-4184 in the name of Ricardo Baluyut and instead issued Transfer Certificates of Title Nos. 201586, 201587, 201588 and 201589, respectively, all in the names of Ricardo Baluyut, married to Zenaida Manalese; Gloria Baluyut, married to Oscar de Guzman and Anicia Baluyut, married to Primitivo Balilo, xerox copies of which are hereto attached as Annexes '4', '4-A', '4-B' and '4-C' respectively."

PREMISES CONSIDERED, the present petition is DENIED and the challenged resolution is hereby AFFIRMED. The temporary restraining order issued pursuant to our resolution of March 30, 1987 is hereby LIFTED. This judgment is immediately executory.

SO ORDERED.

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

* The petition in this case was filed with an inverted title reading Heirs of Pompelo Baluyut, etc., Plaintiffs?Respondents, versus Spouses Eligio Gundayao and Cresencia Baluyut, et al., Defendants-Petitioners, and has been corrected as above set forth, with the Court of Appeals impleaded therein.

[1] Rollo, 53.

[2] Penned by Justice Mariano A. Zosa with Justices Jorge R. Coquia, Floreliana Castro-Bartolome and Bienvenido C. Ejercito concurring.

[3] Civil Case No. 4811, Court of First Instance of Tarlac.

[4] Ibid., 14-16.

[5] Ibid., 11-12.

[6] Ibid., 5.

[7] Ibid., 5, 20.

[8] Ibid., 22.

[9] Ibid., 24.

[10] Ibid., 26-29.

[11] Section 2, Rule 13, Rules of Court: Vecino vs. The Hon. Court of Appeals, et al., 76 SCRA 98 (1977); J.M. Javier Logging Corporation vs. Mardo, etc., et al., 24 SCRA 776 (1968).

[12] Rollo, 83-85.

[13] Petitioner's Reply to Respondents' Comment, 4: Rollo, 98.

[14] Rollo, 101.

[15] Ibid., 113.

[16] Ibid., 114.

[17] Ibid., 98.

[18] Ibid., 80.

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