

JOSEFINA RODRIGUEZ, ACCOMPANIED BY HER HUSBAND RAMON DE LA RAMA, AND LETICIA RODRIGUEZ, ACCOMPANIED BY HER HUSBAND PORFIRIO BLANCAFLOR, PETITIONERS, VS. THE COURT OF APPEALS AND...

G.R. No. L-28373. July 30, 1981

Ponente: BARREDO, J.

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BARREDO, J.:

Two petitions for certiorari against the Court of Appeals: G.R. No. L-28373, by Josefina and Leticia both surnamed Rodriguez, accompanied by their respective husbands, (hereinafter referred to as the Josefina Group) because of the refusal of the appellate court to dismiss the appeal of their adversaries, Anita, Carolina and Maria Victoria, all also surnamed Rodriguez, accompanied likewise by their respective husbands, (hereinafter referred to as the Anita Group) from the decision of the Court of First Instance of Negros Occidental in its Civil Case No. 6621; and G. R. No. L-30252, this time by the latter three or the Anita group, because subsequently, during the pendency of G. R. No. L-28373 and before We could decide whether or not the appeal should have been dismissed, another division of the Court of Appeals by a vote of 3 to 2, dismissed the same appeal upon the motion of the Josefina group based on the technical ground that the brief does not contain any page reference and a duly titled statement of the case.

The background facts are simple. The main case is one of partition of real estate. On November 24, 1964, the trial court rendered a decision the dispositive part of which reads thus:

"EN VIRTUD DE TODO LO EXPUESTO, el Juzgado falla esta causa como sigue:

(a) Se adjudican a las demandadas Josefina Rodriguez y Leticia Rodriguez el Lote No. 853-B-2 en la proporcion de 2/3 para Josefina y 1/3 para Leticia, mas la porcion de 619,900 metros cuadrados del Lote No. 300 que ya se hallan en posesion de ambas, en la proporcion antedicha, mas otra porcion de 182,732 metros cuadrados que debiera ser segregada del mismo Lote No. 300 en la parte de dicho lote que ya se ha marcado en el plano Exh. '2' como Exh. '2-A';

(b) Para la efectividad de lo dispuesto en el parrafo inmediatamente anterior, se ordena a las partes para que, dentro del plazo de 30 dias desde la fecha de esta decision, empleen a un agrimensor cualificado a fin de llevar a cabo la segregacion de los 182,732 metros cuadrados del Lote No. 300, y de levantar un plano de subdivision que habra de ser sometido para su aprobacion a la Oficina de Terrenos, todo en forma tal que dichos 182,732 metros cuadrados y los 619,900 metros cuadrados ya en posesion de las demandadas formen un solo lote que habra de ser indicado como Lote No. 300-A, debiendo correr a cuenta de las partes, en la proporcion de sus respectivas participaciones, los honorarios del agrimensor asi como los otros gastos para llevar a cabo la mencionada segregacion;

(c) Se adjudican el demandante Francisco Rodriguez todos los otros lotes, con excepcion del Lote No. 853-B-2 y las porciones del Lote No. 300 adjudicadas a las demandadas, ademas de lo que reste de dicho Lote No. 300 que resulte despues de la segregacion de las porciones para las demandadas;

(d) Para los efectos del cambio de los certificados de titulo de los terrenos en cuestion, se ordena a las partes para que, dentro del plazo de 30 dias desde la fecha de esta decision, otorguen una escritura de permuta en tal forma que las demandadas traspasen a favor del demandante sus respectivas participaciones que tienen en todos los lotes, con excepcion de sus participaciones en aquellos en que se les ha adjudicado, y el demandante a su vez traspase a favor de las demandadas sus participaciones en el Lote No. 853-B-2 y en las dos porciones de 619,900 y 182,732 metros cuadrados de extension superficial que habran de ser segregadas del Lote No. 300;

(e) En caso de que las partes dejen en emplear a un agrimensor cualificado para segregar las dos referidos porciones del Lote No. 300 dentro del plazo ya fijado, el Juzgado nombrara a uno para tal fin corriendo a cargo de las partes los gastos que se incurran para tal fin;

(f) En caso de que las partes dejen de otorgar la escritura de permuta dispuesta en el parrago (d) anterior, el juzgado ordenara el Escribano de este Juzgado para que otorgue la la correspondiente escritura y su registro en la Oficina del Registrador de Titulos para los efectos del cambio de los certificados de titulo de los lotes a nombre de los respectivos interesados; y, finalmente,

(g) Se ordena al demandante para que, dentro de 30 dias desde la fecha de esta decision, someta y presente una cuenta detallada de los productos que el ha estado percibiendo desde el año 1940 en aquella porcion del Lote No. 300 de 182,732 metros cuadrados que debe corresponder a las demandadas y que el ha estado reteniendo injustificadamente para su uso y provecho personal.

Sin especial pronunciamiento de costas.

Asi se ordena."

