

## SECOND DIVISION

[ G.R. No. 160825, March 26, 2010 ]

**VOLTAIRE I. ROVIRA, PETITIONER, VS. HEIRS OF JOSE C. DELESTE, NAMELY JOSEFA L. DELESTE, JOSE RAY L. DELESTE, RAUL HECTOR L. DELESTE AND RUBEN ALEX L. DELESTE, RESPONDENTS.**

### DECISION

#### **DEL CASTILLO, J.:**

A trial court's ruling on the matter of attorney's fees initiated through a motion, in a suit for recovery of ownership and possession of land, may be appealed by a mere notice of appeal. Since the suit is not one where multiple appeals are taken, a record on appeal is not necessary.

This Petition for Review on *Certiorari* assails the June 30, 2003 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 69383 which set aside and vacated the Orders of the Regional Trial Court (RTC) of Iligan City, Branch 01 dated October 17, 2001<sup>[2]</sup> and January 17, 2002.<sup>[3]</sup> Also assailed is the October 20, 2003 Resolution<sup>[4]</sup> denying the motion for reconsideration. The CA found that the RTC gravely abused its discretion amounting to lack or excess of jurisdiction when it recalled its Order granting the notice of appeal despite having been already divested of its jurisdiction.

#### ***Factual Antecedents***

In 1963, a suit for recovery of ownership and possession of 34 hectares of land was instituted before the Court of First Instance of Lanao del Norte. Originally entitled *Edilberto Noel as Administrator of the Intestate Estate of Gregorio Nanaman and Hilaria Tabuclin versus Dr. Jose C. Deleste*, this was docketed as Civil Case No. 698. This case was decided with finality in 1995 by the Supreme Court which declared the parties as co-owners of the land and ordered defendant Dr. Jose C. Deleste (Dr. Deleste) to return half of it to the plaintiffs.

On May 24, 2000, herein petitioner Atty. Voltaire Rovira (Atty. Rovira) filed as an incident to the said Civil Case No. 698 a motion to resolve his claim for attorney's fees for services rendered to Dr. Deleste. The respondents filed their opposition to the said motion.

#### ***Ruling of the Regional Trial Court***

On April 16, 2001, the RTC of Iligan City, Branch 01, issued an Order granting the motion of Atty. Rovira and awarded him attorney's fees of 25% of the 17-hectare portion adjudicated to Dr. Deleste.

On July 5, 2001, the respondents filed a Notice of Appeal. On August 16, 2001, Atty.

Rovira filed a Motion for Writ of Execution and to Dismiss Appeal to which the respondents filed their opposition. In the Order of September 4, 2001, the RTC granted the Notice of Appeal of the respondents and further instructed: "Let the order of this Court granting attorney's fees to Atty. Rovira, dated April 16, 2001 together with his testimony be transmitted to the CA." However, Atty. Rovira filed a motion for reconsideration alleging among others that the respondents' notice of appeal failed to comply with the requirements of Rule 13 of the Rules of Court.

On October 17, 2001, the RTC issued an Order, the dispositive portion of which reads:

In view of this new development, this Court hereby sets aside its order of September 4, 2001 and hereby dismisses the appeal filed by the defendants. Let therefore a writ of execution [be issued] to implement the order of this Court entered on April 16, 2001.

As the Clerk of Court prematurely and before the lapse of the fifteen day period within which movant may file a motion for reconsideration transmitted to the Court of Appeals the order of April 16, 2001 together with the testimony of Atty. Voltaire Rovira, he is hereby directed to request the Clerk of Court of the Court of Appeals to return the same to this Court.

SO ORDERED.<sup>[5]</sup>

Respondents filed a motion for reconsideration of the aforesaid Order but this was denied in the January 17, 2002 Order. Hence, the respondents filed a petition for *certiorari* with the CA.

### ***Ruling of the Court of Appeals***

The CA found the trial court to have committed grave abuse of discretion. It found that the trial court was already divested of jurisdiction when it recalled its Order granting the notice of appeal because respondents' appeal had already been perfected and there was the ensuing elevation of its records. As previously mentioned, the CA set aside and vacated the two Orders of the RTC and disposed as follows:

WHEREFORE, the petition is GIVEN DUE COURSE and GRANTED. The assailed orders dated October 17, 2001 and January 17, 2002 are SET ASIDE and VACATED. Accordingly the preliminary injunction earlier issued is hereby made PERMANENT, and the respondent Judge is ordered to give due course to the appeal of the petitioners.

