

FIRST DIVISION

[G.R. No. 162217, July 22, 2015]

HEIRS OF ARTURO GARCIA I, (IN SUBSTITUTION OF HEIRS OF MELECIO BUENO), PETITIONERS, VS. MUNICIPALITY OF IBA, ZAMBALES, RESPONDENT.

D E C I S I O N

BERSAMIN, J.:

For review are the resolutions promulgated on October 28, 2003^[1] and February 10, 2004,^[2] whereby the Court of Appeals (CA) respectively “dismissed” the petitioners’ petition for review under Rule 42 of the *Rules of Court*, and denied their motion for reconsideration.

At issue is the correct remedy of a party aggrieved by the decision rendered by the Regional Trial Court (RTC) in the special civil action for *certiorari* brought by the defendant in an ejectment suit to assail the refusal of the Municipal Trial Court (MTC) to give due course to the latter’s notice of appeal vis-à-vis the judgment in favor of the plaintiff.

Antecedents

The late Melecio R. Bueno was the tenant-farmer beneficiary of an agricultural land located in Poblacion, Iba, Zambales. On October 18, 1999, he brought an ejectment suit in the MTC of Iba against the Municipality of Iba, Province of Zambales,^[3] claiming that in 1983, the Municipality of Iba had constructed the public market on a substantial portion of his land without his consent; and that his repeated demands for the Municipality of Iba to vacate the property had remained unheeded.

After due proceedings, the MTC ruled in favor of Bueno.^[4] Thence, the Municipality of Iba filed its notice of appeal, but the MTC denied due course to the notice of appeal. Thus, the Municipality of Iba filed its petition for certiorari in the RTC in Iba, Zambales to assail the denial of due course by the MTC. The case was assigned to Branch 69 which ultimately granted the petition for *certiorari*.^[5]

The petitioners, who meanwhile substituted Bueno upon his death, moved for the reconsideration of the judgment granting the petition for *certiorari*, but the RTC denied their motion for reconsideration.^[6]

Aggrieved, the petitioners appealed to the CA by petition for review under Rule 42 of the Rules of Court.

As earlier mentioned, the CA “dismissed” the petitioners’ petition for review on October 28, 2003 for not being the proper mode of appeal, observing that the

assailed orders had been issued by the RTC in the exercise of its original jurisdiction.
[7]

The motion for reconsideration of the petitioners was ultimately denied by the CA.[8]

Issue

Although admitting that their petition for review under Rule 42 was inappropriate, the petitioners maintain that they substantially complied with the requirements of an ordinary appeal under Rule 41, and pray that the Court exercise its equity jurisdiction because a stringent application of the *Rules of Court* would not serve the demands of substantial justice.

Ruling of the Court

We affirm.

An appeal brings up for review any error of judgment committed by a court with jurisdiction over the subject of the suit and over the persons of the parties, or any error committed by the court in the exercise of its jurisdiction amounting to nothing more than an error of judgment.[9] It was, therefore, very crucial for the petitioners and their counsel to have been cognizant of the different modes to appeal the adverse decision of the RTC in the special civil action for *certiorari* brought by the Municipality of Iba. Such modes of appeal were well delineated in the *Rules of Court*, and have been expressly stated in Section 2, Rule 41 of the *Rules of Court* since July 1, 1997,[10] to wit:

Section 2. *Modes of appeal.*—

(a) *Ordinary appeal.*— The appeal to the Court of Appeals in cases decided by the Regional Trial Court **in the exercise of its original jurisdiction** shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

(b) *Petition for review.*— The appeal to the Court of Appeals in cases decided by the Regional Trial Court **in the exercise of its appellate jurisdiction** shall be by petition for review in accordance with Rule 42.

(c) *Appeal by certiorari.*—**In all cases where only questions of law are raised or involved**, the appeal shall be to the Supreme Court by petition for review on certiorari in accordance with Rule 45. (n)

Pursuant to this rule, in conjunction with Section 3^[11] and Section 4^[12] of Rule 41, the petitioners should have filed a notice of appeal in the RTC within the period of 15 days from their notice of the judgment of the RTC, and within the same period

should have paid to the clerk of the RTC the full amount of the appellate court docket and other lawful fees. The filing of the notice of appeal within the period allowed by Section 3 sets in motion the remedy of ordinary appeal because the appeal is deemed perfected as to the appealing party upon his timely filing of the notice of appeal. It is upon the perfection of the appeal filed in due time, and the expiration of the time to appeal of the other parties that the RTC shall lose jurisdiction over the case.^[13] On the other hand, the non-payment of the appellate court docket fee within the reglementary period as required by Section 4, is both mandatory and jurisdictional, the non-compliance with which is fatal to the appeal, and is a ground to dismiss the appeal under Section 1,^[14] (c), Rule 50 of the *Rules of Court*. The compliance with these requirements was the only way by which they could have perfected their appeal from the adverse judgment of the RTC.

In contrast, an appeal filed under Rule 42 is deemed perfected as to the petitioner upon the timely filing of the petition for review before the CA, while the RTC shall lose jurisdiction upon perfection thereof and the expiration of the time to appeal of the other parties.^[15]

The distinctions between the various modes of appeal cannot be taken for granted, or easily dismissed, or lightly treated. The appeal by notice of appeal under Rule 41 is a matter of right, but the appeal by petition for review under Rule 42 is a matter of discretion. An appeal as a matter of right, which refers to the right to seek the review by a superior court of the judgment rendered by the trial court, exists after the trial in the first instance. In contrast, the discretionary appeal, which is taken from the decision or final order rendered by a court in the exercise of its primary appellate jurisdiction, may be disallowed by the superior court in its discretion.^[16] Verily, the CA has the discretion whether to due course to the petition for review or not.^[17]

The procedure taken after the perfection of an appeal under Rule 41 also significantly differs from that taken under Rule 42. Under Section 10 of Rule 41, the clerk of court of the RTC is burdened to immediately undertake the transmittal of the records by verifying the correctness and completeness of the records of the case; the transmittal to the CA must be made within 30 days from the perfection of the appeal.^[18] This requirement of transmittal of the records does not arise under Rule 42, except upon order of the CA when deemed necessary.^[19]

As borne out in the foregoing, the petitioners' resort to the petition for review under Rule 42 was wrong. Hence, the CA did not err in denying due course to the petition for review.

Yet, the petitioners plead for liberality, insisting that their petition for review, albeit the wrong mode, was a substantial compliance with the proper mode of appeal.

The plea for liberality is unworthy of any sympathy from the Court. We have always looked at appeal as not a matter of right but a mere statutory privilege. As the parties invoking the privilege, the petitioners should have faithfully complied with the requirements of the Rules of Court. Their failure to do so forfeited their privilege to appeal. Indeed, any liberality in the application of the rules of procedure may be properly invoked only in cases of some excusable formal deficiency or error in a