



Republic of the Philippines
Supreme Court
Cagayan de Oro City

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated March 6, 2023 which reads as follows:

“G.R. No. 204848 (*Rosalinda Villamayor, Jackson A. Villamayor, Marlon A. Villamayor and Pederson A. Villamayor v. Rosa C. Villamayor-Mosqueda, Carmelita “Carmen” C. Villamayor-Calingo, Perfecto C. Villamayor and Ma. Nancy C. Villamayor-Picones*) – Before the Court is a Petition for Review on *Certiorari*¹ (Petition) under Rule 45 of the Rules of Court assailing the Resolutions² dated 20 June 2012³ and 11 December 2012⁴ of the Court of Appeals (CA) in CA-G.R. SP No. 124737.

Antecedents

The case stems from a Complaint⁵ for partition, reconveyance, and damages filed by respondents Carmelita Villamayor-Calingo (Carmelita), Rosa Villamayor-Mosqueda* (Rosa), Perfecto C. Villamayor (Perfecto), Ma. Nancy Villamayor-Picones (Nancy) (collectively, respondents) against petitioners Rosalinda, Marlon, Jackson, and Pederson, all surnamed Villamayor (collectively, petitioners).

Spouses Remigio and Alejandra C. Villamayor (Remigio and Alejandra; collectively, Spouses Villamayor) owned an 8,122-sq.m. parcel of land (subject property) located in *Barangay* Tayuman, Binangonan, Rizal covered by Tax Declaration No. 0031-0283946 and prior tax declarations. Remigio died on 27 June 1998, while Alejandra died on 01 February 1992, both intestate and without wills. They had five children, four of whom are

¹ *Rollo*, pp. 08-42.

² Both penned by Associate Justice Noel G. Tijam (now a retired Member of the Court) and concurred in by Associate Justices Romeo F. Barza and Edwin D. Sorongon.

³ *Rollo*, pp. 210- 214.

⁴ *Id.* at 229-232.

⁵ *Id.* at *Rollo*, pp. 78-86.

* Rosa Villamayor in some parts of the *rollo*.

herein respondents, namely: Rosa, Carmelita, Perfecto, Nancy, and Mariano Villamayor.⁶

Mariano died on 8 August 1998, leaving his wife and children, herein petitioners. Upon the death of their parents and Mariano, respondents became co-owners of subject property, along with petitioners. Four-fifths (4/5) of the property went to respondents, and the remaining one-fifth (1/5) went to petitioners.⁷

In September 2007, respondents found out that petitioners were able to obtain a title over the entire subject property in their names, to the exclusion of respondents. Thus, they sought the assistance of a certain Atty. Aga, host of radio program, "*Ito ang Batas with Atty. Aga.*" The latter wrote the Community Environment and Natural Resources Office (CENRO) to inquire about the property and it was confirmed that the application for free patent was filed by petitioner Rosalinda and one of her sons. On 3 November 2007, petitioners went to subject property together with armed policemen and forcibly erected a fence over the property. They had with them a fencing permit issued by the Engineer's Office of Binangonan, Rizal. Respondent Rosa and her children requested the policemen to stop putting up the fence and give them some time to verify the title shown by petitioners, but to no avail. On the same day, Atty. Aga prepared a demand letter addressed to Rosalinda for the latter to return the portions belonging to respondents. The letter went unheeded.⁸

Later on, Department of Environment and Natural Resources (DENR)-Region IV confirmed that the property was the subject of a free patent application filed by Mariano on 12 March 2007.⁹

Respondents, however, averred that Mariano had died eight years before the application was filed, or on 8 August 1998. Thus, he could not have signed and filed said application. It was also determined that the community tax certificates presented by the supposed witnesses were fake.¹⁰

Proceedings before the Regional Trial Court (RTC)

Petitioners filed a Motion to Dismiss¹¹ respondents' complaint, arguing that the same is barred by *litis pendencia*. This, considering that petitioner Rosalinda and Jackson filed a criminal complaint for Falsification of Public

⁶ Id. at 79.

⁷ Id. at 79-81.

⁸ Id. at 80-81.

⁹ Id. at 81.

¹⁰ Id. 82.

¹¹ Id. at 112-123.

Documents against respondents which was pending trial before the Municipal Trial Court of Binangonan, Rizal.¹² Petitioners also asserted that the complaint is in fact, in the nature of a case for settlement of estate.¹³

In a Resolution¹⁴ dated 23 August 2011, the RTC denied petitioners' motion to dismiss the complaint. The court rejected petitioners' contention that the proceedings were barred by *litis pendentia*. The RTC noted that the criminal complaint for Falsification of Public Documents would not yield the same relief for reconveyance, partition, and damages. There is no showing that there is identity in the relief being prayed for in these two cases. Meanwhile, the other grounds raised by petitioners could be properly ventilated during the course of the trial.

Upon denial of their motion to dismiss, petitioners failed to file their Answer to the complaint. Upon respondents' motion, the RTC issued an Order¹⁵ dated 16 December 2011 declaring petitioners in default and allowing respondents to present their evidence *ex parte* (Default Order). Petitioners filed a motion for reconsideration¹⁶ and a motion to admit answer,¹⁷ which respondents opposed. On 16 February 2012, the RTC issued an Order¹⁸ denying the motion for reconsideration.

Petitioners then filed a Motion to Lift Order of Default and/or Second Motion for Reconsideration.¹⁹ The said motion was denied in an Order²⁰ dated 15 March 2012. The RTC found no justification for the relaxation of the rules, noting that petitioners failed to file their Answer despite the extended period. Moreover, petitioners had already been declared in default by the time they filed their Answer.

On 18 May 2012, petitioners filed a petition for *certiorari* before the CA assailing the Default Order and the Order dated 16 February 2012 denying their motion for reconsideration.

Subsequent to the denial of petitioners' Motion to Lift Order of Default and/or Second Motion for Reconsideration, but before the filing of the petition for *certiorari* with the CA, petitioners filed a Manifestation²¹ on 29 March 2012 calling the RTC's attention to deficiencies in the filing fees paid by respondents. Petitioners explained that respondents attached only the tax declaration covering 1,129 sq.m. of the property. It was on this basis that the

¹² Id. at 112.

¹³ Id. at 114.

¹⁴ Id. at 124-125.

¹⁵ Id. at 139.

¹⁶ Id. at 140-144.

¹⁷ Id. at 152-154.

¹⁸ Id. at 180-182.

¹⁹ Id. at 183-190.

²⁰ Id. at 195-196.

²¹ Id. at 198-200.

filing fees were computed, which amounted to only ₱61,148.00. However, the subject of the complaint is the entire area covering 8,122 sq.m. As such, petitioners sought a re-computation from the Office of the Clerk of Court.

In a letter, RTC Clerk of Court VI Atty. Jason O. Reyes stated that respondents should pay ₱325,462.50 as deficiency filing fee. The RTC, through an Order²² dated 2 April 2012 directed respondents to pay the deficiency filing fee within 15 days from notice. Respondents failed to comply with the said Order. Thus, the RTC issued an Order²³ dated 10 May 2012 dismissing the complaint pursuant to Section 3, Rule 17 of the Rules of Court.

Respondents moved for reconsideration of the 10 May 2012 Order, which was granted. The trial court also gave respondents additional time to pay the deficiency in the filing fee.²⁴ They were able to comply on 21 September 2012. However, petitioners filed another manifestation pointing out that respondents need to pay additional ₱188,861.76 docket fees pertaining to improvements on the property.

On 3 January 2013, the RTC ordered respondents to pay ₱201,860.37 representing the docket fees for improvements plus interest. Respondents, however, failed to pay the amount. Consequently, the RTC dismissed the case in an Order²⁵ dated 28 January 2013.

Respondents filed another motion for reconsideration. They claimed that they had fully paid the deficiency in docket fees, or a total of ₱386,610.50. The RTC denied the motion in an Order dated 2 April 2013.²⁶

Ruling of the CA

Meanwhile, in a Resolution dated 20 June 2012, the CA denied petitioners' petition for *certiorari* assailing the Default Order for being filed out of time. The CA noted that the remedy against the Default Order is to file a motion to lift the order of default, not a motion for reconsideration. Nonetheless, the CA affirmed the RTC's denial of the Motion to Lift Order of Default and/or Second Motion for Reconsideration. The CA held that petitioners failed to comply with the basic requirement that the motion be under oath. Likewise, petitioners failed to state that their failure to file the required Answer was due to fraud, accident, mistake, or excusable negligence.

²² Id. at 205.

²³ Id. at 208.

²⁴ Id. at 294-322.

²⁵ Id. at 245.

²⁶ Id. at 306-307.

They also failed to state the evidence they intend to present if given the chance to do so.²⁷

Further, the CA ruled that the petition for *certiorari* was filed out of time. Petitioners received the denial of their motion for reconsideration on 22 February 2012, giving them until 23 April 2012 to file the petition, since 22 April 2012 is a Sunday. However, petitioners filed their petition only on 18 May 2012.²⁸

Petitioners moved for reconsideration. In the assailed Resolution²⁹ dated 11 December 2012, the CA denied the motion. The appellate court found petitioners' argument that the period to file should be reckoned from the denial of the Motion to Lift Order of Default and/or Second Motion for Reconsideration to be unmeritorious. It noted that the motion was a mere rehash of the arguments raised in their motion for reconsideration. Likewise, the later motion was obviously filed merely to delay the proceedings and a belated attempt to change the court's mind after filing the wrong remedy.

Hence, the instant Petition before this Court.

Issues

In the case at bar, petitioners assail the CA's Resolution dismissing their petition outright. They maintain that they should not have been declared in default. Had respondents' motion to declare them in default been set for hearing, they would have filed their Answer before the hearing date. They also reiterated that the reason it took them eight months to file an Answer was that they were exhausting all means to settle the case amicably.³⁰

Notably, petitioners admitted that the RTC had already dismissed the complaint on 28 January 2013 due to respondents' failure to pay the correct filing fees.³¹ There had been no appeal; hence, the dismissal is now final.³²

In their Comment,³³ respondents allege that the delay in petitioners' filing of their Answer was inexcusable and could have been done alongside efforts at amicable settlement. Further, petitioners had already lost standing before the RTC by the time they filed the manifestation for the re-computation of the filing fees, having already been declared in default. They

²⁷ Id. at 212.

²⁸ Id. at 213.

²⁹ Id. at 229-232.

³⁰ Id. at 33.

³¹ Id. at 39.

³² Id. at 385.

³³ Id. at 255-270.

also maintain that any deficiency in the filing fee should be considered a lien on the judgment.³⁴

Respondents asseverate that any error in the computation cannot be attributed to them but on the staff of the Office of Clerk of Court who made such computation. For incorrect payment, the court may direct the party to pay the deficiency or consider the additional fees as lien on the judgment. It is thus unjust and oppressive for the trial court to dismiss the complaint based on the incorrect payment of docket fees. They had no intention to defraud and manifested their willingness to comply. They also aver that the amount of docket fees was computed four times casting doubt on what is the correct figure.

Ruling of the Court

We DENY the Petition for being moot.

An issue becomes moot when it ceases to present a justiciable controversy such that a determination thereof would be without practical value. In such cases, there is “no actual substantial relief to which petitioner would be entitled to and which would be negated by the dismissal of the petition.” Courts will not determine questions that have become moot and academic because there is no longer any justiciable controversy to speak of. The judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced.³⁵

In this case, it is undeniable that the trial court had already dismissed the complaint in its Order dated 28 January 2013. Further, respondents failed to question the dismissal of their complaint, either through an appeal or a petition for *certiorari*. When a party to an original action fails to question an adverse judgment or decision by not filing the proper remedy within the period prescribed by law, he loses the right to do so, and the judgment or decision, as to him, becomes final and binding.³⁶ Accordingly, the Order dated 28 January 2013 has become final and binding and can no longer be modified or set aside, not even by this Court.

To be sure, there are exceptions to the doctrine of immutability of judgments, namely:

³⁴ Id. at 315.

³⁵ *Jorgenetics Swine Improvement Corp. v. Thick & Thin Agri-Products, Inc.*, G.R. Nos. 201044 & 222691, 5 May 2021. [Per J. Hernando] Citations omitted.

³⁶ *Building Care Corp. v. Macaraeg*, 700 Phil. 749-759 (2012), citing *Heirs of Gaudio v. Benemerito*, 545 Phil. 311-320 (2007).

1. The correction of clerical errors;
2. the so-called *nunc pro tunc* entries which cause no prejudice to any party;
3. void judgments; and
4. whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.³⁷

None of these circumstances are present in this case.

Notably, petitioners themselves admit that there is nothing left for the Court to decide. In their Memorandum,³⁸ they averred, “[t]here being no appeal or petitions made by [respondents,] the Partition case below the Regional Trial Court docketed as SCA No. 11-008 has been dismissed permanently and with finality,” and any discussion on the merits of the case is purely for academic reasons.³⁹ Indeed, the Court need not belabor itself to discuss the academic questions raised by both parties.

Notwithstanding, in order to write *finis* to this case, We find that the CA committed no reversible error in denying petitioners’ petition for *certiorari* for being filed out of time.

The right to appeal is neither a natural right nor a part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. One who seeks to avail of the right to appeal must comply strictly with the requirements of the rules. Failure to do so often leads to the loss of the right to appeal.⁴⁰

In this case, petitioners received the denial of their motion for reconsideration on 22 February 2012, giving them until 23 April 2012 to file the petition, since 22 April 2012 was a Sunday. However, petitioner filed their petition only on 18 May 2012, or almost one month after the end of the reglemenatary period.⁴¹ In their motion for reconsideration before the CA, petitioners insisted that the time to reckon their period to file is from the denial of their motion for reconsideration on the Order to deny the Motion to Lift Order of Default and/or Second Motion.

The CA, however, held that the period must be counted from the denial of the first motion for reconsideration. In its Resolution dated 11 December 2012, the CA also noted that the Motion to Lift Order of Default and/or Second Motion for Reconsideration was a mere rehash of the arguments

³⁷ *DMCI Project Developers, Inc. v. Bernadas*, G.R. No. 221978, 04 April 2022. [Per J. J. Lopez] Citations omitted.

³⁸ *Rollo*, pp. 294-321.

³⁹ *Id.* at 385.

⁴⁰ *Ramirez v. Elomina*, G.R. No. 202661, 17 March 2021. [Per J. Hernando]

⁴¹ *Rollo*, p. 213

raised in the first motion for reconsideration and obviously filed to delay the proceedings after belatedly realizing that they had filed the wrong remedy.⁴²

Section 5, Rule 37 of the Revised Rules of Court is explicit that a second motion for reconsideration shall not be allowed. This being so, its filing does not toll the running of the period to file the appropriate remedy. Accordingly, the CA correctly ruled that the petition for *certiorari* was filed out of time. Hence, there is no reason to reverse the rulings of the appellate court.

WHEREFORE, the instant Petition is hereby **DENIED**. The Resolutions of the Court of Appeals in CA-G.R. SP No. 124737 dated 20 June 2012 and 11 December 2012 are **AFFIRMED**.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

261-A

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⁴² Id. at 230-231.