

THIRD DIVISION

[G.R. No. 106153, July 14, 1997]

FLORENCIO G. BERNARDO, PETITIONER, VS. THE HON. SPECIAL SIXTH DIVISION OF THE COURT OF APPEALS AND JIMMY TOMAS, RESPONDENTS.

DECISION

PANGANIBAN, J.:

Did the trial court deny due process to the petitioner by its refusal to grant new trial and/or to reopen the case in spite of the fact that the defendant was unable to participate and to present his evidence due to the death of the handling lawyer of the law firm representing him and the failure of the new attorney to follow the rules on substitution of counsel?

In its original decision,^[1] the Court of Appeals^[2] answered the foregoing question in the affirmative and ordered the trial court to reopen the proceedings to enable the petitioner to present his evidence. Upon reconsideration, however, said Court^[3] reversed itself and affirmed the regional trial court's ruling that petitioner's failure to present his side was due to his own fault or negligence. Undaunted, petitioner filed before this Court the present petition for certiorari, mandamus and prohibition under Rule 65 of the Rules of Court praying for the nullification of the Amended Decision^[4] of the Respondent Court of Appeals promulgated on March 5, 1992 and its Resolution^[5] denying petitioner's motion for reconsideration, promulgated on July 3, 1992.

The dispositive portion of the challenged Amended Decision reads:

"Construed in the light of the above rule, We find the Motion for Reconsideration well taken and grant the same. The decision dated December 27, 1991 is hereby withdrawn and set aside and the decision of the trial court is AFFIRMED."

Originally handled by this Court's First Division, the case was transferred to the Third Division by a Resolution (of the First Division) dated November 23, 1995. After due deliberation on the various submissions of the parties, the Court assigned the undersigned ponente to write the Court's Decision.

The Facts

On November 17, 1988, Private Respondent Jimmy Tomas filed before the Regional Trial Court of Kalookan City, Branch 127,^[6] a complaint^[7] for recovery of possession, quieting of title and damages with preliminary mandatory injunction against Petitioner Florencio Bernardo, the National Housing Authority (NHA),

Raymundo Dizon, Jr. and Jose Vasquez in their official capacities as general manager and project manager, respectively, of NHA. The first pleading filed by therein Defendant Bernardo was an ex parte motion^[8] for extension of time to file an answer signed by "Atty. Jose B. Puerto" as counsel. When the answer^[9] was submitted later, his counsel became "Puerto Nuñez & Associates," but with the same "Jose B. Puerto" signing. Thereafter, all pleadings on behalf of Bernardo during the pre-trial were filed by said law firm, and the other parties furnished him with their own pleadings through the same firm.

It appears that the lot subject of the complaint was the object of a double sale by the NHA to Plaintiff Tomas and to Defendant Bernardo. The parties failed to reach an amicable settlement during the pre-trial. Thus, on November 6, 1990, the trial judge issued an order terminating pre-trial and scheduling initial trial on the merits on December 5, 1990. Counsel for plaintiff, however, requested for a resetting since the plaintiff was going out of the country and would be back only at the end of the year. This was granted and the hearing was reset to January 9, 1991. Later, the court realized that said date fell on a Wednesday, a day reserved for criminal cases. The hearing was thus reset anew to February 5, 1991. On this date, plaintiff's and NHA's respective counsels appeared. However, neither Defendant Bernardo nor his counsel^[10] came despite due notice. During the proceedings, the court interpreter informed the judge that an "associate of Atty. Puerto" allegedly called to say that Atty. Puerto had died.^[11] Pending official and verified notification of such death, the court decided to proceed with reception of evidence from the plaintiff. It was only on June 7, 1991, after Plaintiff Tomas and the NHA concluded the presentation of their respective evidence, that Atty. Marcelo J. Abibas, Jr. filed a notice of appearance^[12] as new counsel for Bernardo, mentioning therein the death of Atty. Puerto.

Without acting on the notice filed by Bernardo's new counsel and without receiving evidence from Defendant Bernardo, the trial court promulgated its decision^[13] on June 11, 1991. The dispositive portion of said decision reads:

"WHEREFORE, in view of all the foregoing considerations, judgment is hereby rendered in favor of plaintiff:

"a) Declaring that Lot 3, Block 6, Phase III-C of the Development Project at Dagat-Dagatan, Kalookan City, was validly awarded and sold by defendant NHA to plaintiff Jimmy Tomas and, therefore, the latter is entitled to the ownership and possession thereof, and to this end defendant NHA is ordered to execute such other documents, as may be necessary in order to transfer full ownership and possession thereof to said plaintiff;

"b) Ordering defendant Florencio Bernardo to remove and to demolish the house he erected on said lot and thereafter deliver unto said plaintiff the peaceful possession of the same lot;

"c) Ordering defendant Florencio Bernardo to pay plaintiff the amounts of P100,000.00 actual damages, P200,000.00 as moral damages, P200,000.00 as exemplary damages, P30,000.00 as attorney's fees plus P500.00 per appearance, as well as the costs of suit;

"d) Dismissing defendant Bernardo's counterclaim and cross-claim for lack of

merit/substantiation; and

"e) Ordering defendant NHA to refund under proper receipt to defendant Florencio Bernardo the sum of P615,000.00 which the latter paid to and was accepted by the former."^[14]

Bernardo, through his new counsel, filed a nine-page Omnibus Motion^[15] seeking (1) reconsideration of the above decision, (2) reopening of the case and (3) a new trial on the grounds that he had been denied his substantive right to due process, particularly the right to be heard, and that said decision was contrary to law. In an Order^[16] dated August 7, 1991, the trial judge denied the motion, reasoning thus:

"The foregoing indeed illustrated a clear instance of a grossly negligent party shifting the blame from his own self to the court. We say 'grossly negligent' because there was absolutely no justification for a client not to get in touch with his lawyer, much less to be ignorant or unaware of the latter's death. And in the same manner that it is the duty of the lawyer to inform the court of the death of his client who is a party in a pending litigation, so is a client-party obligated to inform the court of the death of his lawyer.

x x x x x x x x x

"Furthermore, new counsel knew or must have known that the raw information as to the death of Atty. Puerto was not even a verified information because when he entered his appearance on June 2, 1991 all he could say was that Atty. Puerto died recently. It was only on June 25, 1991 or after the lapse of almost five (5) months when he was able to produce a death certificate evidencing death of Atty. Puerto on January 28, 1991.

"Furthermore, since it was the law firm of PUERTO, NUÑEZ & ASSOCIATES who represented defendant Florencio Bernardo in this case, it behooved any partner or employee therein to inform this Court that Atty. Puerto of said law firm who was handling this case was already dead and that nobody in the same law firm was taking over from said Atty. Puerto. x x x

x x x x x x x x x

"In any event, there was no meritorious defense by defendant Florencio Bernardo to speak of in this case. x x x

"The truth of the matter is that defendant Florencio Bernardo had been forewarned that the acceptance of his money totaling P615,600.00 on April 14, 1988 by the Project Office through the Project Manager, did not constitute a valid award to him of subject lot. He know (sic) or must have known that all the actuations of the Project Manager were subject to the approval of the General Manager of defendant NHA. Furthermore, defendant Bernardo knew or must have known that under Memorandum

Circular No. 528 dated 29 October 1987 (or very much prior to Bernardo's payment of P615,600.00 on April 14, 1988), Project Officers were ordered to cease-desist from accepting payments/deposits from applicants of commercial/industrial lots until after approval of final award has been issued by NHA (Exh. 'E').

"When defendant Bernardo, therefore, did not await the approval by the NHA of his payment of P615,600.00 through the issuance of a final award to him, said defendant took a risk the consequences of which he alone must suffer. Since the award to plaintiff was the one approved by defendant NHA, as in fact the agreement to sell subject lot was executed in his favor, there was no valid defense whatsoever which defendant Bernardo could raise against plaintiff. x x x"^[17]

On September 4, 1991, Bernardo filed his notice^[18] of appeal. However, the appeal was denied due course by the trial court upon opposition by Tomas' counsel on the ground that it was filed beyond the reglementary period to appeal. Hence, on September 24, 1991, Bernardo filed before the Court of Appeals a petition for certiorari, mandamus, prohibition with injunction and a special prayer for the issuance of a temporary restraining order.^[19] A supplement^[20] thereto dated October 8, 1991 was filed through his collaborating counsel -- Gonzales, Batiller, Bilog & Associates. On December 27, 1991, the Court of Appeals (Sixth Division) promulgated a Decision^[21] in favor of Petitioner Bernardo, ordering the trial judge to set the case "for hearing for the reception of petitioner's evidence after which a decision be rendered based on the evidence and applicable law." The appellate court reasoned thus:

"The steps for the substitution of counsel are clear in the Rules. But these rules are not inflexible when a strict adherence thereto would result in injustice, and a decision which gives premium on technicalities. It is therefore our opinion that as of June 7, 1991, Atty. Marcelo J. Abibas, Jr. became the petitioner's new counsel. This being so, copy of the decision should have been sent to him. Since this was not complied with, and without being technical about it, his receipt on June 24, 1991 of the decision is considered as the date from which the reglementary 15-day period to appeal should commence to run. Thus, when petitioner filed his Omnibus Motion on June 25, 1991, this was well within the 15-day period. And when the motion was denied on August 7, 1991 and received by petitioner on August 23, 1991, there were fourteen more days left for petitioner within which to perfect his appeal. When he filed his Notice of Appeal on September 4, 1991, it was only the 13th day of the appeal period."^[22]

Respondent Tomas moved for the reconsideration of the above Decision. After Petitioner Bernardo filed his opposition thereto, the Respondent Court, this time through a Special Sixth Division,^[23] reversed its original decision and affirmed the

trial court's judgment. It justified its change of mind this wise:

"In resolving this Motion for Reconsideration, we feel constrained to consider as crucial the failure of a party to comply with the rules on substitution of counsel. When a party is represented by counsel of record, service of orders and notices must be made upon the said attorney and notice to the client and to any other lawyer, not the counsel of record, is not notice in law. (See *Chainani vs. Tancinco*, 90 Phil. 862). In order that there may be substitution of attorneys in a given case, there must be (1) written application for substitution; (2) a written consent of the client; (3) a written consent of the attorney to be substituted; and (4) in case such written consent cannot be procured, there must be filed with the application for substitution proof of the service of notice of such motion in a manner required by the rules on the attorney to be substituted. (*Cortez vs. Court of Appeals*, L-32547, May 9, 1978; 83 SCRA 316; *Sumadchat vs. Court of Appeals*, 111 SCRA 488). Where the procedure for substitution of attorney is not followed, the attorney who appears on record before the filing of the application for substitution should be regarded as the attorney entitled to be served with all the notices and pleadings, and the client is answerable for the shortcomings of his counsel on record. (See *Ramos vs. Potenciano*, 118 Phil. 1435). The filing of notice of appearance by a new counsel does not amount to official substitution of counsel of record. The courts may not presume that the counsel of record had already been substituted by new counsel merely from the filing of formal appearance by the latter. (*Sumadchat vs. Court of Appeals*, L-58197; January 30, 1982; 111 SCRA 488)."^[24]

Bernardo's motion for reconsideration of the above Amended Decision was denied via a Resolution^[25] promulgated on July 3, 1992. Not satisfied with the said Amended Decision and Resolution, petitioner filed the present petition to this Court.

Issue

The petitioner raises a single issue:

"Respondent Court committed grave abuse of discretion amounting to lack of or in excess of jurisdiction when it initially granted the petition based on legal and equitable grounds in favor of petitioner as contained in its decision dated 27 December 1991 but thereafter reversed itself by withdrawing and setting aside said decision and in lieu thereof enter another one reversing it entirely and consequently affirming the questioned decision, orders and writ issued by respondent judge and the notice to vacate issued by respondent sheriff and such error was further compounded when respondent court denied the motion for reconsideration filed by petitioner despite sufficient factual, legal and equitable grounds of record that justify the grant of the petition as