

FIRST DIVISION

[G.R. No. 162692, August 26, 2015]

NILO V. CHIPONGIAN, PETITIONER, VS. VICTORIA BENITEZ-LIRIO, FEODOR BENITEZ AGUILAR, AND THE COURT OF APPEALS, RESPONDENTS.

D E C I S I O N

BERSAMIN, J.:

This appeal seeks the review and reversal of the decision promulgated on October 30, 2002,^[1] whereby the Court of Appeals (CA) dismissed the petition for *certiorari* that the petitioner had instituted to annul the dismissal by the trial court of his complaint-in-intervention in Special Proceedings No. SP-797 entitled *In the matter of the Intestate Estate of Vicente O. Benitez, Petition for Letters of Administration. Victoria Benitez Lirio and Feodor Benitez Aguilar, Petitioners.*

Antecedents

The late Vicente Benitez was married to Isabel Chipongian, the petitioner's sister. Isabel had predeceased Vicente, who died on November 13, 1989. The couple had no offspring.^[2] On July 20, 1982, after the death of Isabel, Vicente and the petitioner had executed a deed of extrajudicial settlement respecting the estate of Isabel, whereby the latter waived all his rights to the estate of Isabel in favor of Vicente.^[3] According to the petitioner, however, Vicente executed an affidavit on the same date whereby he affirmed that the waiver did not extend to the paraphernal properties of Isabel.^[4]

Upon the death of Vicente, Victoria Benitez Lirio (Victoria), a sister of Vicente, and Feodor Benitez Aguilar (Feodor), a nephew of Vicente, initiated proceedings for the settlement of the estate of Vicente in the Regional Trial Court on September 24, 1990 (RTC).^[5] In its order dated May 13, 1994,^[6] the RTC appointed Feodor the administrator of Vicente's estate. On May 20, 1994,^[7] it issued the letters of administration to Feodor.

The petitioner intervened in Special Proceedings No. SP-797.^[8] On May 27, 1994, he sought the partial revocation of the May 13, 1994 order in order to exclude the paraphernal properties of Isabel from inclusion in the estate of Vicente.^[9] He cited the affidavit of Vicente in support of the partial revocation.

Feodor countered with the request that he be allowed to continue to administer all the properties left by Vicente, including the paraphernal properties of Isabel.^[10]

On June 8, 1994, the petitioner specifically moved for the exclusion of the paraphernal properties of Isabel from Vicente's estate. However, he withdrew the

motion even before the RTC could rule on it. Instead, he filed a *Motion for Leave to Intervene and to Admit Complaint-in-Intervention*.^[11]

Respondents Victoria and Feodor opposed the complaint-in-intervention.^[12]

The RTC granted the *Motion for Leave to Intervene and to Admit Complaint-in-Intervention*, and admitted the complaint-in-intervention of the petitioner.^[13]

Judgment of the RTC

On August 21, 1998, the RTC rendered judgment dismissing the complaint-in-intervention, and ordering the costs of suit to be paid by the petitioner,^[14] pertinently holding:

There is no dispute that the estate of the late Isabel Chipongian was extra-judicially settled on July 20, 1982 by and between Vicente O. Benitez and Nilo V. Chipongian and was published in the BAYANIHAN Weekly News on August 16, 23, and 30, 1982. The herein intervenor actively participated in the execution of the extra-judicial settlement of his sister's estate. As a matter of fact the intervenor therein "agreed x x x x x to quitclaim and waive all my rights to the estate left by my declared sister Isabel Chipongian and I hereby adjudicated them in favor of my brother-in-law Vicente O. Benitez" (Exh. 23-B)

Section 4, Rule 74 of the Rules, provides for a limitation of 2 years after the settlement and distribution of an estate in accordance with either Section 1 or Section 2 of the same Rule, within which an heir or other person deprived of his lawful participation in the estate may compel the settlement of the said estate in the Courts for the purpose of satisfying such lawful participation (Tinatan v. Serilla, 54 O.G. p. 6080 9/15/58). The intervenor took part and had knowledge of the extra-judicial settlement of the estate and is therefore bound thereby. If he was indeed deprived of his lawful share or right in his sister's estate, it comes as a surprise why it took him more than 12 years assert the purported affidavit allegedly executed in his favor by Vicente O. Benitez.

Careful note was taken of the fact that the purported affidavit of Vicente O. Benitez in favor of the herein intervenor was executed simultaneously with the deed of extra-judicial settlement of Isabel Chipongian's estate which was published but the affidavit was not. No reason was advanced by the intervenor why Vicente O. Benitez's affidavit was not published and why it was only after 12 long years that intervenor brought it out.

It is well-settled that the negligence or omission to assert a right within a reasonable time warrants not only a presumption that the party entitled to assert it either had abandoned it or declined to assert it but also casts doubt on the validity of the claim of ownership. Such neglect to assert a right taken in conjunction with the lapse of time more or less great and other circumstances causing prejudice to the adverse party operates as a bar in a Court of equity (Guerrero v. CA, 126 SCRA 109).

WHEREFORE, on the foregoing premises, the complaint in intervention is hereby dismissed with costs. The petitioner's counterclaim is also dismissed.

SO ORDERED.^[15]

The petitioner moved for the reconsideration of the judgment,^[16] but the RTC denied the *Motion for Reconsideration* on March 8, 1999.^[17]

Thus, on March 19, 1999, the petitioner filed a notice of appeal.^[18]

On March 30, 1999, the RTC denied due course to the notice of appeal for having been filed beyond the reglementary period.^[19]

On April 19, 1999, the petitioner filed a *Motion for Reconsideration* vis-a-vis the order denying due course to his notice of appeal.^[20]

On July 5, 1999, the RTC issued its order whereby it conceded that the petitioner had timely filed the notice of appeal, but still denied the *Motion for Reconsideration* on the ground that he had not perfected his appeal because of his failure to pay the appellate court docket fees.^[21]

On July 26, 1999, the petitioner brought his *Motion to Set Aside* the July 5, 1999 order denying his *Motion for Reconsideration*.^[22]

On August 13, 1999, the RTC denied the *Motion to Set Aside*.^[23]

Decision of the CA

On October 26, 1999, the petitioner instituted his petition for *certiorari* in the CA, ^[24] alleging that the RTC had committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing his appeal, and denying his *Motion for Reconsideration*. He averred that on March 19, 1999, he filed the notice of appeal; ^[25] that he paid the appellate court docket fees on March 31, 1999; ^[26] that the RTC denied due course to the notice of appeal on the ground that it had been filed beyond the reglementary period; that he thus filed his Motion for Reconsideration against the order denying due course; ^[27] that on July 5, 1999, the RTC issued its order whereby it conceded that the petitioner had timely filed the notice of appeal, but still denied the *Motion for Reconsideration* on the ground that he had not perfected his appeal because of his failure to pay the appellate court docket fees; ^[28] that he filed his *Motion to Set Aside Order*, appending thereto the copies of the official receipts of the payment of the appellate court docket fees; ^[29] that through the order of August 13, 1999, the RTC still denied the *Motion to Set Aside Order*, a copy of which order was received by his counsel on August 27, 1999; ^[30] that his last day to bring the special civil action for *certiorari* was on October 26 1999, the 60th day from such date; and that there was no appeal, or any plain, speedy and adequate remedy in the ordinary course of law.^[31]

On October 30, 2002, the CA dismissed the petition for *certiorari*,^[32] opining thusly:

The Supreme Court has time and again stressed that the perfection of appeals in the manner and within the period permitted by law is not only mandatory but jurisdictional. The failure to perfect an appeal renders the decision of the trial court final and executory. [Bank of America, NT & SA v. Gerochi, Jr., 230 SCRA 9 (1994) citing Alto Sales Corp. v. IAC, 197 SCRA 618 (1991), Falcon Mfg. v. NLRC, 199 SCRA 814 (1991), Kabushin Kaisha Isetan v. IAC, 203 SCRA 583 (1991)]

