

HEIRS OF FABIO MASANGYA AND JOSE ABAYON, PETITIONERS, VS. DIOSDADO MASANGYA, ESTELITA M. BANTIGUE, FRANCISCO MASANGYA, TANCREDO MASANGYA AND PATRO-CINIO MASANGYA, RESPONDENTS.

G.R. No. 84091. August 30, 1990

Ponente: PARAS, J.

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PARAS, J.:

By this petition for certiorari, petitioners seek to annul and set aside the twin orders[1] issued by the Regional Trial Court, 6th Judicial Region, Branch 2, Kalibo, Aklan, on April 26, 1988 and June 29, 1988, in the case of "Fabio Masangya and Jose Abayon, plaintiffs versus Diosdado Masangya, et al., defendants," Civil Case No. 1535 for partition of real estate.[2]

It appears from the pleadings submitted that on November 18, 1965, plaintiffs Fabio Masangya and Jose Abayon filed a complaint for partition of real estate against respondents (then defendants). During trial, Fabio died but he was substituted by his heirs (now petitioners). A decision was rendered on September 21, 1982, in favor of respondents, dismissing petitioners' complaint and declaring the respondents as the lawful owners of the land in question.

Not satisfied with the decision of the lower court, petitioners appealed to the Court of Appeals, which on December 9, 1986, affirmed the questioned decision. Thereupon, an Entry of Final Judgment was issued by the Court of Appeals on October 21, 1987, upon motion of the prevailing party on the ground that no appeal has been filed by the petitioners with this Court.

Subsequently, upon motion of respondents, the court a quo issued the writ of execution. Petitioners filed a "Motion to Recall Order On Issuance of Writ of Execution" on two grounds, namely, no proper substitution of party and want of effective notice of decision to party Jose Abayon by the appellate court. Respondent trial court denied it in its Order dated April 26, 1988. Thereupon, movants filed a Motion for Reconsideration which said court likewise denied in its Order dated June 29, 1988.[3]

Hence, this petition.

Petitioners contend that there was no valid substitution of the deceased plaintiff, Fabio Masangya, thus whatever proceedings conducted thereafter is null and void for lack of jurisdiction, and for which reason also, the decision of September 21, 1982 which they (petitioners) appealed has no legal effect. Similarly, with the death of their counsel, Atty. Rufo Venus during the pendency of their appeal, petitioners also claim that the Decision of the Court of Appeals, for lack of notice to the proper parties (petitioners), has not become final and executory, and correspondingly, there is no entry of judgment to speak of and no writ of execution could therefore issue.[4]

Anent the first issue on the substitution of parties, records show that the original plaintiffs in this case were Fabio Masangya and Jose Abayon. Fabio died on December 21, 1971, while Abayon is still alive. During the hearing of

Civil Case 1535 on January 7, 1972, counsel for the plaintiffs, Atty. Rufo Venus, moved for the suspension of the trial to give more time to file his motion for substitution of the deceased plaintiff, Fabio Masangya, and for which, the lower court, through Bienvenido Ejercito, then presiding as the District judge gave Atty. Venus up to January 25, 1972 to file his motion for substitution of parties. In compliance therewith, a motion for substitution of plaintiff, Fabio Masangya, dated February 15, 1972, was filed and consequently, an Order dated February 15, 1972, signed by Ejercito was issued granting the motion and ordered that Fabio Masangya be substituted by his heirs (now petitioners) namely: Federico, Arturo, Rodrigo, Carpio and Aelasar, all surnamed Masangya, and Maura M. de Jose.[5] Trial on the merits proceeded with Atty. Venus presenting three (3) witnesses for the plaintiffs, Jose Abayon and substituted parties before it finally rested its case. Considering the foregoing, We see no error committed by the trial court in the substitution of parties.

Furthermore, petitioner never raised the alleged legal infirmity with the appellate court and even assuming that there was no valid substitution made on the deceased Fabio Masangya, for the petitioners to raise objection for the first time after appeal, and after having participated in the trial of this case up to its resolution, cannot be favored on the grounds of estoppel. While lack of jurisdiction may be availed of at any stage, a party's active participation in the proceedings before the court without jurisdiction will estop such party from assailing such lack of jurisdiction.[6]

Petitioners likewise allege that the appellate court sent the notice of judgment to a dead person, Atty. Venus, their counsel. They argue that there was no effective notice in law given by the appellate court. The argument is untenable. While it may be true that the notice of judgment was sent to Atty. Venus, the Court of Appeals still sent a notice to petitioners after having been duly notified by respondents' counsel. Records reveal that petitioners were sent a notice of judgment of the decision dated December 9, 1986, which was received by them on March 24, 1987 per letter dated March 26, 1987 of petitioners. The letter is quoted hereunder, to wit:

"REPUBLIC OF THE PHILIPPINES
COURT OF APPEALS
MANILA

FABIO MASANGYA, et al. CA-G.R. CV-00782

Plaintiffs-Appellants,

- versus -

DIOSDADO MASANGYA, et al.

Defendants-Appellees.

X-----
-----X

March 26, 1987

Atty. Adelaida C. Reyes

Division Clerk of Court

Court of Appeals

Manila

Madam:

Please take notice that we are in receipt of the notice of judgment and copy of the decision of the above-entitled case on March 24, 1987. In this connection, I should like to inform your good office that our lawyer, Atty. Rufo L. Venus, died and since we are intending to appeal this decision of the Honorable Court of Appeals, we are looking for another lawyer to handle our case.

Very truly yours,

FABIO MASANGYA, et al.

Plaintiffs-Appellants

By:

JOSE ABAYON."

(underscoring supplied; p. 88, Rollo of CA--G.R. CV-00782)

Well-settled is the rule that a notice of judgment rendered in the case served on counsel of record is, for all legal purposes, notice to the client, the date of receipt of which is considered the starting point from which the period for appeal prescribed by law shall begin to run.[7] And where counsel is already dead before rendition of judgment, the court may order that notice of decision be sent to the proper party, otherwise, a final and executory judgment may be set aside for lack of due process of law.[8] However, in the case at bar, it is crystal clear that petitioners had all the opportunity to file a motion for reconsideration in the Court of Appeals or an appeal to this Court in view of having actually received the notice of judgment of the Court of Appeals but failed to do so. The subsequent entry of judgment on October 21, 1987 of the December 9, 1986 decision was valid. Their plea, therefore, that they were not accorded the right to procedural due process cannot elicit either approval or sympathy. The denial of their motion for the recall of the writ of execution cannot be stigmatized as contrary to law.

PREMISES CONSIDERED, the petition is hereby DISMISSED.

SO ORDERED.

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

[1] Penned by Judge Amalia Resterio-Andrade

[2] p. 2, Rollo

[3] p. 3, Rollo

[4] p. 8, Rollo

[5] p. 7, Rollo

[6] Echaus vs. Blanco, G.R. No. 30453, December 4, 1989

[7] Baquiran vs. C.A., L-14551, July 31, 1961, 2 SCRA 873 (En Banc) Natividad, J.: Damasco vs. Arrieta, L-18879, Jan. 31, 1963, 4 SCRA 224, 235 (En Banc) Labrador, J.: Jalover vs. Ytoriaga, L-35989, Oct. 28, 1977, 80 SCRA 100, 106 (Second Div.) Castro, C.J.: Cubar vs. Mendoza, 55035, Feb. 23, 1983, 120 SCRA 768, 772 (Second Div.) de Castro, J.

[8] Rueda vs. Luluquisin, L-13764, Jan. 30, 1960, 57 O.G. (No. 29) 5238 (En Banc) Bautista Angelo, J.

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