

THIRD DIVISION

[G.R. NO. 144689, June 09, 2005]

**RAYMUNDO VILLAMOR AND WENEFREDA VILLAMOR,
PETITIONERS, VS. HEIRS OF SEBASTIAN TOLANG; HEIRS OF
PELAGIA TOLANG; HEIRS OF ANGELA TOLANG; HEIRS OF EMILIA
TOLANG; HEIRS OF FRANCISCO TOLANG AND HEIRS OF
TEODORA TOLANG, RESPONDENTS.**

D E C I S I O N

GARCIA, J.:

At bar is this petition for review on certiorari under Rule 45 of the Rules of Court to nullify and set aside the **March 9, 2000 resolution**^[1] of the Court of Appeals, denying due course to and dismissing the petition for certiorari, prohibition and mandamus with prayer for preliminary injunction filed by the petitioners in **CA G.R. SP No. 57288** for failure to comply with procedural requirements, thereby effectively affirming the resolution dated October 28, 1999 and order dated December 14, 1999 of the Regional Trial Court at Dipolog City in its Civil Case No. 1848, which resolution and order, challenged in the dismissed petition, respectively (1) granted respondents' motion for a third Writ of Execution with motion for demolition; and (2) denied petitioners' motion to modify the first.

Similarly assailed herein is the appellate court's subsequent **resolution of July 24, 2000**,^[2] denying petitioners' motion for reconsideration.

The present controversy stems from an action for Annulment of Deed of *Extra-Judicial Partition, Reconveyance of ½ share of each lot, and Damages* filed by respondents against the petitioners before the then Court of First Instance of Zamboanga del Norte, thereat docketed as Civil Case No. 1848.

In a decision^[3] dated October 10, 1974, the trial court rendered judgment in favor of respondents, declaring, to wit:

1. Lot Nos. 1104 and 627 covered by Original Certificate of Title No. 11275 and RT-612(10771) now Transfer Certificate of Title No. T-10005, as conjugal properties of spouses Eugenio Margate and Antonia Tolang who all died intestate and without issue;
2. Extrajudicial Settlement/Partition executed by the defendants on October 17, 1966 covering Lots 1104 and 627, Dipolog Cadastre, null and void;
3. The Deed of Sale executed by Felix Margate in favor of Paulina Margate on October 20, 1966 covering Lots No. 1104 and 627, null

and void;

4. Subdivision Plan (LRC) Psd-91779, covering Lot No. 627, and Subdivision Plan (LRC) Psd-91776 covering Lot No. 1104, null and void;
5. All Certificates of Title issued pursuant to Subdivision Plan (LRC) Psd-91779 and 91776, null and void and of no legal effect, consisting of the following, viz:

xxx xxx xxx

6. Declaring one-half ($\frac{1}{2}$) of Lots No. 1104 and 627 of the Cadastral Survey of Dipolog, together with improvements thereon, to go to the plaintiffs as their lawful shares of the late Antonia Tolang; and the remaining one-half ($\frac{1}{2}$) share to go to the defendants as heirs of the late Eugenio Margate after deducting the 1,000 square meters which was sold to Dr. Reglino Gurdiel, known as Lot No. 1104-A-1 covered by Transfer Certificate of Title No. T-13786;
7. Ordering defendants to execute the proper Deed of Conveyance of the one-half ($\frac{1}{2}$) share of Lots 1104 and 627 in favor of plaintiffs within fifteen (15) days from the finality of the decision, and upon failure of defendants to do so, the Clerk of Court is hereby authorized to execute the same at the expense of the defendants, to be considered as valid and legal; and the Register of Deeds of Zamboanga del Norte is hereby directed to issue the corresponding titles to each and every one of the plaintiffs upon payment of the legal fees for the one-half ($\frac{1}{2}$) share, and the remaining one-half ($\frac{1}{2}$) share to the herein defendants.
8. Ordering the defendants to pay jointly and severally the following amounts:
 - a) P10,000.00 to the plaintiffs for the value of one-half ($\frac{1}{2}$) of the produce of Lot 1104 illegally appropriated by defendants from October 1966 up to October 1974;
 - b) P4,800.00 to the herein plaintiffs corresponding to the one-half ($\frac{1}{2}$) of the rental of Lot 627 from October, 1966 up to October 1974 at the rate of P100.00 per month;
 - c) P1,000.00 as attorney's fees and
 - d) Costs.

Petitioners appealed the aforesaid decision to the then Intermediate Appellate Court which, in a decision^[4] dated December 26, 1984 in AC-G.R. CV No. 57804, affirmed in toto the decision of the trial court.

