

SECOND DIVISION

[G.R. NO. 158615, March 04, 2005]

**SPOUSES FORTUNATA V. BANIQUED AND TEOFILO BANIQUED,
PETITIONERS, VS. TERESITA S. RAMOS AND THE REGISTER OF
DEEDS OF MANILA, RESPONDENTS.**

D E C I S I O N

CALLEJO, SR., J.:

Before us is a petition for review on certiorari seeking to set aside the Decision^[1] of the Court of Appeals in CA-G.R. SP. No. 65631 dismissing the petition of Spouses Fortunata V. Baniqued and Teofilo Baniqued for the nullification of the April 30, 2001 Resolution^[2] of the Regional Trial Court (RTC) of Manila, Branch 31, in Civil Case No. 97-85314 which denied the elevation of the records of the said case to the CA.

The antecedents are as follows:

On September 29, 1997, respondent Teresita S. Ramos filed a Complaint,^[3] with the RTC of Manila, Branch 31, against the petitioner Spouses Baniqued for annulment of Transfer Certificate of Title (TCT) No. 197229 registered in the name of Fortunata V. Baniqued. The case was docketed as Civil Case No. 97-85314.

The petitioners received the summons and a copy of the complaint. Despite several extensions granted to them by the trial court, their counsel, Atty. Diosdado C. Sebrijo, Jr., failed to file their answer to the complaint. Eventually, the petitioners were declared in default. Respondent Ramos adduced her evidence *ex parte*.

On May 25, 1998, the trial court rendered a Decision^[4] in favor of respondent Ramos. The decretal portion of the decision reads:

WHEREFORE, viewed from all the foregoing, judgment is rendered in favor of plaintiff and against defendants as follows:

1. Declaring as null and void Transfer Certificate of Title No. 197229 covering Lot 2-G-1-B registered in the name of Fortunata V. Baniqued, married to Teofilo Baniqued.
2. Ordering defendants Fortunata V. Baniqued and Teofilo Baniqued to surrender the owner's duplicate of TCT No. 197229 to the Register of Deeds of Manila for cancellation.
3. The Register of Deeds of Manila is ordered to cancel Transfer Certificate of Title No. 197229 and to issue a new title in the name of Teresita S. Ramos covering the same property.

4. Ordering defendants Fortunata V. Baniqued and Teofilo Baniqued to pay plaintiff the amount of P20,000.00 as and for attorney's fees, P10,000.00 as moral damages and P10,000.00 as exemplary damages plus costs of suit.

SO ORDERED.^[5]

The petitioners' counsel was served with a copy of the decision on June 5, 1998. Since June 20, 1998 was a Saturday, they filed a Motion for New Trial on June 23, 1998, which was set for hearing at 9:00 a.m. of July 1, 1998.^[6] Respondent Ramos, through counsel, received a copy of the said motion on June 29, 1998, and opposed the same, contending that the petitioner spouses were bound by the negligence of their counsel. It was also averred that the decision had become final and executory because of the petitioners' failure to set the motion for hearing at least three days before receipt of a copy thereof by the respondent through counsel.^[7] Before the trial court could resolve the motion, the petitioners filed a "Manifestation and Notice of Appeal," *quoted infra*:

DEFENDANTS SPOUSES FORTUNATA & TEOFILO BANIQUED, through the undersigned counsel, most respectfully manifest that they have only one (1) day left within which to appeal the decision should their motion for new trial be denied by the Honorable Court. Hence, time being of the essence and in order to avoid any delay which may deprive DEFENDANTS of their right to appeal, DEFENDANTS are appealing the DECISION dated May 25, 1998 and any adverse Order of the Honorable Court to the Honorable Court of Appeals, on the ground that the judgment is contrary to law and existing jurisprudence.

Copy of said Decision was received by DEFENDANTS' previous counsel on June 5, 1998.^[8]

In their rejoinder,^[9] the petitioners prayed that their motion for new trial be granted.

On September 22, 1999, the trial court issued an Order^[10] denying petitioners' motion for new trial for lack of merit.

On November 15, 1999, the petitioners filed an Urgent Ex Parte Motion^[11] praying that the records of the case be elevated to the CA, as they had already paid the docket fees for appeal. Respondent Ramos opposed the motion, contending that the petitioner spouses did not file any notice of appeal after the denial of their motion for new trial; hence, the decision of the trial court had become final and executory. Respondent Ramos moved for the issuance of a writ of execution.^[12]

On April 30, 2001, the trial court issued a Resolution^[13] denying the *Ex Parte* Motion of the petitioners to elevate the records of the case to the CA, and granted the issuance of a writ of execution as prayed for by respondent Ramos. The trial court ruled that the Notice of Appeal filed by the petitioners on July 27, 1998 while their motion for new trial was pending resolution was premature; hence, inefficacious.

On July 16, 2001, the petitioner spouses filed a petition for the nullification of the trial court's Resolution dated April 30, 2001, and for the issuance of a writ of mandamus to compel the latter to elevate the records of Civil Case No. 97-85314 to the CA.

The petitioners made the following allegations:

Public respondents acted capriciously and whimsically by [deliberately] neglecting the elevation of the records in Civil Case No. 97-85314, which the law specifically enjoins as a ministerial duty, despite the timely or reasonable filing of the notice of appeal, in derogation of petitioners' right and to be heard on appeal.

Indeed, the non-elevation of the records, respondent court only magnified its arbitrariness by its issuance of a resolution and completely foreclosing the right to appeal, committed grave abuse of discretion amounting to lack or excess of jurisdiction. Thus, leaving petitioners no adequate remedy as appeal is not plain and speedy remedy under the circumstances obtaining and in the course of law, equity demands that the resolution in question dated April 30, 2001 be set aside being patently rendered whimsically as to call for the power of supervision and ordering respondent court to elevate the records of the case to this Honorable Court.^[14]

The CA rendered judgment^[15] on January 20, 2003 dismissing the petition. It ruled that the notice of appeal filed by the petitioners on July 27, 1998 was premature and uncalled for, since their motion for new trial was still pending with the trial court. The petitioners' motion for reconsideration thereof was denied by the appellate court on May 30, 2003.^[16]

In the present recourse, the petitioners aver that –

THE COURT OF APPEALS ERRED IN DISMISSING THE PETITION AND DENYING RECONSIDERATION THEREOF, THE DECISION HAVING BEEN MADE IN VIOLATION AND IN CONTRAVENTION OF THE RULING LAID DOWN BY THIS HONORABLE COURT IN CALTEX PHILIPPINES INCORPORATED V. INTERMEDIATE APPELLATE COURT, G.R. NO. 72703, 13 NOV. '92, THE SAME SET OF FACTS OBTAINS IN THE CASE OF PETITIONERS. THE COURT OF APPEALS [RESORTED] TO TECHNICALITIES AND RIGID APPLICATION OF THE 1997 RULES OF CIVIL PROCEDURE LIKEWISE IN CONTRAVENTION OF APPLICABLE RULINGS OF THIS HONORABLE COURT IN DEROGATION OF JUDICIAL HIERARCHY.^[17]

Thus, the sole issue is whether or not the petitioners perfected their appeal from the decision of the trial court to the CA within the period and in the manner provided for by the Rules of Court.

The petitioners maintain that they seasonably filed their notice of appeal from the decision of the RTC, and that it was the ministerial duty of the trial court to elevate the records of Civil Case No. 97-85314 to the CA. They contend that the appellate court should have relaxed the application of the provisions of the Rules of Court and liberally construed the same to promote its objectives.