SO ORDERED.<sup>[6]</sup>

Petitioner filed a motion for reconsideration which the CA denied in its October 20, 2003 Resolution.<sup>[7]</sup>

## **Issues**

Petitioner raises the following issues:

### I

WHETHER RESPONDENTS PERFECTED THEIR APPEAL [THEREBY DIVESTING] THE TRIAL COURT OF JURISDICTION OVER PETITIONER'S CLAIM FOR ATTORNEY'S FEES

### II

WHETHER THE COURT OF APPEALS HAD JURISDICTION OVER CA- G.R. SP. NO. 59393, RESPONDENTS' PETITION FOR CERTIORARI WITH THE COURT OF APPEALS which

(a) Did not mention in the statement of material dates when respondents filed their motion for reconsideration to the assailed RTC order of October 16, 2001;

(b) Contained deliberate suppressions and omissions of material portions of the record and other documents relevant or pertinent thereto as are referred to in the petition, as required in Section 3, Rule 46 of the Rules of Court in relation with Rule 65;

(c) Did not contain the full names of the petitioners as required in Section 3, Rule 46 in relation with Section 1, Rule 3 of the Rules of Court. [Furthermore,] "Heirs of Jose C. Deleste" is not a natural or juridical person or one authorized by law to institute an action in Court.<sup>[8]</sup>

### ***Petitioner's Arguments***

Petitioner contends that respondents' appeal was not perfected for their

failure to file a record on appeal to elevate the incident to the CA during the execution process in Civil Case No. 698 and for failure of their notice of appeal to comply with the mandatory provisions of Rule 13 of the Rules of Court. He also contends that a petition for *certiorari* being a remedy in equity must strictly comply with Section 1, Rule 65 in relation with Section 3, Rule 46 of the Rules of Court otherwise the appellate court does not acquire jurisdiction over the petition.

### ***Respondents' Arguments***

Respondents, on the other hand, contend that the intent of the rules for the preferred mode of service had been met considering that their notice of appeal, although served by registered mail, was immediately received by the petitioner. They argue that lapses in compliance with technical rules can be disregarded so as not to override substantial justice. Respondents also contend that the case subject of the petition is not one falling under the category of "special proceedings or other

cases of multiple or separate appeals where the law or the rules require the filing of a record on appeal." They also submit that they substantially complied with the rules and that the CA correctly ruled in not dismissing the petition and in ordering the RTC to give due course to the appeal considering respondents' strong and substantial points in their opposition to petitioner's motion to resolve attorney's fees.

### **Our Ruling**

The petition has no merit.

### ***Perfection of Appeal***

Rule 41 of the Rules of Court provides:

*Sec.2. Modes of appeal. -*

(a) *Ordinary appeal.* - The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

Multiple appeals are allowed in special proceedings, in actions for partition of property with accounting, in the special civil actions of eminent domain and foreclosure of mortgage.<sup>[9]</sup> The rationale behind allowing more than one appeal in the same case is to enable the rest of the case to proceed in the event that a separate and distinct issue is resolved by the court and held to be final.<sup>[10]</sup> In such a case, the filing of a record on appeal becomes indispensable since only a particular incident of the case is brought to the appellate court for resolution with the rest of the proceedings remaining within the jurisdiction of the trial court.<sup>[11]</sup>

The main action involved herein, being a suit for recovery of ownership and possession, is not one where multiple appeals can be taken or are necessary. The choice<sup>[12]</sup> of asserting a claim for attorney's fees in the very action in which the services in question have been rendered, as done by the petitioner herein, will not convert a regular case into one falling under the category of "other cases of multiple or separate appeals where the law or these Rules so require." The main case handled by petitioner lawyer has already been decided with finality up to the appeal stage and is already in the execution stage. The trial court has also already resolved the incident of attorney's fees. Hence, there is no reason why the original records of the case must remain with the trial court. There was also no need for respondents to file a record on appeal because the original records could already be sent to the appellate court<sup>[13]</sup> for the resolution of the appeal on the matter of the attorney's fees.

To repeat, since the case has not been made out for multiple appeals, a record on