

## SECOND DIVISION

[ G.R. NO. 154717, June 19, 2009 ]

**BONIFACIO M. MEJILLANO, PETITIONER, VS. ENRIQUE LUCILLO,  
HON. GREGORIA B. CONSULTA, PRESIDING JUDGE OF RTC,  
LEGASPI CITY, BRANCH 4, RESPONDENTS.**

### DECISION

**QUISUMBING, J.:**

Assailed in the present petition for review on certiorari are the Decision<sup>[1]</sup> dated March 14, 2002 and the Resolution<sup>[2]</sup> dated August 12, 2002 of the Court of Appeals in CA-G.R. SP No. 62322. The Court of Appeals had affirmed the Orders dated September 13, 2000<sup>[3]</sup> and October 23, 2000<sup>[4]</sup> of the Regional Trial Court (RTC) of Legaspi City, Branch 4, in Civil Case No. 9879, which dismissed petitioner's appeal from the Decision<sup>[5]</sup> dated July 5, 2000 of the Municipal Trial Court (MTC) of Daraga, Albay in Civil Case No. 945 and denied his motion for reconsideration.

The factual antecedents of this petition are as follows:

Faustino Loteriña died sometime in 1931 leaving two parcels of land, Lot No. 9007 which contains an area of 6,628 square meters, and Lot No. 9014 which contains an area of 4,904 square meters. During his lifetime, Faustino Loteriña begot six children. He sired three children by his first marriage to Ciriaca Luciñada, namely, Tranquilino, Antonia and Cipriano; and another three during his subsequent marriage to Francisca Monreal, namely, Julita, Felix and Hospicio.

On May 25, 1959, the surviving children of Faustino Loteriña with Ciriaca Luciñada, namely Tranquilino and Antonia, executed an Extrajudicial Settlement and Cession.<sup>[6]</sup> In said agreement, Tranquilino and Antonia divided Lot No. 9007 equally between them and Antonia ceded her one-half ( $\frac{1}{2}$ ) share in the property to Tranquilino. On March 1, 1978, Tranquilino executed a Deed of Absolute Sale<sup>[7]</sup> of Lot No. 9007 in favor of Jesus Lorente. Soon after, he modified the agreement to include Lot No. 9014 in an Amended Deed of Absolute Sale<sup>[8]</sup> dated September 11, 1978.

The conflict arose when the children of Faustino with Francisca Monreal, namely Felix and Hospicio, claimed that Lot No. 9014 is their inheritance from their late father. Hence, Jesus Lorente could not have validly bought it from Tranquilino. The conflicting claims to occupy and use the disputed property led Jesus Lorente to file an action for recovery of possession with the RTC of Legaspi City. The RTC, in a Decision<sup>[9]</sup> dated September 20, 1985 in Civil Case No. 6005, dismissed the complaint and declared that Felix and Hospicio Loteriña are co-heirs or co-owners of Lot No. 9014. As such, they are entitled to the possession of the property, subject to the final determination of their rights as heirs of their late father.

Thereafter, the heirs of Hospicio sold to respondent Enrique Lucillo their one-half (½) share in Lot No. 9014 by way of an Extrajudicial Settlement and Sale<sup>[10]</sup> on April 28, 1995. The remaining one-half (½) portion was also sold to respondent Lucillo by Felix on August 7, 1995 by way of Deed of Absolute Sale.<sup>[11]</sup>

When respondent Lucillo was about to enter said property, however, he discovered that petitioner was occupying Lot No. 9014. Respondent Lucillo wrote petitioner a letter<sup>[12]</sup> requesting him to vacate said property, but petitioner refused to surrender possession thereof claiming that he is the owner of Lot No. 9007 and Lot No. 9014 by virtue of an Extrajudicial Partition and Sale executed in their favor by the heirs of Jesus Lorente. Hence, on September 18, 1995, respondent Lucillo filed an action for recovery of possession of real property against petitioner with the MTC of Daraga, Albay.<sup>[13]</sup>

In its Decision dated July 5, 2000 in Civil Case No. 945, the MTC decreed:

WHEREFORE, judgment is hereby rendered orde[r]ing defendant Bonifacio Mejillano to relinquish possession of Lot No. 9014, situated at Pandan, Daraga, Albay, and to turn-over the peaceful possession thereof to plaintiff Enrique Lucillo. Costs against the defendant.

