

SECOND DIVISION

[G.R. NO. 134154, February 28, 2006]

**SPOUSES PEDRO M. REGALADO AND ZANITA F. REGALADO,
PETITIONERS, VS. ABRAHAM M. REGALADO, CIRILO M.
REGALADO, ISIDRO M. REGALADO, CIRIACO M. REGALADO,
JORGE M. REGALADO, JULIANA R. ABELLO, LUCIO M. REGALADO,
AND APOLONIO M. REGALADO, JR., RESPONDENTS.**

D E C I S I O N

GARCIA, J.:

Herein petitioners, the spouses Pedro Regalado and Zanita Regalado, have come to this Court *via* this appeal^[1] by certiorari under Rule 45 of the Rules of Court to nullify and set aside the following issuances of the Regional Trial Court (RTC) of Kalibo, Aklan, Branch 8, in its *Spl. Civil Action No. 4518*, to wit:

1. **Order dated July 26, 1995,**^[2] granting the petition for appointment of a receiver embodied in the main complaint filed by respondents, and directing such receiver to put up a bond;
2. **Decision dated November 28, 1997,**^[3] declaring the parcel of fishpond land subject of the case as the common property of all the parties; ordering the partition of the same into nine (9) equal parts; requiring petitioners to render an accounting of the produce of said fishpond starting 1980 until actual partition is effected; ordering petitioners to pay jointly and severally attorney's fees and litigation expenses and other costs; and ordering the appointment of a receiver agreeable to all parties upon the filing of the bond for receivership;
3. **Order dated January 14, 1998,**^[4] dismissing the appeal filed by petitioners for failure to file their record on appeal and to pay the appellate court docket and other lawful fees; and
4. **Order dated May 19, 1998,**^[5] denying petitioners' petition for relief from judgment.

The facts:

Petitioner Pedro M. Regalado, married to co-petitioner Zanita F. Regalado, and respondents Abraham, Cirilo, Isidro, Ciriaco, Jorge, Lucio, and Apolonio, all surnamed Regalado, and Juliana R. Abello (hereinafter collectively referred to as respondents), are the children of the deceased spouses Apolonio Regalado and Sofia Regalado.

It appears that as early as 1929, the parties' parents had been in possession of a 40-hectare fishpond which the parents developed and even leased to third persons for a time. At one time, their father leased part of the fishpond property to one Benjamin Roxas for a period of nine (9) years commencing January 6, 1972 to January 6, 1981. However, in 1980, before the termination of the lease contract with Roxas, petitioner Pedro Regalado with one of the respondents, Ciriaco Regalado, forcibly took possession of the fishpond from its lessee.

Upon the death of their father, respondents demanded from petitioner-spouses who are in the possession of the entire fishpond, the partition thereof. Respondents alleged that petitioners refused and merely requested for another three (3) years to be in possession of the subject property.

Again, in 1989, respondents reiterated their demand for partition but petitioners again refused and once more requested that they be allowed to remain in possession and usufruct of the property for five (5) more years after all the litigations concerning the same shall have been terminated, reasoning out that they have not yet recovered all their expenses in developing and recovering possession of the fishpond from third persons.

In 1992, respondents again demanded for partition but as before, petitioners again refused. Hence, on August 20, 1992, in the RTC of Kalibo, Aklan, respondents filed against petitioners a complaint for *Partition of Real Estate, Accounting, Damages and Appointment of a Receiver*,^[6] thereat docketed as *Spl. Civil Action No. 4518* which was raffled to Branch 8 of the court.

In their Answer, petitioner-spouses, as defendants *a quo*, claimed that the fishpond in question was not part of the hereditary estate of their parents as it is a public land covered by a Fishpond Lease Agreement. They argued that even if it were to be considered as part of the hereditary estate of the parents, respondents as plaintiffs below are not entitled to share equally in the fishpond property as it was allegedly only petitioner Pedro Regalado who recovered the actual physical possession of the same from third persons. Petitioners also claimed that respondents did not keep their part in the agreement to let the spouses recover all the expenses they incurred in the development and re-possession of the subject fishpond and to enjoy sole usufruct thereof for five (5) years.

On May 31, 1993, respondents filed in *Spl. Civil Case No. 4518*, a verified *Petition for Receivership*,^[7] thereunder alleging that there was a compelling need for the appointment of a receiver to safeguard the property and its produce from being wasted or materially injured on account of petitioners' failure to pay the real estate taxes and fishpond rentals due thereon. Respondents further averred that the property and the income derived therefrom are in danger of being lost or misappropriated by petitioners who were allegedly constructing their own house thereat out of the income of the fishpond, throwing lavish parties frequently and getting heavily indebted to several persons.

