

SEVENTH DIVISION

[CA-G.R. CV No. 100468, May 28, 2014]

**OSCAR S. MENDOZA, REPRESENTED BY IRMINA M. ATAIZA,
PLAINTIFF-APPELLANT, VS. ERNESTO S. MENDOZA AND
RICARDO MIRAFLOR, DEFENDANTS-APPELLEES.**

DECISION

REYES-CARPIO, A., J.:

Plaintiff-appellant Oscar S. Mendoza,^[1] represented by his daughter Irmina M. Ataiza, appeals from the Decision^[2] dated December 6, 2012 and Order^[3] dated February 4, 2013, rendered by the Regional Trial Court, Branch 26, Naga City, in Civil Case No. 99-4207.

The facts, as succinctly stated by the court *a quo*, are as follows:

“On December 15, 1974, Eulogia Salinas Vda. De Mendoza, mother of both the plaintiff Oscar S. Mendoza and defendant Ernesto S. Mendoza, executed her Last Will and Testament before a notary public Ernesto A. Atienza (xxx).

The first paragraph of the Last Will and Testament which serves as the basis of this complaint was stated as follows:

‘1. An sacuyang sadiring sarong (1) parcela o loteng daga (residencia) sa lugar nin Bagumbayan, Ciudad can Naga, na may sucol na DOS CIENTOS NOVENTA y CINCO (295 Sq. m.) metros cuadrados, titulado, sacop can T.C.T. No. 2310 sacong itinatao bañga bañga (50%/50%) sa dua con akin na iyo si ERNESTO SALINAS MENDOZA, mayor de edad, casado ki Rodita Mirafior, nageestar sa nasabing daga, asin siring man si OSCAR SALINAS MENDOZA, mayor de edad, Viudo, saro man sa nageestar sa nasabing daga, representado kan saiyang akin a iyo si Hermina Alcazar Mendoza bilang administradora asin heridero kan saiyang pagsadiri; asin sa duwang (2) harong na nacatugdoc duman sa nasabing daga na sacuya man na pagsadiri, an pinacadacula itinatao co sa aki co na si ERNESTO SALINAS MENDOZA, asin an sadit na harong itinatao ko man sa aki con si OSCAR SALINAS MENDOZA, an huri como igwang helang sa payo representado can saiyang aki bilang administradora asin heridero na iyo si Hermina Alcazar Mendoza;’

In English translation, [it] would mean as follows:

‘1. My one (1) parcel of residential lot situated at Bagumbayan, Naga City with an area of TWO HUNDRED

NINETY FIVE (295 sq. m.) SQUARE METERS, covered by TCT No. 2310, I give in equal share to my two (2) sons, namely: ERNESTO SALINAS MENDOZA, of legal age, married to Rodita Miraflor, residing on said lot and OSCAR SALINAS MENDOZA, of legal age, widower, also residing on said lot, represented by his daughter HERMINIA ALCAZAR MENDOZA as administratrix and heir of his property; and the two (2) houses constructed on the said lot which I caused to be constructed on the said lot which I own, the big house I give to my son ERNESTO SALINAS MENDOZA and the small house I also give to my son OSCAR SALINAS MENDOZA, who by reason of his unsound mind is represented by his daughter HERMINIA ALCAZAR MENDOZA, as an administratrix and heir;'

Eulogia Salinas Vda. De Mendoza, died in 1977. In 1989, Oscar Salinas Mendoza and Irmina A. Mendoza-Ataiza jointly filed a petition for Probate of the Last Will and Testament of said Eulogia Salinas Vda. De Mendoza. On June 29, 1995, a judgment was rendered by Judge Jose T. Atienza granting the allowance of the said Last Will and Testament. (xxx).

After the Last Will and Testament was probated and allowed by the court, plaintiff made verbal demands for the defendants to allow them to occupy the small house and ½ of the lot according to the will of the testator but defendant Ernesto S. Mendoza refused as according to him it is being occupied by his brother-in-law, Ricardo Miraflor and that he needs time to have him vacate the premises and instead he just gave the plaintiff the same area in the big house.

Despite the lapse of time and the so many verbal demands, defendant Ernesto S. Mendoza failed to comply with his promises, hence the filing of this case.

Defendants, in their answer, claimed that prior to the filing of the petition for Probate of the Last Will and Testament of their mother Eulogia Salinas Vda. De Mendoza, his brother Oscar S. Mendoza had sold his undivided one-half (1/2) portion of the property in question in his favor and executed a Deed of Sale among Co-Owners on May 31, 1979 (xxx), thereby making defendant Ernesto S. Mendoza the absolute owner thereof and the sale was duly registered with the Register of Deeds of Naga City, resulting to the issuance of a new Transfer Certificate of Title in the name of defendant Mendoza."^[4]

On December 6, 2012, the court *a quo* issued its assailed Decision, the decretal portion of which states:

"WHEREFORE, in view of the foregoing, the complaint for recovery of ownership and possession filed by the plaintiff Oscar S. Mendoza, represented by his daughter Irmina M. Ataiza against Ernesto S. Mendoza and Ricardo Miraflor is hereby DISMISSED without prejudice to the filing of cancellation or annulment of title in the proper court.

Defendants' counterclaim on the other hand is likewise DISMISSED there being no justifiable ground to grant the same.

No costs.

SO ORDERED.”^[5]

Aggrieved, appellant filed a Motion for Reconsideration, which was denied in an Order dated February 4, 2013, the pertinent portion of which states:

“After judiciously evaluating the arguments raised by the parties in their respective pleadings, it is the findings of this Court that the matters raised in the Motion for Reconsideration were already passed upon by this Court in its Decision.

There being no new matters raised, this court deems it best to DENY plaintiff’s Motion for Reconsideration for lack of merit.

SO ORDERED.”^[6]

Hence, the instant appeal, which contends that the trial court erred in dismissing appellant’s complaint for recovery of ownership and possession.

We now resolve.

Appeal is an essential part of the judicial process. However, the right to appeal is not a natural right and is not part of due process. It is merely a statutory privilege.^[7] Thus, it should be exercised only in the manner and in accordance with the provisions of the law.^[8] The right is unavoidably forfeited by the litigant who does not comply with the manner thus prescribed.^[9] In *Enriquez vs. Court of Appeals*,^[10] the Supreme Court held:

“It is true that the Rules should be interpreted so as to give litigants ample opportunity to prove their respective claims and that a possible denial of substantial justice due to legal technicalities should be avoided. But it is equally true that an appeal being a purely statutory right, an appealing party must strictly comply with the requisites laid down in the Rules of Court. In other words, he who seeks to avail of the right to appeal must play by the rules. xxx.”

In *Canton vs. City of Cebu*,^[11] the Supreme Court reiterated that:

“xxx, petitioners and their counsel should bear in mind that the right to appeal is not a natural right. The right to appeal is a statutory privilege, and it may be exercised only in the manner and in accordance with the provisions of the law. A party who seeks to appeal must comply with the law's requirements; otherwise, he forfeits his privilege. xxx.”

It is therefore firmly settled in this jurisdiction that the right to appeal is a privilege that must be carefully exercised, failing in which the right to appeal is lost.^[12]

A cursory examination of appellant’s appeal brief reveals that the notary public who notarized the Proof of Service therein failed to indicate the serial number of his notarial commission and the province or city where he is commissioned, in violation of Section 2 (b) and (c), Rule VIII of the 2004 Rules on Notarial Practice (A.M. No. 02-8-13-SC).^[13]

Moreover, appellant's counsel failed to indicate in the appeal brief the date of issuance of her MCLE Certificate of Exemption, in violation of Bar Matter No. 1922, which states among other things, to wit:

"The Court further resolved, upon recommendation of the Committee on Legal Education and Bar matters, **to REQUIRE practicing members of the bar to INDICATE in all pleadings filed before the courts or quasi-judicial bodies, the number and date of issue of their MCLE Certificate of Compliance or Certificate of Exemption**, as may be applicable, for the immediately preceding compliance period. **Failure to disclose the required information would cause the dismissal of the case and the expunction of the pleadings from the records."**
(emphasis Ours)

Finally, the "Statement of the Case" and the "Statement of Facts and Antecedent Proceedings" in the appellant's brief do not contain even a single page reference to the record in blatant disregard of the mandatory requirements of Section 13, paragraphs (c) and (d) of Rule 44 of the 1997 Rules of Civil Procedure, which states that:

"SEC. 13. Contents of the appellant's brief. – The appellant's brief shall contain, in the order herein indicated, the following:

xxx

(c) Under the heading 'Statement of the Case,' a clear and concise statement of the nature of the action, a summary of the proceedings, the appealed rulings and orders of the court, the nature of the judgment and any other matters necessary to an understanding of the nature of the controversy, **with page references to the record;**

(d) Under the heading 'Statement of Facts,' a clear and concise statement in a narrative form of the facts admitted by both parties and of those in controversy, together with the substance of the proof relating thereto in sufficient detail to make it clearly intelligible, **with page references to the record;"** (emphasis Ours)

In **Mendoza vs. United Coconut Planters Bank, Inc.**,^[14] the Supreme Court affirmed the Resolutions of the appellate court dismissing the appeal filed by petitioners therein for failure to comply with the requirements under Section 13, Rule 44 of the 1997 Rules of Civil Procedure, pertinently mentioning the following:

"Further, the Court of Appeals found that the Statement of Facts was not supported by page references to the record. *De Liano v. Court of Appeals* held:

x x x The facts constitute the backbone of a legal argument; they are determinative of the law and jurisprudence applicable to the case, and consequently, will govern the appropriate relief. Appellants should remember that the Court of Appeals is empowered to review both questions of law and of facts. Otherwise, where only a pure question of law is involved,