

THIRD DIVISION

[G.R. No. 195472, January 08, 2018]

**SAMSON LIM BIO HIAN, PETITIONER, VS. JOAQUIN LIM ENG
TIAN, RESPONDENT.**

[G.R. No. 195568]

**JOHNSON LIM BIO TIONG, PETITIONER, VS. JOAQUIN LIM ENG
TIAN, RESPONDENT.**

RESOLUTION

MARTIRES, J.:

These consolidated petitions for review on certiorari seek to reverse and set aside the Decision,^[1] dated 26 July 2010, and Resolution,^[2] dated 9 February 2011, of the Court of Appeals (CA) in CA-G.R. SP No. 111248 which nullified the Orders,^[3] dated 13 March 2009 and 17 August 2009, of the Regional Trial Court, Branch 258, Parañaque City (RTC), in Civil Case No. 08-0246, an action for partition.

THE FACTS

The petitioners Samson Lim Bio Tian (*Samson*) and Johnson Lim Bio Tiong (*Johnson*) and respondent Joaquin Lim Eng Tian (*Joaquin*) are co-owners of a parcel of land covered by Transfer Certificate of Title (TCT) No. 81239. Respondent wanted to have the said land partitioned but the petitioners refused to heed his demand, thus, he filed a complaint for partition.

Summons and copies of the complaint were served upon the petitioners who, in turn, filed their respective pleadings. After the issues were joined, the RTC set the case for pre-trial conference on 8 December 2008. Notices were sent to the parties and their respective counsels.

When the case was called for pre-trial on 8 December 2008, only Joaquin and Johnson and their respective counsels appeared. However, Johnson filed his pre-trial brief only on that day. Samson and his counsel also failed to appear. Thus, the RTC issued an order,^[4] dated 8 December 2008, wherein it ruled that both petitioners failed to file a pre-trial brief. Joaquin was thus allowed to submit his evidence *ex parte*.

On 18 December 2008, Samson moved for reconsideration of the RTC's 8 December 2008 order. He averred that the non-appearance of his counsel during the pre-trial should be excused as the latter was busy attending a seminar in Mandatory Continuing Legal Education (MCLE). He did not, however, offer any reason for his own failure to appear. Johnson also filed a motion for reconsideration, arguing that he and his counsel decided to submit personally his pre-trial brief on the pre-trial

date instead of by mail because they were apprehensive that the court would not receive it on time.

On 13 March 2009, the RTC issued the first assailed order granting the petitioners' motions. The *fallo* reads:

WHEREFORE, premises considered, the Motion[s] for Reconsideration filed by defendants, Samson Lim and Johnson Lim are GRANTED and movants are allowed to cross-examine plaintiff, Joaquin Lim Eng Lian, and the Pre-Trial Brief submitted by defendants-movants are ADMITTED.

Meanwhile, let the cross-examination of plaintiff be set on May 4, 2009 at 8:30 in the morning.

Notify the parties and their counsel.^[5] (emphasis in the original)

Joaquin moved for reconsideration but the same was denied by the RTC in an order, dated 17 August 2009. Aggrieved, Joaquin filed a petition for certiorari before the CA.

The CA Ruling

In its 26 July 2010 decision, the CA nullified the orders of the RTC. It observed that Samson did not bother to offer any excuse for his non-appearance during the pre-trial conference nor for not filing a pre-trial brief. The appellate court added that Johnson's excuse that he opted to personally file his Brief on the date set for pre-trial instead of filing it by mail, because he did not rely on the mail service, was flimsy and could not be given credence. It opined that the rule on liberal construction was not a license to disregard the rules of procedure because like all rules, they are to be followed except only for the most persuasive of reasons. The CA concluded that the RTC acted with grave abuse of discretion in allowing the petitioners to cross-examine Joaquin and to file a pre-trial brief; because the petitioners had clearly failed to show that their failure to attend the pre-trial conference and to file a pre-trial brief was due to fraud, accident, mistake or excusable neglect.

The petitioners moved for reconsideration but were denied by the CA in a resolution, dated 9 February 2011. Undeterred, the petitioners filed a petition for review before this Court.

Meanwhile, on 21 February 2013, the RTC rendered a decision^[6] in the action for partition and ruled that respondent, as co-owner of the parcel of land, was entitled to demand its partition. Thereafter, the trial court denied the petitioners' notice of appeal because it was filed out of time. The decision of the RTC was affirmed by the CA^[7] and on 15 December 2016, the CA judgment became final and executory.^[8]

ISSUE

WHETHER THIS PETITION PRESENTS A JUSTICIABLE CONTROVERSY AFTER THE DECISION ON THE ACTION FOR PARTITION HAS ALREADY BECOME FINAL AND EXECUTORY.