Petitioners opposed the petition for receivership, claiming that mere co-ownership does not justify the appointment of a receiver, since it was actually petitioner Pedro Regalado who risked his own life, spent his own money and time in recovering the fishpond without the other parties contributing a single centavo. Petitioners also

argued in their opposition that the subject fishpond was public property which belongs to the Government, hence it would be folly and a waste of money to pay the real property taxes thereon in addition to the fishpond rentals to the Bureau of Fisheries and Aquatic Resources (BFAR).

In the herein first assailed **Order dated July 26, 1995**,^[8] the trial court granted respondents' petition for receivership, explaining that respondents had rights and interests on the subject property, which property is in danger of being foreclosed by petitioners' creditors or forfeited by the Government for non-payment of taxes.

Aggrieved by the aforementioned Order, petitioners filed a motion for reconsideration, contending that said Order was premature as they (petitioners) were not yet finished with their presentation of evidence in opposition to respondents' petition for the appointment of a receiver.

Acting thereon, the trial court issued an Order^[9] on August 14, 1995 holding in abeyance the resolution of the receivership issue and setting the main case for trial on the merits.

Eventually, in the herein assailed **Decision**^[10] **dated November 28, 1997**, the trial court rendered judgment for the respondents, as follows:

WHEREFORE, premises considered, judgment is hereby rendered:

a) Declaring the parcel of fishpond land located at Barangay Camanci, Batan, Aklan described under paragraph 4 of the complaint and herein referred to as the land in question, the common property of all the parties herein;

b) Ordering the partition of the fishpond in question into nine (9) equal parts, each part shall represent the share of Abraham M. Regalado, Cirilo M. Regalado, Isidro M. Regalado, Ciriaco M. Regalado, Jorge M. Regalado, Juliana R. Abello, Lucio M. Regalado, Apolonio M. Regalado, Jr. and Pedro M. Regalado in the following manner: Within thirty (30) days from receipt by the parties of this decision, they may make partition among themselves, if they are able to agree, by proper instruments of conveyance to be conformed by the court, otherwise, partition would be effected in accordance with Sections 3 or 5, Rule 69 of the Revised Rules of Court, as amended;

c) Ordering the defendants [now petitioners] to render an accounting of the produce of the fishpond in question starting 1980 when they first actually took possession of the same until actual partition of the property is effected among the parties;

d) Ordering the defendants [now petitioners], to pay jointly and severally, the plaintiffs [now respondents] the sum of P10,000.00 attorney's fees, and litigation expenses and to pay the costs;

e) Ordering, upon filing of the petitioners' [plaintiffs'] bond for receivership in the amount of ONE HUNDRED THOUSAND PESOS

(P100,000.00), the appointment of a receiver agreeable to all the parties, who is likewise directed to put-up a bond before assuming his duties as such in the amount which will be fixed later by this Court. [Words in brackets supplied]

SO ORDERED.

Against said decision, petitioners filed a *Notice of Appeal*^[11] on December 17, 1997, therein making known their intention to take an appellate recourse to the Court of Appeals.

In the herein other assailed **Order**^[12] **dated January 14, 1998**, the lower court denied due course to petitioners' notice of appeal, saying that while the notice was timely filed, yet petitioners did not pay the appellate court docket and other lawful fees nor a record on appeal filed by them.

With the November 28, 1997 Decision having become final and executory, respondents filed a *Motion for Execution* which was granted by the trial court. In time, an **Entry of Judgment**^[13] was made on February 27, 1998.

Then, on March 10, 1998, petitioners, this time thru one Atty. Pedro Icamina who was without any proof of entry of appearance in the case either as new or collaborating counsel for the petitioners, filed a *Petition for Relief from Order*,^[14] thereto attaching an affidavit of Atty. Tirol, petitioners' counsel on record about whom there is no indication of any withdrawal of appearance. In that affidavit, Atty. Tirol alleged that while his office received on January 19, 1998 a copy of the January 14, 1998 Order (denying due course to petitioners' appeal), his law clerk did not personally inform him about it and just placed said order on his table among the piles of legal and court papers, adding that he (Atty. Tirol) had several court hearings, not to mention the fact that he was a member of the Sangguniang Panlalawigan of Aklan which required his attendance, all of which caused him to overlook the filing of the Record on Appeal. In the same pleading, Atty. Icamina attached petitioners' Record on Appeal and a check for P400.00 as appellate court docket fee.

In the herein last assailed **Order**^[15] **dated May 19, 1998**, the trial court denied petitioners' petition for relief on the ground that the instances therein cited by counsel "are not those excusable negligence which warrant the granting of relief under Rule 38 of the Rules of Court."

Hence, this recourse by the petitioners.

We **DENY**.

At the outset, it must be stressed that in seeking the reversal and setting aside of the assailed Orders and Decision of the trial court in its *Spl. Civil Action No. 4518*, petitioners came to us on a petition for review under Rule 45 of the Rules of Court.

Under Section 1(b), Rule 41 of the Rules, the denial of a petition for relief from judgment or an order disallowing or dismissing an appeal may only be challenged through the special civil action of certiorari under Rule 65: