327 Phil. 936

FIRST DIVISION

[G.R. No. 116693, July 05, 1996]

PURITA DE LA PEÑA, JUDGE VIVENCIO S. BACLIG, RTC-BR. 2, BALANGA, BATAAN, PETITIONERS, VS. PEDRO R. DE LA PEÑA, BENJAMIN P. BRIONES, SPOUSES JULIA DE LA PEÑA AND JOSE ALBERTO, GODOFREDO, VIRGINIA, AND MARIA, ALL SURNAMED DE LA PEÑA, AND THE COURT OF APPEALS-FOURTH DIVISION, RESPONDENTS.

D E C I S I O N

BELLOSILLO, J.:

A *Complaint* was filed against petitioner Purita de la Peña by Pedro R. de la Peña, Benjamin P. Briones, spouses Julia de la Peña and Jose Alberto, Godofredo de la Peña, Virginia de la Peña and Maria de la Peña in the Regional Trial Court of Balanga, Bataan, seeking (a) the annulment of the deed of sale and deed of extrajudicial partition executed between Fortunata de la Peña and Purita de la Peña, (b) the partition of the estates of Fortunata de la Peña and Gavina de la Peña, and (c) the award in their favor of actual, moral and exemplary damages, attorney's fees, litigation expenses and costs of the suit.[1]

On 8 July 1983, petitioner filed a *Motion for Bill of Particulars* praying that all the heirs of Gavina and Fortunata and the entire estate of each be properly included and defined. The motion was granted and the bill of particulars was filed.

On 23 November 1983, petitioner Purita de la Peña filed her *Answer with Counterclaim.*

On 27 July 1988 and 21 September 1988 the parties entered into partial compromise agreements where they agreed to settle their respective claims regarding Lot No. 524 and to dispense with the intervention earlier filed by Danilo Cruz.

On 28 June 1993 Judge Vivencio S. Baclig dismissed the complaints for annulment of the deeds of sale and extrajudicial partition, partition of the estates of Gavina and Fortunata de la Peña, and the counterclaim of Purita de la Peña for the annulment of the extrajudicial settlement.[2]

Respondents herein as plaintiffs before the trial court received copy of the aforesaid decision on 2 July 1993.

On 15 July 1993, plaintiffs filed their *Motion for Reconsideration* which is now being assailed as *pro forma* since it did not contain a notice of hearing.[3]

In his Order of 11 August 1993,[4] Judge Baclig denied the motion for

reconsideration as he found no cogent and compelling reason to warrant the reversal or modification of the decision sought to be reconsidered. Consequently, on 20 August 1993, plaintiffs in Civil Case No. 4952 filed a *Notice of Appeal and/or Extension of Time to File Appeal.* On the other hand, petitioner herein as defendant in the court below filed a *Motion for Execution* contending that the motion for reconsideration filed by plaintiffs did not toll the running of the prescriptive period as it failed to contain a notice of hearing hence *pro forma.*

On 29 September 1993 Judge Baclig issued another Order[5] denying the motion for extension to file an appeal and ruled that plaintiffs' period to appeal had already lapsed as it was not tolled by the motion for reconsideration earlier filed, the latter being *pro forma* for lack of a notice of hearing. As regards defendant's motion for execution, the court *a quo* found no necessity to issue a writ considering its earlier ruling dismissing plaintiffs' complaint and defendant's counterclaim.

On 25 May 1994 the Court of Appeals held null and void the order of the trial court of 29 September 1993 declaring private respondents' motion for reconsideration *pro forma.*[6]

On 7 June 1994 petitioner moved to reconsider[7] the ruling of the Court of Appeals and reiterating her claim that a motion for reconsideration without a notice of hearing was a mere scrap of paper hence it did not warrant the attention of the court. Without a notice of hearing the motion did not stop the running of the period to appeal. When required to comment[8] plaintiffs sought refuge in the liberal construction of the Rules of Court.

On 29 July 1994, the Court of Appeals denied petitioner's motion for reconsideration and reiterated its ruling that the motion for reconsideration was not a mere scrap of paper so that the notice of appeal was timely filed; hence, this petition for review on certiorari.

In *Pojas v. Gozo-Dadole*[9] we had occasion to rule on the issue of whether a motion for reconsideration without any notice of hearing tolls the running of the prescriptive period. In *Pojas,* petitioner received copy of the decision in Civil Case No. 3430 of the Regional Trial Court of Tagbilaran on 15 April 1986. The decision being adverse to him petitioner filed a motion for reconsideration. For failing to mention the date when the motion was to be resolved as required in Sec. 5, Rule 15, of the Rules of Court, the motion for reconsideration was denied. A second motion for reconsideration met the same fate. On 2 July 1986 petitioner filed a notice of appeal but the same was denied for being filed out of time as "the motion for reconsideration which the Court ruled as *pro forma* did not stop the running of the 15-day period to appeal."[10]

In resolving the issue of whether there was grave abuse of discretion in denying petitioner's notice of appeal, this Court ruled -

> Section 4 of Rule 15 of the Rules of Court requires that notice of motion be served by the movant on all parties concerned at least three (3) days before its hearing. Section 5 of the same Rule provides that the notice shall be directed to the parties concerned, and shall state the time and

> place for the hearing of the motion. A motion which does not meet the requirements of Sections 4 and 5 of Rule 15 of the Rules of Court is considered a worthless piece of paper which the clerk has no right to receive and the court has no authority to act upon. Service of copy of a motion containing notice of the time and place of hearing of said motion is a mandatory requirement and the failure of the movant to comply with said requirements renders his motion fatally defective.[11]

In *New Japan Motors, Inc. v. Perucho*[12] defendant filed a motion for reconsideration which did not contain any notice of hearing. In a petition for certiorari, we affirmed the lower court in ruling that a motion for reconsideration that did not contain a notice of hearing was a useless scrap of paper. We held further -

> Under Sections 4 and 5 of Rule 15 of the Rules of Court, x x x a motion is required to be accompanied by a notice of hearing which must be served by the applicant on all parties concerned at least three (3) days before the hearing thereof. Section 6 of the same rule commands that `(n)o motion shall be acted upon by the Court, without proof of service of the notice thereof x x x.' It is therefore patent that the motion for reconsideration in question is fatally defective for it did not contain any notice of hearing. We have already consistently held in a number of cases that the requirements of Sections 4, 5 and 6 of Rule 15 of the Rules of Court are mandatory and that failure to comply with the same is fatal to movant's cause.[13]

In *Sembrano v. Ramirez*[14] we declared that -

> (A) motion without notice of hearing is a mere scrap of paper. It does not toll the running of the period of appeal. This requirement of notice of hearing equally applies to a motion for reconsideration. Without such notice, the motion is *pro forma.* And a *pro forma* motion for reconsideration does not suspend the running of the period to appeal.

In *In re Almacen*[15] defendant lost his case in the lower court. His counsel then filed a motion for reconsideration but did not notify the adverse counsel of the time and place of hearing of said motion. The Court of Appeals dismissed the motion for the reason that "the motion for reconsideration dated July 5, 1966 does not contain a notice of time and place of hearing thereof and is, therefore a useless piece of paper which did not interrupt the running of the period to appeal, and, consequently, the appeal was perfected out of time." When the case was brought to us, we reminded counsel for the defendant that -

> As a law practitioner who was admitted to the bar as far back as 1941, Atty. Almacen knew - or ought to have known - that a motion for reconsideration to stay the running of the period of (sic) appeal, the