

SECOND DIVISION

[G.R. No. 196919, June 06, 2011]

JOSE RAMILO O. REGALADO, PETITIONER, VS. CHAUCER B. REGALADO AND GERARD R. CUEVAS, RESPONDENTS.

R E S O L U T I O N

NACHURA, J.:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the twin Resolutions dated September 24, 2009^[1] and October 15, 2010^[2] of the Court of Appeals (CA) in CA-G.R. CEB-SP UDK No. 0235, entitled "*Hugo C. Regalado, represented by Jose Ramilo O. Regalado v. Chaucer B. Regalado and Jose Gerard R. Cuevas.*"

The first assailed Resolution dismissed petitioner's appeal on the following grounds:

1. The petitioner failed to incorporate in his petition a written explanation why the preferred mode of personal service and filing as prescribed under Section 11, Rule 13 of the Revised Rules of Court was not availed of;
2. Copies of the pertinent and relevant pleadings and documents, which are necessary for proper resolution of the case, were not attached to the petition, viz.:
 - a. Complaint[;]
 - b. Motion to Dismiss and the corresponding Comment thereon;
 - c. Motion for Reconsideration of the MTC's October 5, 2007 Order and the respondents' separate Opposition thereto;
 - d. Notice of Appeal/Appeal Memorandum; [and]
 - e. Appellees' Memorand[u]m
3. It is not shown that the purported representative of petitioner has the required authority to sign the verification and certificate of non-forum shopping in the latter's behalf.^[3]

Petitioner sought reconsideration and asked for leniency in the application of the Rules of Court. Attached in his motion were copies of the pleadings pertinent and relevant to his petition. Petitioner asserted that he was authorized to sign the verification and certification of non-forum shopping in behalf of Hugo Regalado by virtue of a Special Power of Attorney attached to the complaint filed together with the motion for reconsideration.^[4]

Respondents opposed the motion and manifested that Hugo Regalado died on April 23, 2008, even before the challenged decision of the Regional Trial Court (RTC) was rendered on May 15, 2008.^[5]

On December 15, 2009, Atty. Miguel B. Albar, counsel of Hugo Regalado, furnished the CA with a notice of Hugo Regalado's death on April 23, 2008, together with a list of the latter's legal representatives.^[6]

On October 15, 2010, the CA denied the motion for reconsideration, ruling thus:

With the death of Hugo Regalado on April 23, 2008, the authority of Jose Ramilo O. Regalado to represent the former in this case had ceased effective said date. Elemental is the rule that one of the causes of the termination of an agency is the death of the principal. Apparently, when the instant petition was filed on June 4, 2008, Jose Ramilo O. Regalado had no more authority to sign the verification thereof in behalf of deceased petitioner Hugo Regalado. In effect, the petition was without proper verification. In the absence of verification, the instant petition is deemed as an unsigned pleading, and, as such, it is considered as a mere scrap of paper and does not deserve the cognizance of this Court.^[7]

From this denial, petitioner is now before this Court, seeking for the reversal of the CA's issuances.

We shall first settle petitioner's plea that he be permitted to pursue this appeal as a pauper litigant.

Considering that petitioner was allowed by the courts *a quo* to prosecute his case as an indigent litigant and upon finding that he has complied with the conditions set forth by Section 19, Rule 141 of the Rules of Court,^[8] the prayer is granted.^[9] The Clerk of Court of the Second Division is directed to assign a regular docket number for this case, and the petition is hereby given due course.

Petitioner argues that after the death of Hugo Regalado, he did not lose his right or interest over the case since he is one of the compulsory heirs. As such, he signed the petition before the CA, not as an agent of Hugo Regalado., but as a compulsory heir.

The petition is meritorious.

The action that led to the present controversy was one for cancellation of title, which is a real action affecting as it does title to or possession of real property. It is an action that survives or is not extinguished upon the death of a party, pursuant to Section 1, Rule 87 of the Rules of Court.^[10]

Section 16, Rule 3 lays down the procedure that must be observed when a party dies in an action that survives, *viz.* :

SEC 16, *Death of party; duty of counsel.* - Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.

The rule is intended to protect every party's right to due process.^[11] The estate of the deceased party will continue to be properly represented in the suit, through the duly appointed legal representative.^[12] Moreover, no adjudication can be made against the successor of the deceased if the fundamental right to a day in court is denied.^[13]

Hugo Regalado passed away on April 23, 2008, but the notice of his death was served to the CA by his counsel only on December 15, 2009. Although Hugo Regalado died as early as the pendency of the proceedings before the RTC,^[14] the non-fulfillment of the requirement before said court is excusable since the RTC rendered a decision on May 15, 2008, or before the expiration of the 30-day period set by the rule.

However, it should not have taken Atty. Miguel B. Albar twenty (20) months before notifying the CA, when the same ought to have been carried out at the time of the filing of their appeal.

This notwithstanding, it was still error for the CA to dismiss the appeal. After receiving the notice of Hugo Regalado's death, together with a list of his representatives, it was incumbent upon the appellate court to order the latter's appearance and cause their substitution as parties to the appeal. The belated filing of the notice must not prejudice the deceased party's legal representatives; the rules clearly provide that it is a mere ground for a disciplinary action against the erring counsel. Instead of abiding by the course of action set forth by the rules, the CA adopted a myopic examination of the procedural facts of the case. It focused simply on the validity of the Special Power of Attorney, and completely disregarded