

FIRST DIVISION

[G.R. NO. 144024, July 27, 2006]

**PEDRO TAGABI AND DEMETRIO TABANIAG, PETITIONERS, VS.
MARGARITO TANQUE, RESPONDENT.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court which seeks to set aside the Resolutions of the Court of Appeals (CA) dated April 17, 2000^[1] and June 16, 2000^[2] dismissing herein petitioners' appeal docketed as CA-G.R. CV No. 58697, and denying petitioners' Motion for Reconsideration, respectively.

The facts, as found by the trial court are as follows:

Plaintiff Margarito Tanque is the son of Anastasio Tanque who, during his lifetime, owned and possessed a parcel of land with an area of 47,443 square meters, more or less, situated at Barangay Jolason, Tubungan, Iloilo. Upon the death of his father on December 16, 1966, plaintiff took over the ownership and possession of the said land and declared the same in his name for taxation purposes. He has, since then, paid the real property taxes on the land until the present time.

The same parcel of land was the subject of a civil case for recovery of ownership filed sometime in 1968 by plaintiff against Genaro Tablatin, et al. docketed as Civil Case No. 7551 of the Court of First Instance of Iloilo, which was decided on February 8, 1974 (Exh. "K") in favor of herein plaintiff and which decision, on appeal by the losing party, was affirmed by the Court of Appeals on February 2, 1979 (Exh. "K"). The decision of the Court of Appeals attained finality on March 4, 1979 (Exh. "M").

When the lands in Tubungan, Iloilo were cadastrally surveyed by the Bureau of Lands in 1982, plaintiff's parcel of land was surveyed and identified as Cadastral Lot 2104 with an area of 4.7433 hectares. On February 24, 1986, Original Certificate of Title No. F-31883 was issued to plaintiff based on Free Patent No. 17553 obtained from the Bureau of Lands (Exh. "D").

Sometime in 1988, defendant Pedro Tagabi asserted ownership over a portion of Cadastral Lot 2104 with an area of 654 square meters, claiming that the same forms part of Cadastral Lot 2097 which is owned by him. Without the knowledge and consent of plaintiff, defendant Tagabi had the said portion entered into by his co-defendant, Demetrio Tabaniag, who planted the same with palay and corn.

Plaintiff then went to the Bureau of Lands and asked that Cadastral Lot 2104 be relocated to determine whether a portion was encroached upon by the defendant. Accordingly, relocation survey was made by Geodetic Engineer Ernesto Ciriaco in the presence of both plaintiff and defendants and, thereafter, a sketch, Exhibit "O", was prepared and issued by the said Geodetic Engineer. It was found out that, indeed, a portion with an area of 654 square meters within lot 2104 was encroached upon by the defendants. The matter was then referred by plaintiff to the barangay officials concerned for conciliation. But no settlement was reached (Exhs. "P"; "P-1"). Hence, plaintiff filed the present action in court to recover possession of the disputed portion, plus damages.^[3]

On May 26, 1997, the Regional Trial Court (RTC) of Iloilo City, Branch 26, rendered a Decision with the following dispositive portion:

WHEREFORE, judgment is hereby rendered declaring plaintiff the lawful owner of the property in question and ordering the defendants to vacate and deliver possession of the same to plaintiff and to pay plaintiff, jointly and severally, (1) the sum of P1,850.00 representing the produce of the land annually from the time of filing of the complaint on September 29, 1992 until possession is delivered to plaintiff; (2) the sum of P5,600.00 representing expenses for the relocation survey; (3) attorney's fees in the sum of P8,000.00; plus (4) costs of this suit.

SO ORDERED.^[4]

Aggrieved by the judgment of the trial court, defendants Pedro Tagabi and Demetrio Tabaniag (petitioners) filed an appeal with the CA.

On February 26, 2000, plaintiff-appellee Margarito Tanque (respondent) filed a Motion to Dismiss on grounds that the appellants' brief was filed beyond the period allowed by the CA and that the said brief was not accompanied by a written explanation why it was not filed personally in violation of Section 11, Rule 13 of the Rules of Court.^[5]

Petitioners filed their Comment on the Motion to Dismiss contending that the delay of one day in the filing of their appellants' brief does not automatically cause the dismissal of the appeal. Petitioners further contend that since there was no allegation of any prejudice on the part of the appellee which may have been caused by the delay and since the issues raised are substantial enough to merit consideration by the appellate court, the liberal interpretation of the rules is justified. On the matter of lack of explanation why the appellants' brief was not filed personally with the CA, petitioners aver that the practicability of the filing is self-explanatory considering that the law office of their counsel is in Iloilo City while the CA is in Manila; and that the court may take judicial notice of the distance between these two places and, hence, the impracticability of personal filing.^[6]

In his Reply to petitioners' Comment, respondent asserted that a correct interpretation of the provisions of Section 1, Rule 50 of the Rules of Court would show that it is mandatory on the part of the CA to dismiss an appeal if any of the grounds provided therein exists; that even a delay of one day is a sufficient ground

for dismissing the appeal. Respondent claimed that the requirement of a written explanation in cases where briefs and other pleadings are not filed or served personally is mandatory, and non-compliance therewith will result in the dismissal of an appeal. Respondent brought to the appellate court's attention the fact that petitioners' Comment on the Motion to Dismiss is not also accompanied by a written explanation why it was not filed with the CA personally. This, respondent contends, is evidence of petitioners' deliberate violation of the Rules.^[7]

On April 17, 2000, the CA issued the presently assailed Resolution whereby, in the exercise of its judicial discretion, it admitted herein petitioners' brief for appellants despite having been filed one day late but granted respondent's Motion to Dismiss for failure to comply with Section 11, Rule 13^[8] of the Rules of Court and ordered that petitioners' brief be expunged from the records of the case.^[9] Petitioners filed a Motion for Reconsideration but the same was denied by the CA in a Resolution issued on June 16, 2000.^[10]

Hence, the present petition raising the sole issue, to wit:

The petitioners submit that when the Court of Appeals dismissed the appeal of the petitioners on the ground that there was no explanation why the said brief was filed by registered mail and not by personal service in strictest compliance with Section 11, Rule 13 of the 1997 Rules of Civil Procedure, the Court of Appeals acted not in accord with the said provisions and with the cited decision of the Supreme Court. ^[11]

Petitioners argue that the dismissal by the CA of herein petitioners' appeal on the ground of failure to strictly comply with the provisions of Section 11, Rule 13 of the Rules of Court is not in accord with the policy of liberal construction of the said Rules as provided in Section 6, Rule 1 thereof. Petitioners submit that a strict interpretation of the above-cited provisions of the Rules of Court will obstruct rather than serve the broader interests of justice. Moreover, petitioners assert that the CA can take judicial notice of the distance between the CA office in Manila and the law office of counsel for petitioners in Iloilo City; and that said distance renders personal filing impracticable. Petitioners also contend that a mere perusal of their brief already filed with the CA shows merit in their appeal and that its dismissal would prejudice the substantial rights of herein petitioners.

In his Comment, respondent reiterates his contention that the requirements provided under Section 11, Rule 13 of the Rules of Court are mandatory. Moreover, respondent contends that the said Rule does not provide for any exception that would justify non-compliance therewith.

The Court finds the petition without merit on technical and substantive grounds.

On technical grounds, Section 11, Rule 13 of the Rules of Court provides that personal service of petitions and other pleadings is the general rule, while a resort to other modes of service and filing is the exception.^[12] Where recourse is made to the exception, a written explanation why the service and the filing were not done personally is indispensable, **even when such explanation by its nature is acceptable and manifest.**^[13] **Where no explanation is offered to justify the resort to other modes, the discretionary power of the court to expunge the**

pleading becomes mandatory.^[14] Thus, the CA did not err when it granted respondent's Motion to Dismiss and ordered that petitioners' brief be expunged from the records in view of the latter's failure to present a written explanation why they did not personally file their appeal brief with the CA.

Citing *Kowloon House/Willy Ng v. Court of Appeals*,^[15] this Court reiterated the following pronouncements in *United Pulp and Paper Co., Inc. v. United Pulp and Paper Chapter- Federation of Free Workers*:^[16]

[R]ules of procedure exist for a purpose, and to disregard such rules in the guise of liberal construction would be to defeat such purpose. Procedural rules are not to be disdained as mere technicalities. They may not be ignored to suit the convenience of a party. Adjective law ensures the effective enforcement of substantive rights through the orderly and speedy administration of justice. Rules are not intended to hamper litigants or complicate litigation. But they help provide for a vital system of justice where suitors may be heard in the correct form and manner, at the prescribed time in a peaceful though adversarial confrontation before a judge whose authority litigants acknowledge. Public order and our system of justice are well served by a conscientious observance of the rules of procedure, particularly by government officials and agencies.^[17]

Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights.^[18] Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.^[19]

In the present case, the CA already extended to petitioners the benefit of a liberal construction of the Rules of Court by not dismissing their appeal on the ground that their appellants' brief was belatedly filed by one day. What cannot be ignored, however, are petitioners' successive violations of the Rule requiring explanation why they did not personally file their brief with the CA. The first violation was committed when they filed their appellants' brief and the second violation was incurred when they filed their Comment on respondent's Motion to Dismiss. Petitioners cannot feign ignorance of such Rule because they are represented by counsel. Moreover, they were already informed of such lapse through the Motion to Dismiss filed by herein respondent.

In explaining the importance of faithful compliance with procedural rules, this Court held in *Land Bank of the Philippines v. Natividad*^[20] that:

[P]rocedural rules are designed to facilitate the adjudication of cases. Courts and litigants alike are enjoined to abide strictly by the rules. While in certain instances, the Court allows a relaxation in the application of the rules, there is no intention to forge a weapon for erring litigants to violate the rules with impunity. The liberal interpretation and application of rules apply only in proper cases of demonstrable merit and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in