

JUAN ANG, ROMEO R. ANG, MINDA R. ANG, WILLIAM LOPEZ AND ERNESTO YAP, PETITIONERS, VS. COURT OF APPEALS, JOVITA O. CRUZ, MACARIA TE AND RENE TE, RESPONDENTS.

G.R. Nos. 56572 and 57481. September 04, 1981

Ponente: AQUINO, J.

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AQUINO, J.:

In Civil Case No. 913, filed by Jovita O. Cruz, Macaria Cruz Te and Rene Te against Juan Ang, Romeo R. Ang, Minda R. Ang, William Lopez and Ernesto Yap, the Court of First Instance of Davao, Tagum Branch I, rendered a decision dated October 8, 1979, declaring the defendants the owners of the three disputed lots and ordering that they be placed in possession thereof.

The defendants, as the winning parties, filed a motion for execution pending appeal. It was granted by the lower court in its orders of November 5 and 9, 1979 on condition that they should file a bond in the sum of P10,000. In a separate order dated November 9, 1979 the lower court approved plaintiffs' record on appeal.

Not satisfied with the order of execution pending appeal, plaintiffs Jovita O. Cruz, Macaria Cruz Te and Rene Te filed a petition for certiorari dated December 28, 1979 wherein they prayed that that order be annulled.

That petition was to be filed in the Court of Appeals. The name of that Court is in the heading of the petition. However, it was inadvertently filed with this Court and docketed as G. R No. 52461 on February 5, 1980 at 9 a.m.

After the error was discovered, one original of the petition and some copies were filed in the Court of Appeals where it was docketed also on February 5, 1980 as CA-G. R. No. SP-10355 and assigned to the Seventh Division (Escolin, Villasor and Villaluz, JJ.)

Inasmuch as another original of the petition for certiorari was already stitched to the Rollo of SC-G. R. No. 52461, we issued a resolution on February 8, 1980 transferring that Rollo to the Court of Appeals where it was docketed on February 27, 1980 as CA-G. R. No. SP-10466 and assigned to the Eighth Division (Reyes, Coquia and Zosa, JJ.).

The Rollo of SC-G. R. No. 52461, which became CA-G. R. No. SP-10466, was sent to the Court of Appeals by means of a letter of transmittal signed by this Court's chief of the judicial records office. Thus, a single petition was docketed twice, an anomaly which was not seasonably discovered.

After the submission of a comment and memoranda, the Seventh Division in a decision promulgated on November 12, 1980 nullified the execution pending appeal.

Respondents Juan Ang, et al., the defeated parties in the certiorari case (the winning parties in the lower court and the petitioners in the instant case), filed a motion for reconsideration through lawyer Mario M. Arzadon who called the Seventh Division's attention to the fact that a similar certiorari case, CA-G. R. No. SP-10466, was decided by the Eighth Division. He attached to his motion a copy of Justice Coquia's decision. Justice Villasor of

the Seventh Division denied the motion for reconsideration in a resolution promulgated on March 13, 1981.

That decision was appealed to this Court but because the petition for review on certiorari was filed late, it was denied in the resolution of June 19, 1981 in G.R. No. 56572. A motion dated July 26 for the reconsideration of the minute denial resolution is pending.

On the other hand, the Eighth Division issued summons and a restraining order and required the respondents to comment on the petition in CA-G. R. No. SP-10466. Copies of the summons, restraining order and the resolution to comment were served upon petitioners' counsel, Simeon N. Millan, Jr. Had Millan been more observant and percipient, he would have noticed that his petition had been docketed twice. But he did not perceive the error. Like the respondents, he did nothing about it.

No comment was ever submitted by the respondents. The Eighth Division, through Justice Coquia, in a decision promulgated on November 7, 1980 (the decision of the Seventh Division was promulgated on November 12, 1980) also nullified the execution pending appeal.

Arzadon, the counsel of the respondents (now petitioners Juan Ang, et al.), filed a motion for reconsideration dated December 19, 1980 wherein he called the Division's attention to the fact that the petition in the case, CA-G. R. No. SP-10466, is a duplication of the petition in CA-G.R. No. No. 10355 decided by Justice Villazor of the Seventh Division.

Arzadon prayed for the dismissal of the petition and asked that lawyer Millan be declared in contempt of court. The Eighth Division (per Justice Coquia) in its resolution of June 10, 1981 denied the motion and did not bother to straighten out the anomaly that two decisions were rendered by two Divisions on the same petition for certiorari.

On August 11, 1981, lawyer Arzadon filed in this Court a petition for review on certiorari wherein he prayed that the decision of the Eighth Division be reversed and set aside and that the execution pending appeal be upheld. (G. R. No. 57481).

We hold that the Seventh and Eighth Divisions (assuming that the petition in G. R. No. 56572 was filed on time) did not err in sustaining the petition for certiorari and in annulling the execution pending appeal. The motion for reconsideration in G. R. No. 56572 is denied.

WHEREFORE, the two petitions for review are dismissed. The Division of the Court of Appeals to which the appeal in the main case is assigned should decide that appeal as soon as possible. The Clerk of Court of the Court of Appeals is directed to call the Division's attention to the urgency of resolving the appeal with the least delay. No costs.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., Fernandez, and De Castro, JJ., concur.
Abad Santos, J., is on leave.

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