This rule is founded upon the principle that the right to appeal is not part of due process of law but is a mere statutory privilege to be exercised only in the manner and in accordance with the provisions of the law. [Bello v. Fernando, 4 SCRA 135 (1962); Borre v. Court of Appeals, 158 SCRA 660 (1998); Pedrosa v. Hill, 257 SCRA 373 (1996); People v. Esparas, 260 SCRA 539 (1996)]

Petitioner paid the appeal fees only on March 31, 1999, but as admitted by him in his Motion for Reconsideration (Rollo, p. 61), the last day to perfect his appeal was on August 21, 1998. (Rollo, p. 68) In a long line of cases, the Supreme Court has held that failure to comply with the requirement for payment on time of the appeal fees renders the decision final. (Republic of the Philippines vs. Court of Appeals, 322 SCRA at 90; Pedrosa vs. Hill, 257 SCRA 373; Luna vs. NLRC, 270 SCRA 227) We see no compelling reason to depart from this rule.

We find no further need to rule on the other assigned error. Suffice it to state that the respondent court acted pursuant to law and established jurisprudence; hence, did not commit any abuse of discretion.

WHEREFORE, for lack of merit, the petition is **DISMISSED**.

SO ORDERED.^[33]

On November 28, 2002, the petitioner sought reconsideration,^[34] but the CA denied his Motion for Reconsideration on March 9, 2004.^[35]

Issues

Hence, this appeal, whereby the petitioner contends that the CA gravely abused its discretion in dismissing his petition for *certiorari* assailing the dismissal of his complaint-in-intervention and the denial of due course to his notice of appeal by the RTC on the ground of the late payment of the appellate court docket fees. He argues that he should not be deprived of his right to appeal solely on the basis of the late payment of the appellate court docket fees.^[36]

In contrast, respondents Victoria and Feodor seek the denial of the petition for review because the petitioner did not file a record on appeal,^[37] as mandated under

In his reply to the respondents' comment,^[38] the petitioner submits:

x x x It is to be noted that the appeal was from the decision of the trial court to dismiss petitioner's complaint-in-intervention and not 'the final order or judgment rendered in the case', obviously referring to the main case, that is, the intestate estate case. Since the intervention was not an independent proceeding but only ancillary or supplemental to the main case, the rule on multiple appeals does not apply and the filing of a record on appeal is not a pre-requisite to the acceptance and consideration of the appeal by the appellate court.

Ruling of the Court

The appeal lacks merit.

Intervention is "a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein to enable him, her or it to protect or preserve a right or interest which may be affected by such proceedings."^[39] If an intervention makes a third party a litigant in the main proceedings, his pleading-in-intervention should form part of the main case. Accordingly, when the petitioner intervened in Special Proceedings No. SP-797, his complaint-in-intervention, once admitted by the RTC, became part of the main case, rendering any final disposition thereof subject to the rules specifically applicable to special proceedings, including Rule 109 of the *Rules of Court*, which deals with appeals in special proceedings.

Section 1 of Rule 41 enunciates the *final judgment* rule by providing that an appeal "may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable." In the context of the *final judgment rule*, Section 1 of Rule 109 does not limit the appealable orders and judgments in special proceedings to the final order or judgment rendered in the main case, but extends the remedy of appeal to other orders or dispositions that completely determine a particular matter in the case, to wit:

Rule 109. - Appeals in Special Proceedings

Section 1. *Orders or judgments from which appeals may be taken.* - An interested person may appeal in special proceedings from an order or judgment rendered by a Court of First Instance or a Juvenile and Domestic Relations Court, where such order or judgment:

(a) Allows or disallows a will;

(b) Determines who are the lawful heirs of a deceased person, or the distributive share of the estate to which such person is entitled;