

FIRST DIVISION

[G.R. No. 149692, July 30, 2002]

HEIRS OF SPOUSES JULIAN DELA CRUZ AND MAGDALENA TUAZON, REPRESENTED BY THEIR ATTORNEY-IN-FACT AND CO-HEIR, VIRGILIO C. ALVENDIA, PETITIONERS, VS. HEIRS OF FLORENTINO QUINTOS, SR., NAMELY, FLORENTINO QUINTOS, JR. AND GLORIA QUINTOS BUGAYONG, RESPONDENTS.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before Us is a petition for review on certiorari under Rule 45 filed by petitioners seeking to reverse and set aside the Resolution dated May 29, 2001 of the Court of Appeals^[1] which dismissed their petition for review of the decision of the Regional Trial Court of Lingayen, Pangasinan (Branch 38) on the ground that the petition was filed out of time; and, the Resolution dated August 29, 2001^[2] denying their motion for reconsideration.

Sometime in 1996, petitioners filed with the Municipal Trial Court of Lingayen, Pangasinan an action for reconveyance with damages^[3] against respondents alleging, among others, that they are the children of the late Ariston dela Cruz, who was the only forced and legal heir of his deceased parents, Julian dela Cruz and Magdalena Tuazon who died intestate; that sometime in 1897, Magdalena Tuazon purchased from Herminigildo and Filomena Tiong a certain parcel of land located at Heroes Street, Lingayen, Pangasinan consisting of 605 square meters and since then respondents and their predecessors had been in continuous occupation and adverse possession of the subject land; that sometime in 1987, private respondents' predecessor Florentino Quintos, Sr., filed an application for the judicial registration of a certain land which included petitioners' land; that the land registration court granted Quintos' application and decreed the land in Florentino Quintos' name and OCT No. 22665 was subsequently issued; that OCT No. 22665 was partitioned into four separate lots and petitioners' land was covered by TCT No. 173052; that respondents subsequently filed a complaint (docketed as Civil Case No. 4118) for illegal detainer against petitioners for the latter's refusal to vacate the subject land which resulted in petitioners' ejectment from the subject property.

Respondents filed their answer with counterclaim, alleging that the subject land had always belonged to respondents' late father Florentino Quintos, Sr., who in turn inherited the same from his mother, Dolores Tuazon; that the affidavit evidencing petitioners' ownership of the subject land was not attached to the complaint; that respondents' predecessors merely tolerated petitioners' possession of the subject land; that petitioners never filed their opposition to respondents' application for registration despite knowledge thereof; that the land registration case which was the basis for the issuance of OCT No. 22665 in the name of the predecessor of

respondents was a proceeding in rem which bound all persons whether notified or not.

On January 29, 1999, a decision^[4] was rendered by the MTC declaring petitioners as the legal owners of the land covered by TCT No. 173052 and ordering respondents to convey to petitioners the subject land and to pay damages to petitioners. ^[15]

Respondents filed their appeal before the Regional Trial Court, Lingayen, Pangasinan (Branch 38). On January 19, 2000, the RTC^[6] reversed the decision of the MTC dismissing the complaint, declaring respondents as the absolute owners of the subject land and ordering petitioners to pay damages to respondents.

Petitioners filed their motion for reconsideration which the trial court denied in a Resolution dated March 8, 2000.^[7]

On April 18, 2000, petitioners, through counsel, filed with the Court of Appeals (CA) a motion for extension of time to file a petition for review which she subsequently filed on May 2, 2000. Respondents filed a motion to dismiss the petition for review for being filed out of time since the certification issued by Postmaster Elizabeth I. Torio of Dagupan City Post Office and the affidavit of Ricardo C. Castro, Clerk III of the Regional Trial Court show that the trial court's Resolution dated March 8, 2000 denying petitioners motion for reconsideration was received by the secretary of petitioners' counsel on March 16, 2000, thus the filing of the petition was filed 28 days late.

Petitioners' counsel filed her Comment to respondents' motion to dismiss alleging that when she arrived in her office on April 3, 2000, she found copies of pleadings and correspondence including a copy of the trial court's Resolution dated March 8, 2000 denying her motion for reconsideration; that she thought that these pleadings and correspondence were all received on April 3, 2000; that upon receipt of respondents' motion to dismiss, she confronted her secretary who told her that the envelope containing the Resolution was only opened on April 3, 2000 and her secretary could not recall if the Resolution was among those she received on March 16, 2000.

On May 29, 2001, the CA issued the assailed Resolution dismissing petitioners' petition for review for being filed out of time. It found the explanation given by petitioners' counsel unconvincing since she failed to give the reason why the envelope was opened only on April 3, 2000; that counsel's secretary did not even admit that she actually received the said Resolution; that it is the counsel's duty to adopt and strictly maintain a system that efficiently takes into account all court notices sent to her and she failed to instruct and remind her secretary on what should be done with respect to such notices and processes. Petitioners' motion for reconsideration was denied in a Resolution dated August 29, 2001.

Hence, the present petition on the following grounds:

- 1) The appellate court rejected and refused to consider the valid reason submitted by the petitioner's counsel for the apparent delay in the filing of the petition for review with said court; hence the dismissal of the petition was tainted with grave abuse of discretion;

2) Granting, arguendo, that there is a basis for the dismissal of the petition, the appellate court should have applied the principle of liberal construction of the Rules pursuant to Rule 1, Section 6 of the 1997 Rules of Civil Procedure (1997 RCP), considering the valid and meritorious case of petitioners.

3) In either case, it is respectfully submitted that the appellate court has departed from the accepted and usual course of judicial proceedings in dismissing outright the petition for review as to call for the supervision of this Honorable Court in the exercise of its equity jurisdiction.^[8]

We deny the petition.

Section 1, Rule 42 of the 1997 Rules on Civil Procedure, provides that the petition shall be filed and served within 15 days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment.^[9] In the instant case, it has been established that the resolution denying petitioners' motion for reconsideration of the trial court's decision was received by the secretary of petitioners' former counsel on March 16, 2000, thus the last day of the 15-day period within which to file the petition for review with the respondent court was March 31, 2000. Considering that counsel filed a motion for extension of time to file a petition for review with the respondent court only on April 18, 2000, the judgment of the RTC subject of the petition for review had already become final and executory. Consequently, the CA did not err in dismissing the petition for being filed out of time since it has no more jurisdiction to entertain the petition much less to alter a judgment.

This Court has invariably ruled that perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional.^[10] The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case.^[11] The right to appeal is not a natural right nor a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.^[12] The party who seeks to avail of the same must comply with the requirement of the rules. Failing to do so, the right to appeal is lost. ^[13]

We agree with the CA when it found that the reason advanced by petitioners' former counsel, which is that she received the resolution denying her motion for reconsideration only on April 3, 2000 as she found it on her table on the same date, unacceptable. The negligence of her secretary in failing to immediately give the trial court's resolution denying petitioners' motion for reconsideration upon receipt to the counsel and the negligence of counsel to adopt and arrange matters in order to ensure that official or judicial communications sent by mail would reach her promptly cannot be considered excusable. The Court has also often repeated that the negligence of the clerks which adversely affect the cases handled by lawyers, is binding upon the latter.^[14] The doctrinal rule is that the negligence of counsel binds the client because otherwise, "there would never be an end to a suit so long as new counsel could be employed who could allege and show that prior counsel had not be sufficiently diligent, or experienced, or learned."^[15]

Petitioners claim that there should be a liberal construction of the rules of procedure in order to effect substantial justice and appeal to this Court's exercise of equity