

FIRST DIVISION

[G.R. No. 121013, July 16, 1998]

JOSE ALMEDA, PETITIONER, VS. COURT OF APPEALS, FIFTEENTH DIVISION, HON. STELLA CABUCO-ANDRES, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 31, SAN PEDRO, LAGUNA, SPOUSES ARTEMIO L. MERCADO AND JOSEFINA A. MERCADO, TERESITA, GREGORIO JR., IGNACIO AND VIOLETA, ALL SURNAMED ESPELETA, AND THE PROVINCIAL SHERIFF OR HIS DEPUTY,[1]

RESPONDENTS.

D E C I S I O N

BELLOSILLO, J.:

This is an action by petitioner Jose Almeda for quieting of title, annulment of sale and/or reconveyance with damages against respondent spouses Artemio L. Mercado and Josefina A. Mercado, and Teresita, Gregorio Jr., Ignacio and Violeta, all surnamed Espeleta, filed on 22 September 1992 before the Regional Trial Court of San Pedro, Laguna. Also named defendants were the Register of Deeds of Calamba, Laguna, and a certain Atty. Agapito G. Carait.

Jose Almeda was the registered owner of Lot No. 312 situated in Bo. San Vicente, San Pedro, Laguna. Subsequently, he sold portions thereof to various individuals. Adjacent to Lot No. 312 is Lot No. 308 registered in the name of the late Gregorio Espeleta, father of respondents Teresita, Gregorio Jr., Ignacio and Violeta Espeleta.

On 19 January 1990 a portion of Lot No. 308 denominated as Lot No. 308-B was sold by Gregorio Espeleta to herein respondent spouses Artemio L. Mercado and Josefina A. Mercado. Later, petitioner instituted the present action praying that the deed of sale in favor of respondent Mercado spouses be declared null and void, and that they and/or the heirs of the deceased Gregorio Espeleta be ordered to reconvey the lot to petitioner.

Petitioner alleged in his complaint that sometime in 1989 he discovered that the technical description of Lot No. 308 inadvertently included 6,407 square meters of his Lot No. 312. For this reason, he requested the surveyor to conduct the survey to rectify the error. Consequently, the surveyor prepared a subdivision plan^[2] delineating the disputed portion as Lot No. 308-A.^[3] He then insisted that Lot No. 308-A was part of Lot No. 312 as shown by the following: (a) a right of way lies between Lot No. 308 and Lot No. 308-A; (b) he has been in possession of Lot No. 308-A even before the survey; (c) he was leasing it to another up to the present; and, (d) no one else has asserted a claim over it.

Likewise, petitioner claimed that the spouses Artemio L. Mercado and Josefina A.

Mercado publicly admitted on two (2) occasions that Lot No. 308-A was not included in the property they purchased, but later maintained the contrary and even demanded petitioner's lessee to vacate the premises. Finally, petitioner alleged that through a forged deed of sale respondent Mercado spouses and respondents Teresita, Gregorio Jr., Ignacio and Violeta, all surnamed Espeleta, conspired together in causing the issuance of a transfer certificate of title in the name of the Mercados.

Thereafter, private respondents as defendants in the court below filed their respective answers with counterclaims. On 20 May 1993 the pre-trial conference was set. However, counsel for the Register of Deeds of Calamba, Laguna, moved for a resetting due to a previously scheduled hearing on the same date in another court, which was granted, and the pre-trial was again transferred to 18 June 1993. This time, private respondents' counsel moved for postponement of the hearing because of a professional commitment in another court. The motion was also granted but the trial court, quite erroneously, reset the pre-trial conference for the same date, 18 June 1993.

