

## FIRST DIVISION

[ G.R. No. 155758, October 31, 2008 ]

**HEIRS OF JOSE ESPLANA, NAMELY: YOLANDA BOTIN VDA. DE ESPLANA, TERESA B. ESPLANA, LIZA B. ESPLANA, SHIRLEY B. ESPLANA, ALMA B. ESPLANA, JACK B. ESPLANA, AND LINA B. ESPLANA, PETITIONERS, VS. THE COURT OF APPEALS AND HEIRS OF PEDRO DE LIMA, REPRESENTED BY JAIME DE LIMA, RESPONDENTS.**

### DECISION

**AZCUNA, J.:**

This is a petition for *certiorari* alleging that the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Resolutions in CA-G.R. SP No. 70106 dated June 27, 2002 and October 1, 2002, which dismissed petitioners' petition for review and denied their motion for reconsideration, respectively.

The facts are as follows:

On July 27, 1995, Jose Esplana filed an action for recovery of ownership and possession, quieting of title with damages against Pedro de Lima before the Municipal Trial Court (MTC) of Baao, Camarines Sur.

The MTC tried and decided the case as an action for forcible entry. On November 28, 1995, the MTC dismissed the complaint and ordered plaintiff Jose Esplana to pay defendant Pedro de Lima attorney's fees, the expenses of litigation in the amount of P10,000 and the costs of the suit.

On appeal, the Regional Trial Court (RTC) of Iriga City, Branch 35, in an Order dated February 28, 1997, held that the forcible entry aspect was only incidental to the issue of ownership. It remanded the case to the MTC for the court to decide the issue of ownership, which the parties agreed upon from the outset, and all the issues raised in the Complaint.

Pursuant to the RTC Order, the MTC tried the case anew to resolve who between the contending parties was the real owner of the property. Defendant Pedro de Lima died and was substituted by his son, Jaime de Lima.

The parcels of land under litigation are irrigated ricelands with an aggregate area of 6,152 square meters situated in Barangay Sagrada, Baao, Camarines Sur. They form part of the intestate estate of the late spouses Victor Esplana and Florencia Pereira.\* Florencia died in 1967, while Victor died on January 5, 1982. They were survived by five children, namely, Mercedes, Crisanta, Regina, Jose and Rufino. Rufino died in 1988.

Plaintiff Jose Esplana contended that he was the owner of the subject property by virtue of the Deed of Absolute Sale executed in his favor by his father, Victor Esplana, in 1978. While defendant Pedro de Lima claimed that he was the owner of the subject property having purchased the same from the rightful owners, Mercedes, Crisanta and Regina, all surnamed Esplana (Esplana sisters), by virtue of a Deed of Absolute Sale notarized by Atty. Paulo Briones on June 30, 1995, which sale was admitted by the Esplana sisters.

In a Decision dated April 14, 2000, the MTC found the preponderance of evidence in favor of the defendant; hence, it dismissed the Complaint. The dispositive portion of the decision reads:

WHEREFORE, for failure of the plaintiff to establish a valid cause of action, the complaint is, as it is, hereby dismissed. Plaintiff's exhibit "A" being a spurious and/or falsified document, the same is declared null and void ab initio; consequently, all deeds or transactions executed by the plaintiff subsequent to its execution covering or affecting the land bought by the defendant from the Esplana sisters is/are likewise declared null and void and of no legal effect whatsoever. Particularly, the tax declaration/s generated by the Assessor's Office in the name of the plaintiff by virtue or pursuant to exhibit "A" is/are declared without legal basis and are hereby ordered cancelled also.

As regards defendant's counter-claim, the plaintiff is directed to pay the defendant, attorney's fees and expenses of litigation in the amount of P20,000.00 and to pay the costs of suit.

Defendant's title to the land in question is quieted and for lack of legal and factual basis, the Third-Party Complaint is, as it is hereby dismissed.

[1]

Jose Esplana appealed the MTC decision to the RTC.

A certification from the Office of the Civil Registrar shows that Jose Esplana died on December 12, 2001.

In a Decision dated February 6, 2002, the RTC of Iriga City, Branch 34, stated that the issues raised before it were factual in character. Since the factual finding of the MTC was supported by evidence on record, the RTC affirmed the decision of the MTC *in toto* and dismissed the appeal.

Jose Esplana's counsel received a copy of the RTC decision on February 21, 2002.

On March 7, 2002, Jose Esplana's counsel filed before the Court of Appeals a motion for extension of 30 days within which to file a petition for review reckoned from March 8, 2002. He stated that he could not submit the petition on the deadline, March 8, 2002, due to Jose Esplana's untimely death, his day to day court appearance and the voluminous paper work in his office.

On May 16, 2002, the Court of Appeals issued a Resolution granting petitioners only 15 days, reckoned from March 8, 2002 or until March 23, 2002, within which to file

the petition for review subject to the caveat that a petition filed after March 23, 2002 shall be expunged from the records of the case.

Petitioners' counsel received a copy of the Court of Appeals' Resolution on May 29, 2002. However, he already filed the petition for review on April 5, 2002, which was within the 30-day extension requested for.

In a Resolution promulgated on June 27, 2002,<sup>[2]</sup> the Court of Appeals dismissed the petition for review and expunged it from the records of the case for having been filed out of time on April 5, 2002, instead of the deadline, March 23, 2002.

Petitioners' counsel received a copy of the Resolution on July 29, 2002. Petitioners, through counsel, filed a Manifestation with Motion for Reconsideration alleging that they filed the motion for extension to file the petition for review within 30 days from March 8, 2002 considering that the original petitioner, Jose Esplana, had just died and they had to attend the wake and that they had just manifested their desire to appeal the case of their father. Attached to the Manifestation was the Death Certificate of Jose Esplana showing that he died on December 12, 2001. Thus, petitioners alleged that their failure to file the petition on time was due to the sudden death of their father and the inefficiency of the postal service.

The Court of Appeals denied petitioners' motion for reconsideration in a Resolution promulgated on October 1, 2002.<sup>[3]</sup>

Hence, this petition.

The issue is whether or not the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Resolutions promulgated on June 27, 2002 and October 1, 2002.

Petitioners, the heirs of Jose Esplana, contend that they could have filed the petition for review before the deadline (March 23, 2002) if they received before the deadline the Court of Appeals' resolution on their motion for extension of time to file the petition for review. However, their motion was resolved by the Court of Appeals only on May 16, 2002 or after the extended period granted had already expired. They received the Resolution dated May 16, 2002 only on May 29, 2002, after they had already filed their petition for review on April 5, 2002. They claim that the non-compliance with the Resolution dated May 16, 2002 is clearly due to the delay in the postal service.

Petitioners also submit that the 15-day extension to file a petition for review under Sec. 1, Rule 42 of the Rules of Court is not a strict and rigid rule for it allows a further extension of 15 days for the most compelling reason, which in this case is the death of the original party, Jose Esplana; the observance of his wake; and the indecision of his heirs to pursue the case on appeal.

Petitioners pray that the Court annul and set aside the Court of Appeals' Resolutions dated June 27, 2002 and October 1, 2002 and direct the Court of Appeals to resolve the petition for review on the merits.

The petition is without merit.