Within the usual reglementary period, Francisco Rodriguez (now deceased and represented by the Anita Group) made an appeal but it was ruled by the trial court to be premature since neither the survey ordered by the court for the actual partition of the properties in question nor the accounting which Francisco was supposed to make had been completed. No action was taken against such ruling, so, a Commissioner was appointed to make the partition and Francisco prepared and submitted his accounts. On October 12, 1965, the Commissioner's report on the partition plans were approved by the court. Later, on October 15, 1966, the accounts of Francisco were approved. Copy of this last order was served on Francisco on October 20, 1966, but it was only on November 28, 1966, that he filed his amended record on appeal.[1] In view of the fact that on this last date, more than thirty (30) days had elapsed from the date he was served the order approving his accounts, the defendants (the Josefina Group) moved to dismiss his appeal, but this was denied not only by the trial court but also by the appellate court, on certiorari and mandamus, in the resolutions subject of the petition in G.R. No. L-28373. The Court of Appeals reasoned out its denial resolution of Francisco's motion for reconsideration as follows:

"RESOLUTION

RODRIGUEZ, J.:

On April 28, 1967 the appellees filed their Evidence in Support of Defendants-Appellees' Motion for Reconsideration (which motion had been denied in a resolution on April 6, 1967), reiterating the prayer to reconsider our earlier resolution on February 22, 1967 denying their motion to dismiss the plaintiff's appeal. The evidence now submitted consists of a certified copy of the lower court's order of October 15, 1966 with a certification of the deputy clerk of the lower court that the same order was received by the appellant's counsel on October 20, 1966.

Thus the appellees now maintain that more than thirty days had elapsed from October 20, 1966 up to November 28, 1966, when the appellant's amended record on appeal was presented for approval; so that his

appeal should then be dismissed.

After having twice denied the appellees' prayer for dismissal of the plaintiff's appeal, we are not inclined to change our position now.

It is to be noted that while the defendants opposed the original record on appeal, such opposition and motion for dismissal was premised 'on the ground that the decision is not yet final and executory because in an action for partition, the decision ordering the partition is not yet appealable until the properties have been partitioned ... and the plaintiff has submitted his accounting...' (P. 3, Motion to Dismiss Appeal.) In fact, for this same reason the lower court ordered, 'por el presente se deniega la apelacion y la aprobacion del expediente de apelacion,' (P. 131 printed R.A.) Nevertheless, upon presentation of the amended record on appeal on November 28, 1966, after 'all the requirements set forth in the decision ... has duly been implemented by the plaintiff and passed by the Court after presentation of the original record on appeal,' (P. 226 printed R.A.), the appellees never manifested their objection to the same amended record on appeal, nor did they pray for its disapproval and dismissal in the lower court, on the ground that it was not perfected on time. In fact, in approving the amended record on appeal in its order of December 19, 1966, the lower court observed, 'y no habiendose presentado ninguna oposicion contra su aprobacion, por el presente se aprueba dicho expediente de apelacion enmendada.' (P. 268 printed R. A., underscoring supplied.)

In similar instances the Supreme Court has held:

If the motion to dismiss the appeal on the ground that it was perfected out of time, is filed for the first time with the appellate court after the appellant had paid the docketing fee and the cost of printing the record on appeal (as in the present case) and specially after he had filed his brief, the appellate court should deny the motion, for the appellee may be considered in estoppel or estopped from filing said motion, because he would have, by his silence or failure to object in time, led the appellant to believe that the appellee was also satisfied that the delay, if any, was due to justifiable cause, and to incur those necessary expenses. (Santiago, et al., vs. Valenzuela, et al., 78 Phil. 397.)

WHEREFORE, the Court hereby resolves to deny the appellees' motion and prayer to dismiss the plaintiff's appeal.

SO ORDERED."

The Josefina Group contends that the Court of Appeals erred in making this resolution and in not dismissing the appeal in question.

After G.R. No. L-28373 had been filed, another incident took place in the Court of Appeals. In due time, and without awaiting the result of G.R. No. L-28373, appellants (the Anita Group) filed their brief; whereupon, the Josefina Group moved again to dismiss the same, this time on even more technical grounds stated in the dismissal resolution of the Court of Appeals thus:

"RESOLVING: The action to dismiss appeal filed by the defendants-appellees on 12 April, 1966, page 111 rollo, opposed by appellants-plaintiffs on 17 June, 1968 page 134, the ground being that appellant's brief on page 107 violated Sec. 16 of Rule 46;

1. - CONSIDERING: That an examination of said brief as well as of the rollo will really sustain the contention of movants that:

'In the brief for the plaintiff-appellant dated March 11, 1968, five (5) copies of which was received today, March 20, 1968, plaintiff-appellant instead a making a Statement of the Case as required under paragraph (c), Section 16, Rule 46 of the Rules of Court, had a paragraph with merely the heading 'FACTS', and furthermore, had several paragraphs under the heading 'HISTORY OF THE CASE'.

'However, in his explanation of the 'FACTS' and 'HISTORY OF THE CASE', appellant never complied with the requirements of paragraph (d), Section 16, Rule. 46, of the Rules of Court in the sense that on his statement of the alleged FACTS or HISTORY OF THE CASE, he never made page references to the printed Record on Appeal or to the transcript of the stenographic notes.

'This is a clear violation of the provisions of the Rules of Court and a ground for the dismissal of the appeal under paragraph (g), Section 1, Rule 50 of the Rules of Court above-quoted.

'In this connection, we would like to emphasize and respectfully invite the attention of this Honorable Court that appellant could not have made references to the page of the transcript of the stenographic notes as during the hearing in the court below, plaintiff-appellant did not present any witness to testify on the facts which he now elaborates in his brief. ' pp. 111-112, rollo;

and that is exactly against the requirement that:

'SECTION 16. Contents of appellant's brief. - The appellant's brief shall contain in the order herein indicated the following:

'x x x

'(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;' Sec. 16, Rule 46; of the Rules of Court;

and that is ground sufficient for this Court of Appeals to dismiss the appeal under Rule 50, Sec. 1, par. g, and the reason for this rule being that this appellate Court would be at a loss on how to adjudicate the merits of appellants' points otherwise and that is why under Rule 46, Sec. 16 this is sufficient ground to dismiss the appeal, although the exercise of this is discretionary; and the question is whether to exercise the discretion against appellants;

2. - CONSIDERING: Now that as to this date not only that the brief violated aforementioned Rule 46, by failing to refer to specific pages of the record but much worse to that it now appears that appellants not having presented any testimonial evidenced, when they further stated in their brief certain facts not at all and could not be at all supported except by testimonial proof, namely, from the penultimate paragraph on page 4 of the brief, beginning with the words,

'That appellant immediately after the death of his father, went to study in the United States of America up to the year 1916.'

up to the middle of page 6 wherein is mentioned that,

'. . the physical condition of the appellant worsened';

this can only mean an attempt to mislead this Court;"

Now, in G.R. No. L-30252, it is the Anita Group who is assailing the action of the appellate court as null and void allegedly because the same was taken during the pendency of G. R. No. L-28373 wherein its appellate jurisdiction is precisely being impugned and, furthermore, because the supposed slight "error or defect in the brief --- does not in any manner prejudice the substantial rights of the party - (and) --- could very well (have been ordered) corrected," instead of being invoked as ground for dismissal.

After mature deliberation, We are of the considered opinion that in the above premises, it would be rather too much of a technicality not to allow the appeal of the Anita Group. As will be recalled, their dissatisfaction with the

judgment of the trial court was demonstrated manifestly when they took all the necessary steps to perfect an appeal therefrom. Evidently caused by honest error on a matter of procedure regarding which even this Court has made its own volte-face on the occasions related in *Miranda vs. Court of Appeals*, G. R. No. L-33007, June 18, 1976, 71 SCRA 295, their appeal was declared premature. But there was already a notice of appeal, appeal bond and record on appeal which were otherwise adequate, except as to prematurity.

Realizing their error, they willingly submitted to the trial court's dictum. They waited until the corresponding survey report and accounting of the administrator were approved. And in this connection, it may be said that as a rule, the survey and accounting were mere routinary corollaries and implementation of the original order of partition, albeit, even then, to complete the record on appeal, what happened in the subsequent proceedings have to be included in an amended record on appeal.

Under the circumstances of this particular case, the Court sees no substantial prejudice could be caused to the Josefina Group, if We overlooked, in the interest of substantial justice and in the exercise of Our prerogative to liberally construe the rules and by virtue thereof excuse the eight-day delay, if it strictly speaking it could be so, of the Anita Group in filing their amended record on appeal. Besides, since We are dealing with an amended record on appeal, there is enough equitable ground to consider the same as a mere reiteration, with the needed additional data of the original one, which was not only filed on time but even technically premature.

Coming now to the dismissal by another division of the Court of Appeals of the appeal of the Anita Group assailed in G.R. No. L-30252, suffice it to say that for reasons of substantial justice and equity, We are closing Our eyes to the supposed delay in the filing of their amended record on appeal, We cannot afford to be as technical as to dismiss such appeal on the grounds relied upon by the Court of Appeals in its 3 to 2 resolution. There is more reason to say in this regard that no substantial prejudice can be caused to the Josefina Group by the errors of form which the appellate court held violate the requirement of the rules. We have gone over the brief in question, and We find that the interests of justice can be better served by overlooking such formal errors than by depriving the appellants of their full day in court.

WHEREFORE, the resolution of the Court of Appeals impugned in G.R. No. L-30502 is hereby reversed and the petition of Josefina Group in G. R. No. L-28373 is denied, for lack of merit. Costs against the Josefina Group in both cases.

Aquino, Concepcion, Jr., Abad Santos, and De Castro, JJ., concur.

[1] No issue is raised in the record as to the timeliness of the filing of the notice of appeal and the appeal bond.

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