

NINETEENTH DIVISION

[CA-G.R. SP NO. 04848, January 15, 2015]

**MARCELINO APOLI AND FRANCISCA REYES, PETITIONERS, VS.
JOSEFINA BAROT MIRAFLORE, ANATOLIO C. BAROT, LORENZO C.
BAROT, JR., MA. LORNA B. TIQUE, AND VALERIANA B. MALERO,
RESPONDENTS.**

D E C I S I O N

LAGURA-YAP, J.:

Before Us is an appeal denominated by petitioners as an "Amended Petition for Review on Certiorari under Rule 42 of the Rules of Court",^[1] seeking to assail the December 3, 2008 Order^[2] of the Regional Trial Court (RTC), Branch 43 of Tanjay, Negros Oriental in Civil Case No. 379.

The antecedents of the appeal, which We opine should have been designated as a Petition for Review, are as follows:

Respondents were plaintiffs while petitioners were defendants, in the original case for Recovery of Property and Damages (Civil Case No. 825)^[3] filed before the Municipal Trial Court in Cities (MTCC) of Tanjay City on February 4, 1998. On February 14, 2007, the MTCC disposed of the case in this wise:

"WHEREFORE, premises considered, judgment is hereby rendered in favor of the (respondents), whereby (petitioners) are ordered to:

1. vacate the premises particularly Lot No. 766 and to deliver and surrender the possession of the same to the (respondents).
2. to pay (respondents) the sum of Php 32, 400.00 as reasonable computation for the use and occupation of the subject matter of the above-entitled case;
- 3 pay (respondents) the sum of Php 10,000.00 as attorney's fees and to pay the cost of the suit.^[4]

From the above-quoted decision, petitioners, through their new counsel, Atty. Orlando V. Remollo, filed an appeal with the RTC, Branch 43 of Negros Oriental on March 9, 2007. Petitioners received Notice of Appealed Case on April 14, 2007 and were then given fifteen (15) days from receipt thereof, to file memorandum.

On May 3, 2007, petitioners through counsel filed a Motion to Extend Time to File Memorandum.^[5] On May 8, 2007 however, the court issued an Order^[6] denying petitioners' motion for extension of time, on the ground that it is a prohibited pleading, thus:

"Considering that the Motion for Extension of time to file memorandum filed by the (petitioners) thru counsel is a prohibited pleading, the same is hereby DENIED."

Counsel for petitioner received a copy of the May 8, 2007 Order on May 11, 2007.

Likewise, on May 11, 2007, counsel for respondents filed a Motion to Dismiss Appeal. As petitioners' Motion for Extension of Time was denied, respondents moved for the dismissal of petitioners' appeal, for failure to file memorandum pursuant to Section 7, Rule 40 of the Rules of Court.

On June 7, 2007, petitioners filed a Manifestation^[7] with the RTC, alleging among others to wit:

- 1) That the undersigned counsel is not the original counsel on record before the court of origin Municipal Trial Court in Cities, Tanjay City.
- 2) That the office of counsel in Dumaguete City, received Notice of Appealed Case from Jaime M. Jasmin, office in charge, on April 19, 2007, notifying that the court has received the original record on appeal and citing the provision of Section 7, Rule 40 of the Rules of Court to file Memorandum within fifteen (15) days from receipt thereof, otherwise it will be a ground for dismissal.
- 3) That when the office of counsel received said Notice on April 19, 2007, counsel was in Manila to send off his daughter and family to the United States.
- 4) That during their short stay in the Philippines for less than a month, counsel for the (petitioners) was always with her and family, so that he could not attend and concentrate to his work in the office, coupled by the fact that he was busy in his political activities, so that he requested Atty. Felipe Antonio B. Remollo to assist and collaborate with him and prepare the Memorandum giving to him all the records of the instant case.
- 5) That counsel was apprehensive, that the said Memorandum might not be filed on time, so that on May 3, 2007 counsel hurriedly filed a Motion to Extend Time to file Memorandum.
- 6) That on May 4, 2007, which was still within the 15th day period, Atty. Felipe Antonio B. Remollo collaborating counsel filed the Memorandum on Appeal to this Court by registered mail with return card copy furnished to counsel for the (respondents), at his Law Firm, Second Floor. El Oriente Hotel, Real St., Dumaguete City, Registry Receipt No. 299 which is the registry receipt attached to the original Memorandum sent to Atty. Saleto Eramas and likewise photocopy of Registry Receipt No. 300 which is the registry receipt of the original Memorandum sent to the Court hereto attached.

On March 31, 2008, petitioners were allegedly surprised to receive the RTC's Order dated March 12, 2008, which dismissed their appeal for failure to file Memorandum. According to petitioners, the court failed to scrutinize the records of the case, that on May 4, 2007, collaborating counsel for petitioners, Atty. Felipe Antonio B. Remollo filed petitioners' Memorandum on Appeal with the RTC.

Thereafter, petitioners filed a Reply to Opposition,^[8] praying that the RTC would reconsider its March 12, 2008 Order and give due course to their Memorandum on

Appeal. In support of their prayer, petitioners alleged among others, that the RTC Order denying the Motion to Extend Time to File Memorandum, was rendered moot and academic by the belated receipt of the RTC, of the Memorandum on Appeal sent by Atty. Felipe Antonio B. Remollo (collaborating counsel of Atty. Orlando Remollo) with return card posted in Manila on May 4, 2007. The said order therefore had no valid and legal consequence.

On December 3, 2008 however, the RTC Branch 43 of Tanjay City, issued the assailed order, viz:

"Considering that the record does not show that there is another lawyer handling this case and that Atty. Felipe Remollo does not appear to a (sic) counsel for any of the parties in this case, the hearing of (the) motion for reconsideration is denied for lack of merit."

Hence the instant petition before Us, with a prayer, as follows:

"WHEREFORE, premises considered, (petitioners) pray to the Honorable Court to reverse the order of the Honorable Court dated the 3rd day of December 2008 giving due course to the Motion for Reconsideration filed by the (petitioners) and the validity to the Memorandum on Appeal filed by the (petitioners) reversing the decision of the court of origin and to declare (petitioners) the lawful owner of Lot No. 766-E which is a portion of Lot No. 766, covered by Original Certificate of Title No. O-V-9267 and maintain the status quo the possession of the (petitioners) and to order the (respondents) to reconvey to the (petitioners) the ownership of Lot No. 766-E.

Granting such other reliefs and remedy that the Honorable Court may deem just and equitable in the premises."

and with the following assignment of errors, viz:

(A) THE COURT OF ORIGIN ERRED WHEN IT DECLARED AND RULED IN ITS FEBRUARY 14, 2007 DECISION THAT THE (RESPONDENTS) ARE THE CO-OWNERS OF LOT NO. 766 BECAUSE THEIR OWNERSHIP OF A PORTION OF AFORESAID LOT IS BASED ON THE ORIGINAL CERTIFICATE OF TITLE NO. O-V-9267, DISREGARDING THE DOCUMENTARY AND TESTIMONIAL EVIDENCE OF THE (PETITIONERS) PARTICULARLY THE CADASTRAL ANSWER WERE THE NAMES OF ROSENDA BAROT GRANDMOTHER OF THE (PETITIONERS), APPEARED AS ONE OF THE CO-HEIRS CHILDREN OF FLAVIANO BAROT FILED BY TERESA GIRASOL, SECOND WIFE OF FLAVIANO BAROT REPRESENTED BY THEIR LAWYER.

(B) THE COURT DID NOT CONSIDER THE POSSESSION OF THE (PETITIONERS) AND THEIR MOTHER ESPERANZA BAROT DAUGHTER OF ROSENDA BAROT IN GOOD FAITH AND IN CONCEPT OF AN OWNER, OPEN, CONTINUOUS, ADVERSE AND UNINTERRUPTED FOR MORE THAN THIRTY (30) YEARS UNTIL THE TIME THE COMPLAINT WAS FILED ON FEBRUARY 4, 1998.

OUR RULING