

LEON MATEO AND ANA VILORIA MATEO, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS; THE HONORABLE JUDGE DAVID MOJICA, PRE-SIDING JUDGE OF BRANCH XIX, REGIONAL TRIAL COURT OF DAVA...

G.R. No. 83354. April 25, 1991

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

This is a petition for review on certiorari assailing the decision dated April 26, 1988 of the respondent Court of Appeals[1] denying the petition for mandamus with preliminary injunction filed by the petitioners.

The antecedent facts are as follows:

On November 9, 1978, the private respondents (then plaintiffs) instituted an action for recovery of possession and/or ownership with damages against the petitioners (then defendants), of a two-hectare piece of land situated in Calamagoy, Magsaysay, Davao del Sur, which land is covered by Transfer Certificate of Title No. 9309 in the name of private respondent (then plaintiff) "Julia Mateo, married to Francisco del Rosario." [2]

After protracted proceedings which lasted for almost nine years, the Regional Trial Court of Digos, Davao del Sur, [3] rendered a decision dated March 21, 1987, the decretal portion of which states:

WHEREFORE, judgment is hereby rendered:

Ordering the defendants to vacate Lot No. 5072-A-2, Psd-211682, situated in Calamagoy, Magsaysay, Davao del Sur, covered by T.C.T. No. 9309 in the name of plaintiff Julia Mateo, married to Francisco del Rosario; to pay the plaintiffs P2,000.00 for and as attorney's fees; to pay the plaintiffs P4,000.00 per year, commencing in the year 1978 until they shall have vacated the land, for the income from the property that the plaintiffs failed to receive due to the refusal of the defendants to return the same to them; and to pay the costs.

A copy of the said decision was served on the petitioners, defendants in the trial court, on March 31, 1987, but since no appeal from this judgment

had been filed within the reglementary period, or up to April 15, 1987, the same became final and executory. [4]

On April 20, 1987, the private respondents, plaintiffs in the court a quo, filed a motion for execution of the said final judgment and the trial court granted the same, which was unopposed, after proper hearing. Upon the issuance on May 13, 1987 of a writ of execution, the deputy sheriff issued a "Sheriff's Notice of Sale" and a "Levy on Execution and/or Attachment" on May 18, 1987. [5]

On June 8, 1987, the deputy sheriff attested in his delivery receipt the actual reconveyance of the land in question to the private respondents.

On July 16, 1987, or after the lapse of 107 days from the time the petitioners received the said decision adverse to

them, they filed a Petition for Relief from Judgment in the same trial court, in the same cause, alleging excusable negligence in their failure to appeal the said decision, and praying that the same be set aside.

On November 9, 1987, the trial court[6] denied the said Petition for Relief from Judgment as well as the motion to reconsider the denial of the petitioners' notice of appeal on the grounds that there was no excusable negligence to warrant relief from judgment and that the petition failed to show a valid and sufficient cause of action.

The petitioners elevated the case to the respondent appellate court on a Petition for Mandamus alleging that the denial of their appeal was unwarranted and that the granting of the notice of appeal was a ministerial duty enforceable by mandamus.

As adverted to at the outset, the respondent appellate court denied the said Petition for Mandamus in a decision dated April 26, 1988.

Hence, this recourse.

In their Petition, the petitioners submit the following assignment of errors:

- That the instant petition is a concrete and specific example of a violation of section one, article IV, of the Constitution of the Philippines;
- That the respondents violated section 2, Rule 41 of the Rules of Court of the Philippines.

The petition is not meritorious.

Central to the controversy are the issues of whether or not the approval of a notice of appeal by the trial judge is a ministerial duty enforceable by mandamus, and if it is, whether or not the appeal of the petitioners is meritorious.

The petitioners assail the decision of the respondent appellate court affirming the trial court's denial of both their Petition for Relief from Judgment and the notice of appeal. As regards the denial of the Petition for Relief from Judgment, there is no question that the same involved the exercise of discretion by the trial court and therefore, the granting thereof can not be compelled by mandamus.