On the scheduled pre-trial on 18 June 1993 respondents and their counsel failed to appear. Thus, they were declared as in default and the court scheduled the presentation of petitioner's evidence ex-parte on 20 August 1993. However, on motion for reconsideration, without objection from petitioner's counsel, the default order was lifted and the pre-trial was set anew on the same date originally scheduled for the reception of petitioner's evidence, i.e., 20 August 1993. Later, however, the trial court reset the pre-trial to 12 November 1993 since in the interim a motion for leave to file an amended answer with third-party complaint was filed against Edgardo Tumang for allegedly conspiring with petitioner in threatening respondents, as well as an opposition thereto. But, as prayed for by respondents' counsel, and without objection from petitioner through counsel, the pre-trial was further reset to 11 and 24 February 1994. Counsel for third-party defendant, owing to conflict of schedules, moved for cancellation of the 11 February 1994 conference. Without objection from counsel for respondents, the trial court reset the pre-trial for the last time to 24 February 1994, on which date petitioner and his counsel failed to appear, prompting the trial court to declare petitioner non-suited and his complaint dismissed, and set the hearing on the counterclaims of respondents ex-parte.

Private respondent Josefina A. Mercado testified that she and her husband Artemio L. Mercado bought the property in good faith and for value, and that a complete technical description was inscribed in its title. According to her, as a consequence of the filing of the present suit, they incurred expenses and demanded payment therefor in the amount of P100,000.00 for attorney's fees and P50,000.00 as litigation expenses. Respondent Espeletas corroborated the foregoing allegations and likewise demanded payment of P100,000.00 for attorney's fees, P50,000.00 for litigation expenses, P50,000.00 for moral damages, and P25,000.00 for exemplary damages.

On 20 June 1994 judgment was rendered ordering petitioner to pay respondents the exact amounts claimed by them in their answer on the ratiocination that -

x x x x Indeed, said defendants were constrained to litigate and incur expenses therefor and engage the services of a counsel to handle the litigation of this case for the protection of their rights and interests for an agreed sum by way of attorney's fees. It was established too that the filing of this case caused them sleepless nights,

anxiety, nervousness and distress thereby justifying the payment of the prayed moral damages to them. It is significant to note that after the case had been filed, plaintiff simply abandoned its prosecution and showed his lack of interest in prosecuting the case upon his failure to appear during the pre-trial conference thereby constraining the Court to declare him non-suited. In this regard, there is also reason to award to said defendants the prayed exemplary damages.^[4]

Petitioner claimed that he learned for the first time about his having been declared non-suited when he received the decision against him. He therefore moved for reconsideration on the ground that he was not notified of the pre-trial as the signature appearing on the registry return receipt was fake although his counsel remembered having affixed his signature on the expediente regarding the scheduled pre-trial and jotted down the date on an envelope or a document but failed to transfer it to his daily time calendar. Petitioner further averred that he was not furnished copy of the order declaring him non-suited. Attached to his motion were his and his counsel's affidavits of merit.

But the trial court brushed aside their assertions and held that copy of the 24 February 1994 order was duly received by petitioner and his counsel as shown by the registry return receipts. On 6 December 1994 their motion for reconsideration was resultantly denied.^[5]

On 23 December 1994 petitioner filed a notice of appeal. But on 16 January 1995 the trial court disapproved the appeal for having been filed beyond the reglementary period.^[6] On 19 April 1995 his motion for reconsideration was denied.^[7]

Petitioner assailed the last two (2) rulings of the trial court before respondent Court of Appeals by way of a petition for certiorari, prohibition and mandamus. On 30 May 1995 respondent court dismissed the petition on the ground that the requirement regarding perfection of an appeal within the reglementary period was not only mandatory but jurisdictional such that petitioner's failure to comply therewith had the effect of rendering the judgment final.^[8] On 18 July 1995 his motion for reconsideration was denied.

Petitioner admits that his notice of appeal was filed five (5) days late but explains that his former counsel who took over from another former counsel must have overlooked its due date. He then argues that the fact that he was not notified of the pre-trial conference falls within the ambit of liberal application of the rules so as not to frustrate a party's right to appeal. He reiterates his allegation that his signature on the registry return receipt was fake and expresses his apprehension that an unfavorable resolution on this issue would throw into the dustbin his claim over the subject property.

We uphold respondent Court of Appeals. The period to appeal is prescribed not only by the Rules of Court but also by statute, particularly Sec. 39 of BP 129 which provides -

Sec. 39. Appeals. - The period for appeal from final orders, resolutions, awards, judgments, or decisions of any court in all cases shall be fifteen (15) days counted from the notice of the final order, resolution, award, judgment, or decision appealed from: Provided, however, That habeas corpus cases, the period for appeal shall be