

FIRST DIVISION

[G.R. NO. 151376, February 22, 2006]

FILOMENO G. GONZALES, P E T I T I O N E R, VS. QUIRINO G. GONZALES, REPRESENTED BY EUFEMIA GONZALES, R E S P O N D E N T.

D E C I S I O N

CHICO-NAZARIO, J.:

The Case

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeking to reverse and set aside, in part, the Decision^[1] dated 26 August 1999, and the Resolution^[2] dated 08 January 2002, both promulgated by the Court of Appeals (CA) in CA-G.R. SP No. 47348, in so far as the aforesaid decision 1) reversed and set aside the portion of the Order^[3] dated 11 November 1997 of Honorable Apolinario D. Bruselas, Jr., presiding judge of Regional Trial Court (RTC) of Quezon City, Branch 93, dismissing the appeal filed by herein respondent Quirino G. Gonzales for failure to file the Memorandum of Appeal within the reglementary period provided for under Sec. 7 (b) of Rule 40 of the Rules of Civil Procedure; and 2) directed the RTC to give due course to respondent's appeal and decide the case based on the records.

The Facts

The present petition stemmed from a complaint^[4] for ejectment dated 11 December 1995 filed by herein petitioner Filomeno G. Gonzales against herein respondent Quirino G. Gonzales before the Metropolitan Trial Court (MTC) of Quezon City, Branch 35, docketed as Civil Case No. 35-14327.

During the pendency of the case, on 30 April 1996, respondent Quirino B. Gonzales passed away. His wife, Eufemia Gonzales, was substituted in his stead as party defendant.

In a Motion^[5] dated 10 April 1997, respondent moved to suspend the proceedings before the MTC on the ground that she instituted before the RTC of Quezon City, Branch 84, a case for annulment of title, docketed as Civil Case No. Q-97-30360, against petitioner.

In an Order^[6] dated 28 April 1997, the MTC denied the aforementioned motion "as suits for annulment of sale and title does (sic) not abate ejectment actions respecting the same property (citations omitted);" and reiterated its earlier order submitting said case for decision.

In a Decision^[7] dated 01 August 1997, the MTC rendered judgment in favor of petitioner, the dispositive part of which states that:

WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the plaintiff Filomeno Gonzales against the defendant Eufemia Gonzales ordering the latter the following:

- 1) Ordering the defendant Eufemia Gonzales, and all persons claiming rights under her to vacate and surrender peacefully the subject premises to the plaintiff;
- 2) Ordering the defendant to pay rentals from November 22, 1995 up to the present in the amount of P5,000.00 a month until defendants have vacated the leased premises, as reasonable compensation of the use of the premises;
- 3) To pay the amount of P10,000.00 as attorney's fees, and
- 4) To pay the cost of suit.^[8]

Respondent seasonably appealed^[9] the foregoing decision to the RTC, which docketed the appeal as Civil Case No. Q-97-32061.

In an Order dated 18 September 1997, the RTC of Quezon City, Branch 93, directed respondent to "x x x submit a memorandum which shall briefly discuss the errors imputed to the lower court, x x x."^[10] Further, it warned the party that "[f]ailure on the part of the defendant-appellant to file a memorandum as directed x x x shall be a cause for the dismissal of the appeal."^[11]

Instead of filing the necessary memorandum of appeal, however, respondent filed a motion to consolidate^[12] the present case with the one she instituted against petitioner for annulment of title filed before the RTC of Quezon City, Branch 84, docketed as Civil Case No. Q-97-30360.

On 29 October 1997, petitioner filed a Motion for Execution Pending Appeal^[13] essentially moving for the immediate execution of the appealed judgment of the MTC, as provided for under Section 19^[14], Rule 70 Rules of Court. The motion alleged as basis respondent's failure to: 1) file a supersedes bond; and 2) periodically deposit the rentals falling due during the pendency of the appeal.

On 31 October 1997, the motion to consolidate the two abovementioned cases was, denied^[15] for lack of merit.

