THIRD DIVISION

[G.R. NO. 157194, June 20, 2006]

ANTONIO P. TAN, PETITIONER, VS. HON. COURT OF APPEALS (SPECIAL FORMER FOURTH DIVISION), THE HONORABLE WILFREDO D. REYES, ACTING PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 31, MANILA, THE REGISTER OF DEEDS OF MANILA AND DPG DEVELOPMENT & MANAGEMENT CORPORATION, RESPONDENTS.

DECISION

QUISUMBING, J.:

Before us is a petition for review on *certiorari* which seeks to reverse the Decision[1] dated September 10, 2001 of the Court of Appeals in CA-G.R. SP No. 56873, and its Resolution[2] dated February 17, 2003. The Court of Appeals affirmed the Order[3] dated July 29, 1998, of the Regional Trial Court of Manila, Branch 31, which dismissed petitioner Antonio P. Tan's complaint for cancellation/annulment of Transfer Certificate of Title No. 169146 in the name of private respondent DPG Development & Management Corporation.

The facts are as follows:

Petitioner Antonio P. Tan is the lessee of a parcel of land covered by Transfer Certificate of Title (TCT) No. 165501 located at No. 3658 Ramon Magsaysay Boulevard, Sta. Mesa, Manila. Private respondent, DPG Development & Management Corporation bought the land and was issued TCT No. 169146 on April 22, 1986.[4]

On January 24, 1990, the petitioner filed a Complaint[5] for the cancellation/annulment of TCT No. 169146 before the Regional Trial Court of Manila, Branch 31. Petitioner claimed that TCT No. 169146, originally TCT No. 165501, covered an area outside of Sampaloc, Manila, where the subject property was located.

For failing to file a responsive pleading, the trial court declared the private respondent in default. The petitioner was allowed to present evidence *ex parte*.

On October 5, 1990, the trial court ordered the cancellation of TCT No. 169146. The property reverted to the government for distribution to qualified applicants. On November 3, 1990, the private respondent filed a motion for new trial and a motion to admit its answer, which were both denied by the trial court.

Elevated to the Court of Appeals, the trial court's decision was reversed and it was directed to conduct a new trial and to admit the answer of the private respondent. Likewise, the appellate court ordered the use of the evidence recorded during the

first trial insofar as they were material in the resolution of the issues in the case.

The Supreme Court affirmed the appellate court's decision.

During the trial in the lower court, the private respondent filed on November 6, 1992, a motion to dismiss the complaint, which the petitioner opposed. On July 29, 1998, the trial court dismissed the complaint. Citing *Bishop v. Court of Appeals*,[6] that likewise cited *Legarda and Prieto v. Saleeby*,[7] it ruled that upon the expiration of one year from and after the date of entry of the registration, the certificate of title becomes indefeasible and collateral attack is not allowed.[8]

Petitioner's motion for reconsideration was denied in the Order dated October 13, 1998. Petitioner's notice of appeal was likewise denied on January 6, 1999 for having been filed late.[9]

On January 26, 2000, the petitioner filed a petition for annulment of judgment before the Court of Appeals, praying to annul and set aside the Orders dated July 29, 1998, October 13, 1998, and January 6, 1999 of the Regional Trial Court. On September 10, 2001, the appellate court affirmed the assailed orders of the trial court.

The Court of Appeals ruled that for a petition for annulment of judgment to prosper, it is required that: (1) the judgment is void for want of jurisdiction or for lack of due process of law; or (2) the judgment has been obtained by fraud. It explained that the fraud referred to must either be extrinsic or collateral fraud to set aside a judgment. Such fraud should have been neither revealed nor deliberately suppressed from the opposing party and the court. Absent these requisites, relief could be available only subject to certain conditions.

According to the appellate court, the petitioner failed to meet these requisites. It also added that the petitioner's innuendos that the legal infirmity emanated from his former counsel's negligence cannot be given weight since it is a well-settled rule that the negligence of counsel binds the client just as the latter is bound by the mistakes of his lawyer. The appellate court also said that the petitioner failed to avail of the remedies provided for in Rule 47,[10] Section 2 of the Revised Rules of Court without any justification. Hence, he must suffer the consequences of his own inaction or negligence. The dispositive portion of the appellate court decision reads:

> WHEREFORE, premises considered, the petition is DISMISSED, hereby AFFIRMING the assailed orders of the Regional Trial Court (Branch 31) in Manila in Civil Case No. 90-51767. Let the records of said case be remanded to the court *a quo* immediately upon the finality hereof.
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> SO ORDERED.[11]

Petitioner's motion for reconsideration was also denied.

In the instant petition for review, the petitioner now submits the following issues for our consideration:

1. WHETHER OR NOT PETITIONER IS ENTITLED TO DUE PROCESS FOR THE SINGLE NEGLIGENCE COMMITTED BY HIS PREVIOUS COUNSEL FOR FAILURE TO APPEAL ON TIME.

2. WHETHER OR NOT PETITIONER CAN AVAIL [OF] THE PREFERENTIAL RIGHT TO FIRST REFUSAL UNDER [ARTICLES] 1279, 1380, 1381, 1403, SUB-PARAGRAPH 2, 1479, AND 1544 OF THE [NEW] CIVIL CODE OF THE PHILIPPINES.[12]

While the petitioner admits that he failed to file the notice of appeal seasonably, he contends that it was due to the patent negligence of his previous counsel who failed to inform him of the denial of the notice of appeal and the motion for reconsideration filed thereafter. According to the petitioner, his counsel's negligence amounted to betrayal of confidence and a serious violation of a lawyer's oath, which should have prompted the appellate court to take cognizance of the notice of appeal and the petition for annulment of judgment.

The private respondent, on the other hand, maintains that no extrinsic fraud existed in the case to warrant the relief under Rule 47. The petitioner had the chance to ventilate his case before the lower court but the case was dismissed with finality due to his failure to perfect his appeal to the Court of Appeals.

After considering the circumstances in this case, and the submission of the parties, we agree that the petition should be denied for lack of merit.

Jurisprudence teems with pronouncements that the perfection of an appeal in the manner and within the period permitted by law is not only mandatory, but also jurisdictional. Failure to perfect the appeal renders the judgment of the court final and executory.[13] Just as a losing party has the privilege to file an appeal within the prescribed period, so does the winner also have the correlative right to enjoy the finality of the decision.[14] Furthermore, a denial of a petition for being time-barred is a decision on the merits.[15]

Although the Court may extend the time or allow the perfection of the appeal beyond the prescribed period if it is satisfactorily shown that there is justifiable reason, such as fraud, accident, mistake or excusable negligence, or similar supervening cause, without fault of the appellant, and the appeal is deemed taken and perfected on time, and the appellate court acquires appellate jurisdiction,[16] the circumstances here do not convince us to take exception. While the petitioner made a painstaking effort to attribute the loss of the remedy of appeal to the fault entirely of his former counsel, this Court cannot turn a blind eye to his own negligence and apathy.

The findings of the appellate court, as fully substantiated by the records, showed that the petitioner was equally guilty of negligence, thus,[17]

In the first place, the remedy of appeal was lost through the fault of petitioner, particularly of his counsel. Thus, the first requisite [abovecited] is clearly not satisfied here. Besides, it is incredible that petitioner did not bother to check the status of his case with his lawyer in