A petition for mandamus lies "when any tribunal, corporation, board or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no plain, speedy and adequate remedy in the ordinary course of law x x x." [7]

As the Court en banc recently held in *Cruz vs. Major General Montano*, [8] "mandamus is a remedy available only to compel the doing of an act specifically enjoined by law as a duty. It cannot compel the exercise of discretion one way or the other." Indeed, mandamus does not lie to compel the performance of a discretionary duty. [9]

In *Symaco vs. Aquino*, [10] we had the occasion to clearly distinguish between a ministerial duty and a discretionary duty. We explained:

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Ministerial duty is one which is so clear and specific as to leave no room for the exercise of discretion in its performance. On the other hand, a discretionary duty is that which by its nature requires the exercise of judgment. A purely ministerial act or duty is one in which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment, upon the propriety of the act done. But if the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official

discretion nor judgment. x x x

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Applying the foregoing distinctions, we agree with the observations made by the respondent appellate court when it stated thus:

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In the present case, petitioner lost his right to appeal when he failed to perfect his appeal within the reglementary period. The Petition for Relief From Judgment granted by Section 2 of Rule 38, does not confer on petitioner the right to appeal which had been lost. And the remedy of relief from judgment can only be resorted to on any of the grounds mentioned by said rules, namely: fraud, accident, mistake or excusable negligence. The determination of whether the element of fraud, accident, mistake or excusable negligence is present to warrant the granting of the relief prayed for, requires an exercise of judgment and discretion by the judge. And the writ of mandamus can not be issued and is not available to control the discretion of the judge or compel him to decide a case in a particular way. (*Diy vs. Crossfield*, 38 Phil. 934). The trial court, in exercising its discretionary authority, denied the Petition for Relief from Judgment on a finding that petitioners had no meritorious defense and that the failure to perfect the appeal on time was not due to excusable negligence. This is clearly an exercise of power or authority which cannot be controlled by a writ of mandamus.[11]

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Furthermore, the petitioners do not dispute the fact that the Petition for Relief from Judgment was not filed with the trial court within the reglementary period, i.e., within sixty (60) days from the time the petitioners learned of the judgment in question and not more than six (6) months after such judgment was entered.[12] Although the petition was filed within six (6) months, it was not within sixty (60) days from the time the petitioners learned of the judgment, but only after 107 days. The absence of one of the two said periods which are concurring elements precludes the petitioners from availing of the Petition for Relief from Judgment.

In this instance, the remedy available to the petitioners is to appeal the denial of their Petition for Relief from Judgment. As we held in *De Jesus v. Domingo*,[13] an order denying a petition for relief, being final, is appealable and may not be corrected through the special civil action for certiorari and prohibition.

Specifically, Section 2, par. 2 of Rule 41 of the Revised Rules of Court, in part, states:

A judgment denying relief under Rule 38 is subject to appeal, and in the course thereof, a party may also assail the judgment on the merits, upon the ground that it is not supported by the evidence or it is contrary to law.

Hence, we agree with the contention of the petitioners that it was the ministerial duty of the trial court to approve the notice of appeal. It must be observed that the petitioners had filed within the prescribed period a notice of appeal on December 1, 1987 when the petition in question was denied by the trial court in an order dated November 9, 1987, a copy of which was received by the petitioners on November 27, 1987.

The refusal of the trial court, therefore, to accept the said notice filed by petitioners in pursuance of their statutory right to appeal is clearly enforceable by mandamus.

Be that as it may, to remand the instant case to the respondent appellate court for a review of its merits would be an exercise in futility. In its questioned decision, the respondent appellate court nonetheless ruled on the merits of the present controversy which we find to be adequately supported by the evidence on record.

The petitioners, to be entitled to a Petition for Relief from Judgment, must not only show excusable negligence

but must likewise assert the facts constituting their good and substantial cause of action. Still and all, considering the evidence adduced by the petitioners, we see no reason to depart from the well-grounded conclusion of the respondent appellate court finding the appeal not meritorious for failure to establish both foregoing requisites. Thus:

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x x x As it is known to them that their case was pending decision, a little diligence, a little exercise of prudence, a little attention here and there, a little haste made slowly ought to have alerted and urged them to see their lawyer about their pending case before leaving for Manila. At the very least, to leave instructions to their lawyer on what to do should the decision be adverse to them. But they did not. The decision was rendered on March 21, 1987. By the records their lawyer received it on March 31, 1987. They left on April 1, 1987. There was time enough to save their case. Indeed, had they seen their lawyer before they left they would have known that a decision adverse to them had been rendered. Or, having left instructions, their lawyer could have appealed. Negligence, to be EXCUSABLE, must be one which ordinary diligence and prudence could not have guarded against.

The affidavit of Lina Mateo, Leon Mateo and Virgilio Gomintong which are attached to the petition to show excusable negligence are too apt. They invite serious doubt. Consider that Virgilio Gomintong, a distant neighbor, knew of the arrival of the petitioners on April 25, 1987. It is obvious that he learned of it only from a member of petitioners' household. It followed that Lina Mateo, a daughter who lives with her parents, knew of it. Why then would she (Lina Mateo) leave for North Cotabato on April 24, 1987 for a vacation when her parents were supposed to arrive on April 25, 1987 and leave the task of meeting her parents to Virgilio who is not even a relative? Her alleged return to Calamagoy on May 19, 1987 appears to this Court to be so carefully tailored to fit the events. It has been said that evidence to be believed must not only come from a credible witness; it must be believable in itself and must conform to observable human behaviour. Moreover, despite the testimony of Virgilio Gomintong, it is reasonable to believe that only Leon Mateo left for Manila, no ticket having been presented to show that petitioner Ana Vilorio Mateo also made the trip." (Rollo, pp. 16-17).

We agree with the trial court's findings that the negligence is not excusable to justify the granting of a relief from the judgment, ordering the defendants (petitioners) to vacate the premises.[14]

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Moreover, as the respondent court correctly observed, the petitioners did not present any valid and sufficient cause of action to justify any relief from judgment. Correctly the Court or Appeals ruled:

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x x x Petitioners' defense rests mainly on their allegation of "continuous possession for 15 years". This is not a valid defense as against the plaintiffs' rights over the property as owner with an indefeasible title. The land in question is covered by Transfer Certificate of Title No. 9309 in the name of plaintiff Julia Mateo, married to Francisco del Rosario. There can be no claim of rights based on 15 years continuous possession if the land is registered under the Torrens System in the name of another because the latter's rights are indefeasible as against the whole world. The transfer certificate of title issued to the plaintiff is on February 21, 1956, bringing the land under the operation of the Torrens System, confers on the plaintiffs an imprescriptible title over such land after the lapse of one year from issuance thereof.[15]

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Indeed, the respondent court did not commit any reversible error.

WHEREFORE, the petition for review on certiorari is DENIED. Costs against the petitioners.

SO ORDERED.

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

[1] Campos, Jose C., J., Ponente; Francisco, Ricardo J., and Benipayo, Alfredo L., JJ., Concurring.

[2] Rollo, 87-88.

[3] Hon. Nicasio O. delos Reyes, Presiding Judge, Branch 19.

[4] Rollo, 88.

[5] Ibid.

[6] Hon. David Q. Mojica, Presiding Judge.

[7] Sec. 3, Rule 65, Revised Rules of Court.

[8] G.R. 92066, June 5, 1990.

[9] Diokno vs. Rehabilitation Finance Corporation, No. L-4712, July 11, 1952 [91 Phil. 608].

[10] L-14535, January 30, 1960 [106 Phil. 1130].

[11] Rollo, 92-93.

[12] Section 3, Rule 38, Revised Rules of Court.

[13] Nos. L-30006-07, August 31, 1970 [34 SCRA 647].

[14] Rollo, 90-91.

[15] Id., 91.

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