Thereafter, petitioners elevated the case to this Court via a petition for review on certiorari but it, too, was denied by this Court in a resolution dated May 15, 1985^[5], which became final on June 24, 1985, the dispositive portion of which reads, as

follows:

Acting on the petition for review on certiorari of the decision of the Intermediate Appellate Court, the court Resolved to DENY the petition for lack of merit.

Pursuant to an order of the trial court, a Writ of Execution was issued on November 22, 1985^[6].

Initially, the deputy sheriff made it appear that the above writ of execution was duly executed and effected on January 30, 1986 by allegedly placing the prevailing parties in possession of the one-half (½) portion of the two (2) lots. The supposed compliance with the aforesaid writ was stated in: (1) the handwritten certification^[7] of the sheriff duly signed by respondents' supposed authorized representatives; and (2) the Sheriff's Return dated May 8, 1986^[8] submitted by Deputy Sheriff Ignacio M. Barbaso, Sr. However, the purported signatures of the parties found in the sheriff's certification were neither the signatures of respondents nor their duly authorized representatives.

Hence, on June 14, 1986, respondents filed a motion for issuance of an alias writ of execution^[9] which was granted by the trial court on June 20, 1986.^[10]

In the execution of said alias writ, Deputy Sheriff Lamberto Cabuguas' return shows that respondents were not actually in possession of their one-half (½) share of Lots 1104 and 627. The lots were being occupied, not only by petitioners Raymundo Villamor and Wenefreda Villamor, but also by other persons who claim to be their lessees and vendees. Respondents were never placed in possession of their one-half (½) northern portion share of Lots 1104 and 627, because the deputy sheriff merely informed petitioners that the one-half (½) share of Lots 1104 and 627 belongs to the respondents, and that petitioners should vacate the same, without, however, specifying which portion, northern or southern. Furthermore, there was no specific and definite survey of the lots in question delineating the extent of the one-half (½) share of respondents whereat they shall be put in possession because at the time the trial court is yet to approve the subdivision survey.

On July 19, 1994, respondents filed anew a *Motion for Issuance of Third Writ of Execution with Motion for Demolition*, which petitioners opposed.

In a resolution dated October 28, 1999^[11], the trial court granted respondents' aforementioned motion, thus:

Finding the motion for issuance of a Third Writ of Execution and Motion for Demolition to be meritorious and justified, the same is hereby
GRANTED.

In time, petitioners moved for a modification of the same resolution but their motion was denied by the court in its order of December 14, 1999^[12].

Unrelenting, petitioners elevated said resolution and order of the trial court to the Court of Appeals via a petition for certiorari, prohibition and mandamus with prayer for preliminary injunction, thereat docketed as **CA-G.R. SP No. 57288.**

As stated at the threshold hereof, the Court of Appeals, in a **resolution dated March 9, 2000^[13]**, denied due course to and dismissed the petition due to technical lapses, to wit:

A perusal of the instant petition reveals that:

The petitioners failed to indicate the material dates as to when they received the assailed resolution dated 29 October 1999 and the date when the petitioners filed the 'Motion to Modify Order dated 29 October 1999, dated 19 November 1999 which is in effect a motion for reconsideration to determine the timeliness of the herein petition in violation of Section 3, Rule 46 of the 1997 Rules of Civil Procedure as amended by Supreme Court Circular No. 39-98 which states that:

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In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.

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Likewise, the petitioner (sic) is short of P150.00 in the payment of docketing fee.

WHEREFORE, for being insufficient in substance, the petition is hereby **DENIED DUE COURSE** and is consequently **DISMISSED**.

SO ORDERED.

With their motion for reconsideration having been denied by the appellate court in its subsequent **resolution of July 24, 2000^[14]**, petitioners are now before this Court praying for judgment in their favor: (1) annulling and setting aside of the resolutions dated March 9, 2000 and July 20, 2000 of the Court of Appeals; and (2) ordering the Court of Appeals to give due course to their amended petition in CA G.R. SP No. 57288 and decide said petition on the merits.

We **DENY**.

It is doctrinally entrenched that the right to appeal is merely statutory and a party seeking to avail of that right must comply with the statute or rules. This principle is stated by this Court in *Oro vs. Diaz*,^[15] thus:

It should be stressed that the right to appeal is not a natural right or a part of due process. Rather, it is a procedural remedy of statutory origin and, as such, may be exercised only in the manner prescribed by the provisions of law authorizing its exercise."^[16] Hence, its requirements must be strictly complied with.^[17]