446 Phil. 722

THIRD DIVISION

[G.R. No. 127827, March 05, 2003]

ELEUTERIO, ANATALIA, JOSELITO, ROGELIO, EVANGELINE, NOEL, GUILLERMO, LORENZO, DOMINGO, AMADO, AND VICTORIA, ALL SURNAMED LOPEZ, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS, AND SPOUSES MARCELINO AND CRISTINA S. LOPEZ, FELISA LOPEZ AND RAMON CORTEZ, ZOILO LOPEZ, LEONARDO LOPEZ AND LEONILA LOPEZ AND SPOUSES ROGELIO M. AMURAO AND NOAMI T. AMURAO, RESPONDENTS.

D E C I S I O N

PUNO, J.:

Before us is a petition for review on *certiorari* of the Decision[1] dated September 30, 1996 of the Court of Appeals in C.A.-G.R. CV No. 43837, which affirmed with modification the Decision dated March 30, 1993 of the Regional Trial Court of Antipolo, Rizal, Branch 71, in Civil Case No. 677-A.

The evidence shows that in 1920, Fermin Lopez occupied, possessed, and declared for taxation purposes a parcel of public land containing an area of 19 hectares, 48 ares, 88 centares, more or less, situated in Makatubong, Barrio De la Paz, Antipolo, Rizal. He filed a homestead application over the land, but his application was not acted upon until his death in 1934. When he died, he was survived by the following: (1) Hermogenes Lopez, now deceased, leaving his children, respondents Marcelino, Felisa, Zoilo, and Leonardo, all surnamed Lopez, as his heirs; (2) petitioner Eleuterio Lopez; (3) Juan Lopez, now deceased, leaving his children, Guillermo, Lorenzo, Domingo, Amado, and Victoria, all surnamed Lopez, as his heirs;[2] and (4) Nazario, now deceased, leaving his wife, petitioner Anatalia, and children, petitioners Joselito, Rogelio, Evangeline and Noel, all surnamed Lopez, as his heirs.

Following Fermin's death, Hermogenes, being the eldest child, worked and introduced additional improvements on the land. In 1936, he inquired from the Bureau of Lands the status of his late father's application for a homestead grant. An official[3] of the bureau informed him that the application remained unacted upon and suggested that he file a new application. Following the suggestion, Hermogenes filed a homestead application in his own name, which was docketed as No. 138612. After ascertaining that the land was free from claim of any private person, the Bureau approved his application. In 1939, Hermogenes submitted his final proof of compliance with the residency and cultivation requirements of the law. The land was surveyed and a resulting plan, H-138612, was approved by the Director of Lands, who thereafter ordered the issuance of the homestead patent. The patent was later transmitted to the Register of Deeds of Rizal for transcription and issuance of the corresponding certificate of title in his name.

Unaware that he has been awarded a homestead patent, Hermogenes executed on February 11, 1956 an Extra-judicial Partition of the disputed land with his brothers - petitioner Eleuterio, Juan, and Nazario. On September 12, 1958, however, the three executed a Deed of Absolute Sale of their share in the land in favor of Hermogenes. The succeeding year, Hermogenes applied with the Land Registration Commission for the registration of the property in his name. This was docketed as LRC Case No. 2531. To his surprise, he found that the land has been registered in the names of Fernando Gorospe, Salvador de Tagle, Rosario de Tagle, Beatriz de Suzuarrequi and Eduardo Santos, who collectively opposed his application.

In December 1959, Hermogenes filed a complaint for the annulment of the free patent and title against these persons before the Court of First Instance of Rizal,[4] docketed as Civil Case No. 5957. Some of the defendants moved for its dismissal alleging that Hermogenes was not a real party in interest since he previously sold his right to the land to one Ambrocio Aguilar on July 31, 1959. The case was dismissed.

Aguilar instituted on November 18, 1976 a new civil action before the CFI of Rizal,[5] docketed as Civil Case No. 24873. It was similar to Civil Case No. 5957 except for the change in plaintiff and the addition of the Bureau of Lands as co-defendant. On April 15, 1982, the lower court declared Aguilar as the absolute owner of the land and OCT No. 537 and all subsequent certificates of title emanating therefrom as *void ab initio*. This decision was affirmed *in toto* by the Court of Appeals. In G.R. No. 90380, we affirmed the decision of the appellate court in a decision promulgated on September 13, 1990.[6]