On 07 November 1997, the court *a quo* (RTC) ordered^[16] the issuance of the writ of execution.

On 11 November 1997, the court *a quo* then directed^[17] the dismissal of respondent's appeal for failing to file the necessary memorandum of appeal, to wit:

Before this court is an Appeal from a decision rendered by the Metropolitan Trial Court, Branch 35, Quezon City, in an action for Ejectment filed by defendant-appellant through counsel.

A perusal of the record reveals that defendant-appellant had failed to comply with the court order dated 18 September 1997 directing compliance with Section 7 (b), Rule 40 of the 1997 Rules of Court.

In view thereof, the court hereby orders the dismissal of the appeal.

On 03 December 1997, respondent filed an *Omnibus Urgent Motion for Reconsideration*.^[18] In said omnibus motion, she prayed for the reconsideration of the 07 and 11 November 1997 Orders of the court *a quo*. As regards the 07 November 1997 Order directing the issuance of a writ of execution, respondent's counsel argued that respondent's failure to deposit a supersedeas bond was because of the exorbitant amount earlier fixed by the MTC for which said counsel filed a motion to fix supersedeas bond. As regards the 11 November 1997 Order of Dismissal, respondent's counsel explained that he inadvertently failed to file said appeal memorandum due to his "voluminous" workload. Respondent's counsel prayed that he be allowed to submit the required appeal memorandum; or, since he had already fully discussed respondent's position in the memorandum^[19] filed before the MTC, that he be allowed to just adopt the same respondent's memorandum of appeal.

On 26 November 1997, the court *a quo* issued the writ of execution.^[20]

On 10 March 1998, the court *a quo* denied^[21] respondent's *Omnibus Urgent Motion for Reconsideration* dated 03 December 1997, for lack of merit and for being merely dilatory. The court also noted the branch Sheriff's Return indicating implementation of the issued writ of execution.

On 13 March 1998, petitioner filed an *Omnibus Motion*^[22] praying that the court command the branch Sheriff to fully enforce and execute the 01 August 1997 Decision of the MTC; and for the court to also deny and declare respondent's Omnibus Urgent Motion for Reconsideration as nothing but a dilatory tactic.

On 20 March 1998, an Order^[23] was issued partially denying the foregoing omnibus motion for being moot in view of the 10 March 1998 Order. The court *a quo*, however, granted the prayer to command the deputy sheriff to fully enforce and execute the MTC decision considering that the money judgment aspect of the decision does not appear to have been enforced and executed.

On the same date, 20 March 1998, respondent filed a *Motion for Reconsideration of the Order of the Honorable Court Dated 10 (March) 1998*^[24] praying for the reconsideration of the order of the court *a quo* denying her Omnibus Urgent Motion for Reconsideration.

The preceding motion was likewise denied^[25] by the court *a quo* for lack of merit

and for being in the nature of a second motion for reconsideration, which is a prohibited pleading.

Undaunted, respondent subsequently filed a Petition for Review on *Certiorari*^[26] before the CA essentially seeking to annul and set aside: 1) the 10 March 1998 Order of the court *a quo* denying her Omnibus Urgent Motion for Reconsideration; and 2) the 27 March 1998 Order denying her second motion for reconsideration.

In her petition, respondent assigned two errors allegedly committed by the court *a quo*: 1) that "the court *a quo* erred and exercised grave abuse of its discretion in granting execution pending appeal there being a pending motion to fix Supersedeas (sic) bond which is still unresolved by the Court;" and 2) that "the court *a quo* erred and gravely abused its discretion in dismissing the appeal there being a prayer on the part of the defendants-appellants that instead of filing an appeal brief defendants-appellants will instead adopt the position paper filed in the Metropolitan Trial Court as their brief on appeal."

Six days later, or on 14 April 1998, respondent's counsel filed a *Manifestation and Motion to Admit Certified True Xerox Copies of Annexes*^[27] alleging that he inadvertently failed to file the certified true copies of the annexes; and moved that he be allowed to submit the same.

