

THIRD DIVISION

[G.R. No. 176995, July 30, 2008]

**PABLO D. ACAYLAR, JR., PETITIONER, VS. DANILO G. HARAYO,
RESPONDENT.**

D E C I S I O N

CHICO-NAZARIO, J.:

Before this Court is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Revised Rules of Court filed by petitioner Pablo D. Acaylar, Jr., seeking the reversal and the setting aside of the Resolutions^[2] dated 28 July 2006 and 30 January 2007 of the Court of Appeals in CA-G.R. SP No. 01077-MIN. The appellate court, in its assailed Resolution dated 28 July 2006, dismissed petitioner's Petition for Review on *Certiorari* therein on technical grounds; thus, it affirmed the Decision dated 20 January 2006 of the Regional Trial Court (RTC) of Dipolog City, Branch 9, in Civil Case No. 6087, which, in turn, affirmed the Decision^[3] dated 28 March 2005 of the Municipal Trial Court in Cities (MTCC) of Dapitan City, in Civil Case No. 622, awarding possession of the subject property to respondent Danilo G. Harayo on the ground that he is the lawful possessor thereof. In its assailed Resolution dated 30 January 2007, the Court of Appeals refused to reconsider its earlier Resolution of 28 July 2006.

The subject property is a parcel of land designated as Lot 741-B-1 situated in Tolon, Potungan, Dapitan City, with an area of 30,000 square meters, described and bounded as follows:

Lot 741-B-1 of the Sketch Plan, situated at Tolon, Potungan, Dapitan City, containing an area of 30,000 square meters, bounded on the N., by Tolon River; on the South by Lot 741-A; on the E by Lot 741-B-2; and on the West by the Municipal Road, and embraced in OCT No. - (P-14969)-1119.

^[4]

In his Complaint filed with the MTCC, and docketed as Civil Case No. 622, respondent alleged that he acquired the subject property from the spouses Pablo Acaylar, Sr., and Zoila Dangcalan Acaylar (the spouses Acaylar) by virtue of a Deed of Sale executed on 14 September 2004. On the same day, respondent took possession of the subject property. On 19 September 2004, one of the spouses Acaylar's sons, the petitioner, using strategy, intimidation, threats and stealth, entered the subject property, cut the tall grasses in the coconut plantation therein, gathered the fallen coconuts and other fruits, and pastured his cows and other animals thereon.^[5]

In his Answer, petitioner countered that the subject property claimed by respondent is a portion of the entire property owned by petitioner's parents, the spouses Acaylar, with a total area of 59,775 square meters. Petitioner is in possession of his

parents' entire property since 1979 as administrator thereof. He built his house on the property and farmed the land. Respondent cannot definitively claim which portion of the entire property he was able to buy from the spouses Acaylar since the same was not clearly delineated.^[6] In addition, petitioner, together with his sisters, Rosario Acaylar Herrera and Asteria Acaylar, already filed against respondent and his spouse Beatriz Harayo a case for annulment of the Deed of Sale dated 14 September 2004, with prayer for preliminary injunction and damages, presently pending before the RTC, Branch 6.

During the Pre-Trial Conference held before the MTCC on 17 February 2005, the parties stipulated that the spouses Acaylar sold to respondent only a 30,000-square-meter portion of their entire property; and that there is a pending civil case before the RTC on the validity of the sale of the subject property.

Among the pieces of evidence presented by respondent before the MTCC was an Affidavit of Zoila Acaylar (First Affidavit) attesting that she sold the subject property to respondent for consideration and she did not give petitioner authority to either administer or remain on her and her husband's property.

After trial, the MTCC rendered a Decision^[7] on 28 March 2005, awarding to respondent the possession of the subject property. The MTCC gave credence to respondent's claim that he took immediate possession of the subject property after the execution of the Deed of Sale but was ousted therefrom by petitioner who invoked the alleged authority granted to him by Zoila Acaylar as the administrator of the unsold portion of her and her husband's property. The MTCC referred to the First Affidavit executed by Zoila Acaylar wherein she refuted that she gave petitioner authority or designated him as the administrator of her and her husband's property. Zoila Acaylar further admitted therein that the subject property was already sold to respondent. For lack of any legal right to remain on the subject property, the MTCC adjudged that petitioner's possession of the same was illegal. The dispositive portion of the MTCC Decision reads:

WHEREFORE, judgment is hereby rendered, by preponderance of evidence in favor of the [herein respondent] as against the [herein petitioner], and hereby orders:

(1) For [petitioner] and all other persons who may have derived rights from him to vacate lot 741-B-1 containing an area of 30,000 square meters as shown in the sketch plan prepared by Christopher Palpagan and turn over peaceful possession thereof to [herein respondent];

(2) For [petitioner] to pay [respondent] the amount of P5,000.00 as attorney's fees and P 1,591.25 as costs of the suit.

All other claims and counterclaims are hereby dismissed for lack of merit.

^[8]

On appeal, docketed as Civil Case No. 6087, the RTC promulgated its Decision^[9] dated 20 January 2006 affirming the award of possession in favor of respondent after finding that the appealed MTCC Decision was based on facts and law on the matter. The RTC declared that the sale of the subject property by the spouses Acaylar to respondent vested ownership and possession of said property in the

latter. Thus, petitioner's acts of entering the subject property, cutting the tall grasses and gathering the agricultural products therein, constitute forcible entry, which gave rise to an action for ejectment. The RTC decreed:

WHEREFORE, premises considered, [the RTC] finds by preponderance of evidence that [herein respondent] is in physical possession of the [subject property] that is on September 14, 2004 prior to the [herein petitioner] on September 19, 2004 and therefore affirms the decision of the Municipal Trial Court in the City of Dapitan without modification.^[10]

Banking on another Affidavit (Second Affidavit) executed by Zoila Acaylar, in which she recanted the statements she made in her First Affidavit denying that she designated petitioner as the administrator of her and her husband's property, petitioner moved for the reconsideration of the 20 January 2006 Decision of the RTC. The RTC, however, issued a Resolution^[11] dated 18 April 2006 denying petitioner's Motion for Reconsideration.

Consequently, petitioner filed a Petition for Review on *Certiorari*^[12] with the Court of Appeals where it was docketed as CA-G.R. SP No. 01077-MIN. Petitioner argued in his Petition that the RTC gravely erred in ruling that respondent was in prior possession of the subject property based solely on the Deed of Sale executed by the spouses Acaylar in respondent's favor. Petitioner also asserted therein that the RTC gravely abused its discretion when it did not give credence to the Second Affidavit executed by Zoila Acaylar.^[13]

On 28 July 2006, the Court of Appeals issued a Resolution^[14] dismissing outright CA-G.R. SP No. 01077-MIN for failure of petitioner to avail himself of the correct remedy under the law. Petitioner should have filed a **Petition for Review** under Rule 42 of the Revised Rules of Court, the proper remedy to appeal the adverse decisions rendered by the RTC in its appellate capacity. Instead, petitioner erroneously filed a **Petition for Review on *Certiorari***^[15] to assail the 20 January 2006 Decision and 8 April 2006 Resolution of the RTC in Civil Case No. 6087. The Court of Appeals also noted non-compliance by petitioner and his counsel with several more requirements for filing a petition with the Court of Appeals, namely: (a) shortage in the payment of the docket fees; (b) failure of petitioner's counsel to indicate the place of issue of his Integrated Bar of the Philippines (IBP) number and his complete address; (3) failure of petitioner to furnish the appellate court which rendered the assailed decision, in this case the RTC, a copy of the Petition; and (4) failure of the Petition to state the material dates.

The Court of Appeals, in a Resolution^[16] dated 30 January 2007, denied for lack of merit the Motion for Reconsideration interposed by petitioner. The appellate court, however, excused the mistake of petitioner in the designation of the pleading as a Petition for Review on *Certiorari*, since it was clear from petitioner's Motion for Extension to file Petition for Review that he wished to avail himself of the remedy provided under Rule 42 of the Revised Rules of Court.

Petitioner is now before this Court *via* the Petition at bar, making the following assignment of errors:

I.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN DENYING THE PETITION DESPITE ADEQUATE EXPLANATION SUBMITTED BY THE PETITIONER ON THE TECHNICALITIES ASSIGNED TO THE PETITIONER;

II.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN READING SHORT THE GIST OF THE PETITION WHEN IT RULED THAT SPECIFIC MATTERS INVOLVED IN THE CASE WERE INDICATED IN THE PETITION;

III.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN RULING THAT ANNEXES WERE NOT ATTACHED WHEN THEY ARE DULY ATTACHED;

IV.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FAILING TO EVALUATE THE PROPRIETY (SIC) FORCIBLE ENTRY CASE WHICH IS THE ORIGINAL ACTION INVOLVED IN THIS CASE *VIS-À-VIS* UNLAWFUL DETAINER.^[17]

The Court first addresses the procedural issues involved in the present case.

The Court of Appeals pointed several procedural defects of petitioner's Petition for Review therein. Petitioner's payment of docket fees was short of P500.00. It is also evident after a perusal of the records that petitioner failed to indicate in his Petition with the Court of Appeals the material dates to establish when he received notice of the assailed RTC Decision and when he filed his motion for reconsideration thereof with the RTC, as required by Section 2, Rule 42^[18] of the Revised Rules of Court. Petitioner further failed to set forth concisely a statement of the matters involved in the case in accordance with the same provision. Finally, petitioner did not furnish the RTC, the court which rendered the assailed decision, a copy of the Petition he filed with the Court of Appeals.^[19]

Petitioner, however, submits that he raised meritorious arguments in his Petition with the Court of Appeals and, thus, the dismissal thereof on a mere technicality would cause a miscarriage of justice. The petitioner invokes considerations of substantial justice and prays that this Court give his Petition due course and set aside the Court of Appeals Resolutions dated 28 July 2006 and 30 January 2007 in CA-G.R. SP No. 01077-MIN.

Respondent counters that the Court of Appeals did not commit any reversible error in dismissing the Petition in CA-G.R. SP No. 01077-MIN and adopted the discussion of the appellate court in his Memorandum.

In appealed cases, failure to pay the docketing fees does not automatically result in the dismissal of the appeal; the dismissal is discretionary on the part of the appellate court.^[20] Section 5, Rule 141 of the Revised Rules of Court provides that "If the fees are not paid, the court may refuse to proceed with the action until they

are paid and may dismiss the appeal or the action or proceedings." Petitioner explained in his Motion for Reconsideration before the Court of Appeals that he relied in good faith on the computation provided by the Clerk of Court of Zamboanga with whom he inquired as regards the amount of docket fees due. He had previously paid P4,030.00 and was short of only P500.00, which he also immediately paid upon being informed of the deficiency. Given the circumstances, petitioner should have been granted leniency by the Court of Appeals on this matter.

We also agree with the petitioner that failure to state the material dates is not fatal to his cause of action, provided the date of his receipt, *i.e.*, 9 May 2006, of the RTC Resolution dated 18 April 2006 denying his Motion for Reconsideration is duly alleged in his Petition.^[21] In the recent case of *Great Southern Maritime Services Corporation v. Acuña*,^[22] we held that "the failure to comply with the rule on a statement of material dates in the petition may be excused since the dates are evident from the records." The more material date for purposes of appeal to the Court of Appeals is the date of receipt of the trial court's order denying the motion for reconsideration.^[23] The other material dates may be gleaned from the records of the case if reasonably evident.^[24]

Likewise excusable is petitioner's failure to strictly follow the required form for presenting the facts and law of his case before the Court of Appeals. His Petition before the appellate court consists of only five pages, presenting concisely enough the facts and law supporting his case.

With respect to petitioner's failure to furnish the RTC a copy of his Petition with the Court of Appeals, this Court found upon examination of the records that petitioner had already complied with such requirement.^[25]

Accordingly, the parties are now given the amplest opportunity to fully ventilate their claims and defenses brushing aside technicalities in order to truly ascertain the merits of this case. Indeed, judicial cases do not come and go through the portals of a court of law by the mere mandate of technicalities.^[26] Where a rigid application of the rules will result in a manifest failure or miscarriage of justice, technicalities should be disregarded in order to resolve the case. In *Aguam v. Court of Appeals*,^[27] we ruled that:

The court has [the] discretion to dismiss or not to dismiss an appellant's appeal. It is a power conferred on the court, not a duty. The "discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case." Technicalities, however, must be avoided. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice. "A litigation is not a game of technicalities." "Law suits, unlike duels, are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts." Litigations must be decided on their merits and not on technicality. Every party litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities. Thus, dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to