**SO ORDERED.**<sup>[14]</sup>

Aggrieved, petitioner seasonably appealed the foregoing decision to the RTC, but failed to file an appeal memorandum. Consequently, respondent judge dismissed petitioner's appeal on September 13, 2000:

For failure of appellant to file a memorandum pursuant to the mandatory requirement ... of Rule 40, Sec. 7(b) of the 1997 Rules of Civil Procedure, despite the lapse of the period therein given, the appeal is hereby ordered DISMISSED.

**SO ORDERED.**<sup>[15]</sup>

On October 9, 2000, petitioner, through new counsel, filed a motion for reconsideration attaching thereto the appeal memorandum. Petitioner alleged that his failure to file the required memorandum on time was due to ignorance, the untimely demise of his former counsel and the mistaken notion that what was needed in the appeal was merely a notice of appeal and nothing more.<sup>[16]</sup> In its Order<sup>[17]</sup> dated October 23, 2000, the RTC of Legaspi City, ruled:

x x x x

The Court cannot accept ... [petitioner's] claim of ignorance for the records will show that he personally made the Answer to the Complaint (Exp. pp. 9, 10, 11 & 12) and the Notice of Appeal (Exp. pp. 1-7).

Neither can the Court accept his claim of poverty because he chose to be represented by the late Atty. Delfin De Vera, a lawyer of no ordinary caliber and there is no indication on record that his services were for

free. But even assuming that the entry of Atty. Delfin de Vera into the picture was financially excessive on him, why did he not seek the services of the PAO before which he subscribed and swore the Verification and Certification of his Answer on November 23, 1995?

In view of the foregoing, the Opposition to the Motion for Reconsideration stands to be meritorious.

SO ORDERED.

Petitioner went to the Court of Appeals on a petition for certiorari. In a Decision dated March 14, 2002, the Court of Appeals dismissed the petition, ruling that respondent judge did not act with grave abuse of discretion in dismissing the appeal. The *falla* of said decision reads:

**WHEREFORE**, premises considered, the petition is **DISMISSED** and the assailed orders are **AFFIRMED**.

**SO ORDERED.**<sup>[18]</sup>

On August 12, 2002, the appellate court also denied his motion for reconsideration. Hence, the instant appeal. Petitioner now raises the following issues for our resolution:

I.

THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT CONSIDERING PETITIONER'S SUBSTANTIAL COMPLIANCE IN FILING HIS APPEAL MEMORANDUM WITH THE REGIONAL TRIAL COURT OF LEGASPI CITY IN THE INTEREST OF SUBSTANTIAL JUSTICE DESPITE THE FACT THAT THE RATHER BELATED FILING THEREOF BY PETITIONER WAS UNINTENTIONAL AS SHOWN IN HIS AFFIDA[V]IT OF MERIT.

II.

THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT CONSIDERING THE FACT THAT THE SALE OF SUBJECT LAND TO PRIVATE RESPONDENT IS NULL AND VOID.

III.

THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT CONSIDERING THE MERITORIOUS CAUSE OF ACTION OF PETITIONER AGAINST PRIVATE RESPONDENT.<sup>[19]</sup>

Stated simply, the issue for our resolution is whether the appellate court committed reversible error in affirming the order of the RTC dismissing petitioner's appeal for failure to file on time his memorandum on appeal.

Petitioner avers that his failure to file his memorandum on time was due to his lawyer's untimely death. He avers that he received the notice to file his memorandum, but because he is not a lawyer, he did not fully understand the tenor of such notice. It was only later after he talked with a Public Attorney's Office district