FIRST DIVISION

[G.R. No. 166036, June 19, 2009]

NENA A. CARIÑO, PETITIONER, VS. ESTRELLA M. ESPINOZA, REPRESENTED BY HER ATTORNEY-IN-FACT MANUEL P. MEJIA, JR., RESPONDENT.

R E S O L U T I O N

CARPIO, J.:

The Case

Before the Court is a petition for review assailing the 30 October 2003[1] and 2 November 2004[2] Resolutions of the Court of Appeals in CA-G.R. CV No. 73034.

The Antecedent Facts

The case originated from an action for Legal Redemption and Damages with Writ of Preliminary Injunction filed by Estrella M. Espinoza (respondent), represented by her attorney-in-fact Manuel P. Mejia, Jr., against Nena A. Cariño (petitioner) and Modesto Penullar (Penullar).

Respondent was the co-owner, to the extent of 2/4 share, of a parcel of land, known as Lot 422 of the Mangaldan Cadastre, located in Poblacion, Mangaldan, Pangasinan. Penullar was the owner of 1/4 share of the land. However, the land remained undivided.

In 1988, respondent heard a rumor that Penullar was selling his share of the land. She inquired from both Penullar and petitioner if the rumor was true but they both denied it. On 25 July 1989, respondent learned that Penullar executed a deed of absolute sale in favor of petitioner.

Penullar alleged that he informed respondent of his intention to sell the land. Petitioner also claimed that the land was first offered to respondent but she was not interested in buying it.

The Regional Trial Court of Dagupan City, Branch 44 (trial court) ruled in favor of respondent. The trial court ruled that respondent was not notified of the sale of Penullar's share of the land. The trial court found that upon learning of the sale, respondent promptly filed the complaint and deposited the amount of redemption price. The dispositive portion of the trial court's Decision reads:

> WHEREFORE, judgment is rendered in favor of Estrella Mejia Espinoza and against defendants Nena Cariño and Modesto Penullar, as follows:

1. The defendants are ordered to allow the plaintiff to redeem the ¼ share/interest [that] defendant Modesto Penullar has over the land in question, Lot 422 of the Mangaldan Cadastre;

2. The defendants are ordered to execute the corresponding deed of redemption in favor of the plaintiff; and

3. The defendants are ordered jointly and severally to pay attorney's fee in the amount of P15,000.00 plus P500.00 for each day of hearing and actual litigation expenses of P5,000.00 plus costs of this suit.

The writ of preliminary injunction which the Court issued on November 22, 1996 enjoining the defendants and/or their agents or any other person acting in their [behalf] from continuing with the construction going on in the premises in question, is hereby made permanent.

Furnish copies of this Decision to Atty. Pedro M. Surdilla and Atty. Fernando P. Cabrera.

SO ORDERED.[3]

Petitioner appealed from the trial court's Decision.

In its 30 October 2003 Resolution, the Court of Appeals dismissed the appeal for petitioner's failure to file the appellant's brief. The Court of Appeals deemed that petitioner abandoned the appeal.

Petitioner filed a motion for reconsideration. In its 2 November 2004 Resolution, the Court of Appeals denied the motion.

Hence, the petition before this Court.

The Issue

The sole issue in this case is whether the Court of Appeals committed a reversible error in dismissing the appeal for failure of petitioner to file the appellant's brief.

The Ruling of this Court

The petition has no merit.

Petitioner alleges that the failure to file appellant's brief was not deliberate but was due to an exceptional reason, the illness of her counsel, which was supported by a medical certificate. Petitioner alleges that Section 1, Rule 50 of the 1997 Rules of Civil Procedure is merely directory and it is not the ministerial duty of the Court to dismiss the appeal. Petitioner alleges that the appellant's brief was submitted prior to the issuance of the 30 October 2003 Resolution and hence, there was substantial compliance with the Rules.

Section 1(e), Rule 50 of the 1997 Rules of Civil Procedure states: