



CERTIORARI CASE
Welford Lopez
 DIVISION OF THE SUPREME COURT
 THIRD DIVISION
 AUG 09 2016

Republic of the Philippines
Supreme Court
 Manila

THIRD DIVISION

PATRICIA SIBAYAN represented
 by **TEODICIO SIBAYAN**,
 Petitioner,

G.R. No. 191492

Present:

VELASCO, JR., J.,
Chairperson,
 PERALTA,
 PEREZ,
 REYES, and
 JARDELEZA, JJ.

- versus -

**EMILIO COSTALES, SUSANA
 ISIDRO, RODOLFO ISIDRO,
 ANNO ISIDRO and ROBERTO
 CERANE**,

Promulgated:

July 4, 2016

Respondents.

Welford Lopez

x ----- x

RESOLUTION

PEREZ, J.:

For resolution of the Court is this Petition for Review on *Certiorari*¹ filed by petitioner Patricia Sibayan represented by Teodicio Sibayan, seeking to reverse and set aside the Resolutions dated 2 October 2009² and 26 February 2010³ of the Court of Appeals (CA) in CA-G.R. CV. No. 91399. The assailed resolutions dismissed the appeal of the petitioner for failure to file her appellant's brief within the reglementary period.

¹ *Rollo*, pp. 7-25.

² *Id.* at 26-28; penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Mario L. Guariña III and Jane Aurora C. Lantion, concurring.

³ *Id.* at 29-31.

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The Facts

On 27 February 2003, petitioner initiated an action for Recovery of Possession and Ownership with Damages against respondents Emilio Costales, Susana Isidro, Rodolfo Isidro, Marcelo Isidro, and Roberto Cerane before the Regional Trial Court (RTC) of Urdaneta, Pangasinan, Branch 45.⁴ In her Complaint docketed as Civil Case No. U-7642, petitioner averred that she is the registered owner of a parcel of land with an area of 5,726 square meters located in Brgy. Catablan, Urdaneta City, Pangasinan and registered under Transfer Certificate of Title (TCT) No. 180130.⁵ Due to the encroachment effected by respondents on her property, particularly on Lot Nos. 5 and 7 thereof (subject property), petitioner was compelled to file a case against them to protect her rights thereon. To support her claims, petitioner appended in her complaint a copy of the relocation survey showing that the abovementioned lots are within the bounds of TCT No. 180130.⁶ Petitioner thus prayed that the RTC declare her the rightful owner of the disputed portion and order respondents to vacate the same and respect her right thereon.⁷

For their part, respondents assailed the ownership of the petitioner on the disputed property and asserted that they, as the lawful owners and occupants, have the right to cultivate the land and enjoy the fruits accruing thereon.⁸ Respondents asserted that they, together with their predecessors-in-interest, were in possession of the subject property for over 80 years already.⁹ That the spraying of insecticide on the mango trees found in the said property was merely in exercise of their right of dominion as they were the ones who planted those mango trees.¹⁰ Respondents likewise denied having knowledge of any relocation survey conducted on the property which was made the basis of the petitioner in filing her complaint.¹¹

After the pre-trial conference, trial on the merits ensued wherein the trial court received the respective documentary and testimonial evidence of both parties. After respondents put their case to rest, the case was submitted for decision.

⁴ Id. at 68-72.

⁵ Id.

⁶ Id.

⁷ Id.

⁸ Id. at 76-79.

⁹ Id.

¹⁰ Id.

¹¹ Id.



On 24 April 2007, the RTC rendered a Decision¹² dismissing Civil Case No. U-7642 filed by the petitioner. It was found by the court *a quo* that respondents were occupying the disputed portion for 52 years already and the action of the petitioner to remove them from the said lot is already barred by laches. An examination of the relocation survey submitted by the petitioner and reception of testimonial evidence from opposing sides reveals that there was no overlapping or encroachment of properties in the case at bar that warrants the removal of cloud. The RTC thus disposed:

“WHEREFORE, IN VIEW OF THE FOREGOING, the Court renders judgment dismissing the herein amended complaint filed by [petitioner] against [respondents].

SO ORDERED.”¹³

Petitioner timely filed a Motion for Reconsideration¹⁴ which was denied by the RTC in an Order¹⁵ dated 2 August 2007.

Dissatisfied, petitioner elevated the adverse RTC Decision to the CA by filing a Notice of Appeal¹⁶ before the lower court.

Pursuant to Section 7, Rule 44 of the Revised Rules of Court,¹⁷ the appellate court ordered petitioner to file her corresponding Appellant’s Brief within 45 days from the receipt of the copy of the notice. A copy of the said notice was received by petitioner’s counsel on 17 November 2008; petitioner has therefore until 31 January 2009 to file the required brief. Unfortunately, petitioner was able to file her Appellant’s Brief only on ***19 June 2009 or 139 days after the lapse of the reglementary period.*** This long delay prompted the CA to consider the appeal abandoned and dismissed in a Resolution¹⁸ dated 2 October 2009, to wit:

“**WHEREFORE**, the Motion to Admit Appellant’s Brief is **DENIED**. The instant appeal is considered **ABANDONED** and **DISMISSED** pursuant to Section 1 (e) Rule 50 of the Revised Rules of Court.”¹⁹

¹² Id. at 80-100.

¹³ Id. at 100.

¹⁴ Id. at 101-105.

¹⁵ Id. at 110-111.

¹⁶ Id. at 113.

¹⁷ SEC. 7. *Appellant's brief.* — It shall be the duty of the appellant to file with the court, within forty-five (45) days from receipt of the notice of the clerk that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee.

¹⁸ *Rollo*, pp. 26-31.

¹⁹ Id. at 31.

Faulting her counsel for the non-filing of the Appellant's Brief within the reglementary period, petitioner sought for the reconsideration of the earlier CA Resolution dismissing her appeal. She averred that she should not be allowed to suffer from the consequences of her counsel's negligence and prayed for the liberality of the court to afford her the opportunity to ventilate her case on the merits. To rule otherwise, the petitioner claimed, is tantamount to deprivation of her right to enjoy her property without due process.

For failure of the petitioner to present persuasive arguments to merit the reinstatement of her appeal, the CA denied her Motion for Reconsideration in its Resolution²⁰ dated 26 February 2010. The disquisition of the appellate court reads:

"In the case at bench, not only was there a considerable delay of one hundred thirty-nine (139) days in the filing of appellants brief. No justifiable explanation therefor was proffered by [petitioner] other than continuing pressure of work of her counsel or negligence of her counsel. Such unexplained delay is not just a technical lapse which can be excused. Moreover, We thus reiterate that a client is bound by [her] counsel's conduct, negligence and mistakes in handling the case, and the client [might not] be heard to complain that the result might have been different had [her] lawyer proceeded differently. The only exceptions to the general rule which the Supreme Court finds acceptable are when the reckless or gross negligence of counsel deprives the client of due process of law, or when the application of the rule results in the outright deprivation of one's property through technicality. Failure to file the appellant's brief can qualify as simple negligence, but it does not amount to gross negligence. Also, there is no outright deprivation of property. [Petitioner] actively participated in the proceedings before the lower court."²¹ (Citations omitted)

Unflinching, petitioner is now before this Court *via* this instant Petition for Review on *Certiorari* assailing the CA's Decision and Resolution on the following grounds:

The Issue

I.

THE COURT OF APPEALS ERRED IN DENYING THE MOTION TO ADMIT APPELLANT'S BRIEF AND CONSIDERING THE APPEAL AS DISMISSED AND ABANDONED;

²⁰ Supra note 3.

²¹ Id. at 27-28.

II.

THE COURT OF APPEALS ERRED IN CLASSIFYING ONLY AS SIMPLE NEGLIGENCE THE LONG DELAY OF HER COUNSEL IN FILING THE APPELLANT'S BRIEF THEREBY BINDING HER TO THE AFORESAID NEGLIGENCE;

III.

THE COURT OF APPEALS ERRED IN DENYING PETITIONER HER RIGHT TO APPEAL WHEN SHE STOOD TO LOSE HER RIGHT TO HER PROPERTY DUE TO THE ERRONEOUS JUDGMENT OF THE RTC.²²

The Court's Ruling

The core issue here is whether the CA erred in dismissing the appeal for petitioner's failure to file the appellant's brief seasonably.

In insisting that the dismissal of her appeal was erroneous, petitioner harps on the negligence of her counsel which is gross and therefore should not bind her. She argues that her right to exercise ownership over her property is at stake and the denial of the appeal would be tantamount to deprivation of her right to property without due process of law. To not allow her to ventilate her position on appeal would bind her to the RTC Decision which is patently erroneous.

The Court resolves to deny the petition.

Section 3, Rule 41 of the 1997 Rules of Civil Procedure provides:

Section 3. *Period of ordinary appeal.* — The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order.

The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.

The foregoing Rule should be read in consonance with Section 7, Rule 44, which states:

²²

Id. at 15.

Section 7. *Appellant's brief.* — It shall be the duty of the appellant to file with the court, within forty-five (45) days from receipt of the notice of the clerk that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee.

Corollarily, the CA has, under the foregoing provision, discretion to dismiss or not to dismiss respondent's appeal.

Section 1. *Grounds for dismissal of appeal.* — An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

xxxx

(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules[.]²³

Expounding on the discretion of the appellate court to dismiss or allow the appeal to proceed despite belated service and filing of the required brief, the Court in *Diaz v. People*,²⁴ held:

The usage of the word *may* in Section 1 (e) of Rule 50 indicates that the dismissal of the appeal upon failure to file the appellant's brief is not mandatory, but discretionary. Verily, the failure to serve and file the required number of copies of the appellant's brief within the time provided by the Rules of Court does not have the immediate effect of causing the outright dismissal of the appeal. This means that the discretion to dismiss the appeal on that basis is lodged in the CA, by virtue of which the CA may still allow the appeal to proceed despite the late filing of the appellant's brief, when the circumstances so warrant its liberality. In deciding to dismiss the appeal, then, the CA is bound to exercise its sound discretion upon taking all the pertinent circumstances into due consideration.

The CA in the case at bar opted to dismiss the appeal interposed by petitioner considering the negligence of the counsel as merely simple which binds petitioner from the adverse consequence thereof. Her invocation of outright deprivation of property did not carry her day before the appellate court as it was observed that she actively participated in the proceedings before the trial court and thus she was afforded therein the unfettered opportunity to ventilate her case.

²³ RULES OF COURT, Rule 50, Sec. 1(e).

²⁴ 704 Phil. 146, 157 (2013).

We find no reason to disturb the appellate court's exercise of discretion in dismissing the appeal. We perused the explanation proffered by petitioner and we found nothing that would compel us to reverse the appellate court. The attribution of negligence to the counsel does not automatically shield the client from adverse consequence of her own negligence and relieve her from the unfavorable result of such lapse. Truly, a litigant bears the responsibility to monitor the status of his case, for no prudent party leaves the fate of his case entirely in the hands of his lawyer.²⁵ It is the client's duty to be in contact with his lawyer from time to time in order to be informed of the progress and developments of his case; hence, to merely rely on the bare reassurances of his lawyer that everything is being taken care of is not enough.²⁶

The failure to file Appellant's Brief, though not jurisdictional, results in the abandonment of the appeal which may be the cause for its dismissal.²⁷ We must emphasize that the right to appeal is not a natural right but a statutory privilege, and it may be exercised only in the manner and in accordance with the provisions of the law.²⁸ The party who seeks to avail of the same must comply with the requirements of the Rules. Failing to do so, the right to appeal is lost. In the present case, petitioner failed to file the required brief within the period prescribed under Section 7, Rule 44 of the Rules.²⁹ Thus, the appellate court rightly considered her appeal abandoned and consequently dismissed the same.

WHEREFORE, premises considered, the petition is **DENIED**. The assailed Resolutions of the Court of Appeals are hereby **AFFIRMED**.

SO ORDERED.


JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:


²⁵ *Torrecampo v. NLRC*, G.R. No. 199617, September 2, 2015.

²⁶ *Id.*

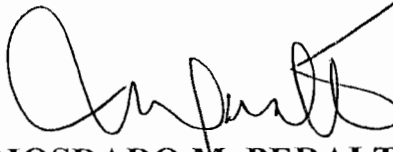
²⁷ *Beatingo v. Bu Gasis*, 657 Phil. 552, 559 (2011).

²⁸ *Id.*

²⁹ *Heirs of the late Cruz Barredo v. Sps. Asis*, 480 Phil. 642, 649 (2004).



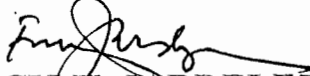
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice



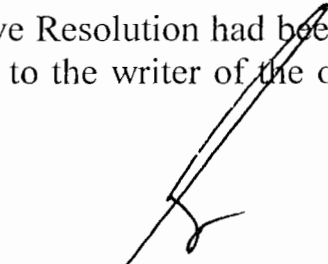
BIENVENIDO L. REYES
Associate Justice



FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



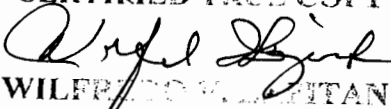
PRESBITERO J. VELASCO, JR.
Associate Justice
Third Division, Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Acting Chief Justice

CERTIFIED TRUE COPY

WILFREDO M. LLANETA
Division Clerk of Court
Third Division

2016