After the April 15, 1982 decision of the CFI, and while the case was on appeal, respondent Lopezes, as heirs of Hermogenes (who died on August 20, 1982), filed a complaint against Aguilar before the RTC of Antipolo, Rizal. The July 14, 1984 complaint was for the cancellation of the deed of sale executed by Hermogenes in favor of Aguilar dated July 31, 1959 and/or reconveyance. It was docketed as Civil Case No. 463-A. On February 5, 1985, the lower court declared the deed of absolute sale null and void *ab initio* and the respondents as the true and absolute owner of the disputed land. Aguilar sought relief with the Court of Appeals, which affirmed *in toto* the decision of the RTC in a Decision promulgated on August 18, 1987.[7] In G.R. No. 81092, we denied Aguilar's petition for review in a resolution dated April 6, 1998 for having been filed late.

On April 25, 1985, after the RTC of Antipolo rendered its February 5, 1987 decision in Civil Case No. 463-A and pending its appeal, respondent Lopezes sold a large portion of the disputed property to respondent spouses Amurao.

On May 31, 1985, petitioners Eleuterio, Anatalia, Joselito, Rogelio, Evangeline and Noel, all heirs of Nazario Lopez, along with Guillermo, Lorenzo, Domingo, Amado, and Victoria, all heirs of Juan Lopez, instituted the present action against the respondents before the RTC of Antipolo, Rizal, Branch 71, docketed as Civil Case No. 677-A. They prayed, among others, that they be declared co-owners of the property subject matter hereof and that private respondents be ordered to reconvey to them 3/5 thereof as its co-owners, or in the alternative, to pay its value. On June 26, 1985, respondents filed their Answer with Compulsory Counterclaim alleging that they are the absolute owners of the contested land on the basis of the homestead

grant to their predecessor-in-interest, Hermogenes.

After the pre-trial on November 27, 1987, trial ensued. In the August 28, 1986 hearing petitioners' counsel failed to appear, causing the case to be dismissed. The dismissal, however, was reconsidered upon motion of petitioners' counsel, and the case was again set for hearing. In the scheduled hearing of October 17, 1986, counsel for respondent was absent. Upon proper motion, petitioners were allowed to present their evidence *ex-parte* on December 5, 1986. Following the presentation of *ex-parte* evidence, the case was deemed submitted for resolution.

On June 25, 1987, the court *a quo* rendered a decision in favor of the petitioners ordering the division of the disputed lot in equal portions among the four children of Fermin or their heirs. Respondents failed to appeal the decision but on September 10, 1987, they filed a petition for relief from judgment, alleging that accident/excusable negligence prevented them from attending the trial and that they have a good, substantial and meritorious defense. On December 28, 1989, the court *a quo* set aside its decision dated June 25, 1987 and ordered a pre-trial conference.

On January 30, 1990, respondents filed a Motion to Admit Amended Answer alleging for the first time that petitioners have already sold to Hermogenes their shares in the contested property. Petitioners opposed the motion on the ground that the amendments constituted substantial alteration of the theory of the defense. On February 13, 1990, the court *a quo* allowed respondents to amend the answer. When their motion for reconsideration was denied, petitioners elevated the issue directly to this court *via* a Petition for Certiorari. On April 25, 1990, we denied the petition for failure to comply with the requirements of Circular 1-88, with a further pronouncement that, "besides, even if the petition were admitted, the same would still be dismissed as the Court finds that no grave abuse of discretion was committed by public respondent." Trial on the merits once more proceeded in the court *a quo*.

While the case was on trial, complainants therein Guillermo, Lorenzo, Domingo, Amado and Victoria, all children of Juan Lopez, entered into a compromise agreement with the respondent Lopezes, heirs of Hermogenes, recognizing the latter's ownership and possession of the property subject of the case. They confirmed the sale made by their father Juan to Hermogenes. On July 20, 1992, the court *a quo* rendered a partial decision approving the compromise agreement.[8]

On March 30, 1993, the court *a quo* rendered a Decision dismissing the complaint, the dispositive portion of which states:

> "WHEREFORE, judgment is hereby rendered:
>
> 1. Ordering the dismissal of the case;
>
> 2. Declaring Hermogenes Lopez as the exclusive owner of the property in question;
>
> 3. Ordering the plaintiffs to pay the defendants the amount of P20,000.00 as attorney's fees; and

4. Ordering plaintiffs to pay the costs.

SO ORDERED."[9]

Feeling aggrieved, petitioners appealed to the Court of Appeals, which affirmed with modification the above Decision, thus:

> "Finally, We have to delete and disallow the award of attorney's fees for want of factual and legal premise in the text of the appealed Decision.
>
> IN VIEW OF ALL THE FOREGOING, the decision appealed from is **AFFIRMED** with a **modification** that the award of attorney's fees is deleted. Costs against the appellants."[10]

Hence, the present course of action where petitioners contend:

> "I. The Honorable Court of Appeals in ruling that the propriety of the grant of respondents' petition for relief from judgment has been rendered moot is not in accord with the decisions of this Honorable Supreme Court.
>
> II. The Court of Appeals' ruling that Fermin Lopez, the common predecessor-in-interest, was not entitled to the grant of the homestead patent, hence petitioners are not co-owners of the disputed property is not in accord with the evidence and the decisions of this Honorable Supreme Court.
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> III. The Court of Appeals' ruling that the statement or declarations in the extra-judicial partition (Exh. N); the special power of attorney (Exh. O); and the letter dated January 11, 1984 (Exh. Q) were based on a wrong assumption that the property is owned by their common predecessor-in-interest -- is not in accord with the evidence and decisions of this Honorable Supreme Court.
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> IV. The Court of Appeals committed reversible error in ruling that the forged absolute deed of sale dated September 12, 1958 has no bearing on the respondents' claim over the disputed property.
>
> V. The Court of Appeals in not ruling that the remedy of partition is available to the petitioners is not in accord with law.
>
> VI. The Court of Appeals' ruling that laches applies to the herein (*sic*) who are close relatives is not in accord with the decisions of this Honorable Supreme Court."[11]

First, the procedural issue. Petitioners contend that the grant of relief from judgment is erroneous as the respondents did not substantiate their allegation of fraud, accident, mistake, or excusable negligence which unjustly deprived them of a hearing. They add that while respondents had ample opportunity to avail of other remedies, such as a motion for reconsideration or an appeal, from the time they received a copy of the decision on July 10, 1987, yet they did not do so.

Rule 38 of the 1997 Rules of Civil Procedure governs the petition for relief from judgment. Sections 2 and 3 of the Rules provide:

> "Section 2. *Petition for relief from judgment, order or other proceedings*. - When a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside."[12]

> "Section 3. *Time for filing petition; contents and verification.* - A petition provided for in either of the preceding sections of this Rule must be verified, filed within sixty (60) days after the petitioner learns of the judgment, final order or other proceeding to be set aside, and not more than six (6) months after such judgment or final order was entered or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake or excusable negligence relied upon, and the facts constituting the petitioners' good and substantial cause of action or defense, as the case may be."[13]

We find that respondents were deprived of their right to a hearing due to accident. In the October 17, 1986 hearing, their counsel was absent due to asthma, which disabled him and made it difficult for him to talk. Similarly, when petitioners presented their evidence *ex-parte* on December 5, 1986, the counsel for the respondents again failed to appear as he experienced another severe asthma attack. On both occasions, his absence is clearly excusable.

Nor is there any doubt that respondents were able to show that they have a good and substantial defense. They attached to their affidavit of merit the following documents:[14] the decision of the Court of First Instance of Pasig in Civil Case No. 5957 entitled "Hermogenes Lopez v. Fernando Gorospe, *et al*."; the decision also of the Pasig CFI, in Civil Case No. 24873, entitled "Ambrocio Aguilar v. Fernando Gorospe"; the decisions of the lower and appellate courts in the case of Marcelino Lopez, *et al*. v. Ambrocio Aguilar"; the decision of the Municipal Trial Court of Antipolo in the case of "Ambrocio Aguilar v. Santos"; and the Deed of Sale executed by and between Hermogenes and his brothers - petitioner Eleuterio, Nazario and Juan. The ruling in the foregoing cases recognized the absolute ownership and possession of respondents' predecessor-in-interest, Hermogenes Lopez. The deed showed that petitioner Eleuterio, Juan and Nazario sold their rights and interests in the contested lot to their brother Hermogenes.

Time and again, we have stressed that the rules of procedure are not to be applied in a very strict and technical sense. The rules of procedure are used only to help secure and not override substantial justice.[15] If a stringent application of the rules would hinder rather than serve the demands of substantial justice, the former must yield to the latter.[16]

We now address the substantive issues. The most pivotal is the petitioners' contention that the appellate court erred in holding that they are not co-owners of the disputed property. They argue that Fermin, their predecessor-in-interest, has complied with all the requirements of the Public Land Act pertaining to a homestead