On 26 August 1999, the CA promulgated the assailed Decision,^[28] the dispositive part of which states thus:

WHEREFORE, the instant petition is partially GRANTED. Accordingly, the Order dated November 7, 1997 is hereby AFFIRMED and the Order dated November 11, 1997 is hereby REVERSED and SET ASIDE. The public respondent is directed to decide the case on the basis of the records of the case.

The motion for reconsideration filed by petitioner was subsequently denied by the CA in its assailed Resolution dated 08 January 2002.

Hence, this petition.

The Issues

Petitioner now comes to this Court *via* a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court predicated on the following errors.

I.

THE COURT OF APPEALS ERRED IN GRANTING DUE COURSE TO THE PETITION AS IT WAS FILED OUT OF TIME, AND THERE WAS NO COMPLIANCE WITH MANDATORY REQUIREMENTS; and

II.

ASSUMING ARGUENDO THAT THE APPEAL WAS PROPERLY ALLOWED, THE COURT OF APPEALS ERRED IN SETTING ASIDE THE REGIONAL

TRIAL COURT'S DISMISSAL OF THE APPEAL FILED BEFORE IT BY
RESPONDENT, DUE TO RESPONDENT'S FAILURE TO COMPLY WITH THE
ORDER OF THE REGIONAL TRIAL COURT TO FILE A MEMORANDUM.

Simply put, the present petition raises as a primary issue the question of whether or not the CA committed reversible error in reversing and setting aside the order of the court *a quo* dismissing respondent's appeal for failure to file the memorandum of appeal. And, in the event that said order of dismissal is proper, whether or not the CA committed reversible error in granting due course to respondent's petition despite its numerous procedural defects.

The Court's Ruling

We grant the petition.

Petitioner faults the appellate court for overlooking "x x x the significant fact that respondent manifested her intention to adopt the Position Paper filed before the Metropolitan Trial Court as her memorandum in the Regional Trial Court, only after the Regional Trial Court had already issued an order dismissing respondent's appeal and long after the period to file a Memorandum on (sic) Appeal had expired."^[29] For such reason, in issuing said order, the court *a quo* only acted in accord with and in compliance to, the clear and mandatory provisions of the Rules of Court.

Further, petitioner reduces respondent's manifestation as a mere afterthought; an attempt at circumventing the effects of the Rules.

Respondent, on the other hand, counters that there is nothing in the Rules of Court that prohibits a party to adopt pleadings and arguments which were already embodied in the record, fully discussed and supported by evidence, the appeal in the RTC being a review of evidence presented before the MTC. She went on further to rationalize that "(r)ules must not be strictly construed to defeat substantial right of the litigants. The rules must be interpreted liberally."

In passing judgment on the petition, the CA agreed in respondent's assertion that the court *a quo* erred in dismissing her appeal considering that she has opted to adopt her position paper filed before the MTC as her memorandum of appeal.

Moreover, the CA ratiocinated that "[n]othing in the Rules of Court prohibits adoption of some pleading and arguments which are already embodied in the record, fully discussed and supported by evidence, the instant appeal being a review of evidences (sic) presented before the Metropolitan Trial Court." Adding further, that "[a]ppeal from the Metropolitan Trial Court to the Regional Trial Court is merely a review of the records, facts and evidence submitted (sic) before the Metropolitan Trial Court, hence, if the parties desire to adopt (the) same argument and evidence submitted before the Metropolitan Trial Court the appellate court may consider the same facts and evidence adopted by the party, the Regional Trial Court being an appellate court and no new evidence will be presented in the appeal."

The issue of whether or not the CA committed reversible error in reversing and setting aside the order of the court *a quo* dismissing respondent's appeal for failing to file the memorandum of appeal is best answered by the Rules of Court, specifically, Section 7 (b) of Rule 40 of the 1997 Revised Rules of Court, to wit: