

AVELINO G. GREGORIO AND IRENE J. GREGORIO, SUBSTITUTED APPELLEES FOR THE DECEASED DEFENDANT EUSEBIO GREGORIO, PETITIONERS, VS. COURT OF APPEALS[] AND CECILIO PANALIGAN, RESPONDE...

G.R. No. L-39393. October 29, 1976

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The petition invoking a rigid application of the material data rule is ordered dismissed and respondent's right of appeal is upheld on the ground of substantial compliance with the rule and on the strength of the now controlling liberal doctrine that the appellate court should properly rely on the trial court's order of approval and determination that the perfection of the appeal was in order, where the correctness and veracity of such determination by the trial court are not impugned or disputed by the adverse party.

In an action for recovery of possession of land with damages filed by respondent Cecilio Panaligan as plaintiff against Eusebio Gregorio as defendant, now deceased and substituted by petitioners as his surviving parents and heirs, the Zambales court of first instance, after trial, rendered its judgment of June 6, 1973 resolving the conflict of boundaries between the contending parties (both of whom hold torrens titles to their respective lands) in favor of defendants (petitioners) and dismissed respondent's complaint.

Respondent filed on July 10, 1973 his motion for new trial and/or reconsideration which was denied in the trial court's order dated October 31, 1973. Respondent filed on November 9, 1973 his notice of appeal and appeal bond, wherein he stated that copy of the denial order was received by him on the preceding day, November 8, 1973.[1]

Respondent's Motion for Extension dated November 8, 1973 as reproduced in the 125-page Record on Appeal eventually filed by him states that his "reglementary period within which to file Record on Appeal expires November 9, 1973" and that "due to absence of clerical assistance" he prayed for a 30-day extension from November 9, 1973 within which to submit the Record on Appeal.[2]

The Record on Appeal shows that the trial court's Order of November 9, 1973 granted the extension and gave respondent "up to December 9, 1973 within which to submit (his) record on appeal".[3]

Respondent filed his Record on Appeal well within the extended period on December 3, 1973. No objection thereto was filed by petitioners. The trial court in its Order of January 3, 1974 found the same to be "in order" and approved the same, as follows:

"Finding the record on appeal filed by the plaintiff to be in order, the same is hereby approved, and the stenographers who took part in the proceedings are hereby directed to transcribe their respective stenographic notes within the reglementary period."[4]

After the elevation of the record to the Court of Appeals, petitioners filed therein a Motion to Dismiss Appeal on the ground that the Record on Appeal did not show the date when respondent-appellant received copy of the adverse decision and of the adverse order denying his motion for reconsideration.

Respondent in opposing dismissal of the appeal[5] asserted that the record shows that he was served through counsel with the decision on June 11, 1973 and filed his motion for reconsideration on the 28th day (should be 29th day) on July 9, 1973, (should be July 10, 1973). As to the date of service of the Order denying reconsideration, respondent showed that his notice of appeal as reproduced in the Record on Appeal specifically mentioned that he received copy thereof only on November 8, 1973, and that on the following day, he promptly filed his notice of appeal and appeal bond (and the motion for 30-day extension to submit the record on appeal), thus perfecting his appeal well within the reglementary period.

Respondent court of appeals accordingly issued its Resolution of August 7, 1974 denying the motion to dismiss appeal and its Resolution of September 6, 1974 denying reconsideration.

Hence, the present petition invoking a rigid application of the material data rule.

The petition must be denied for lack of merit. Respondent appellate court did not err, much less act with grave abuse of discretion in denying petitioners' motion to dismiss the appeal.

Respondent-appellant's motion for a 30-day extension to submit his record on appeal actually stated that his reglementary period to do so would expire on November 9, 1973 - a fact undisputed by petitioners. It is equally of record and undisputed in the record on appeal that the extension was granted and that respondent filed his record on appeal well within the extended period, as above shown. These data as stated in the record on appeal showing the perfection on time of the appeal constituted substantial compliance with the material data rule. (Rule 41, section 6).

Even if such had not been the case, under the 1973 precedent of *Berkenkotter vs. Court of Appeals*[6] which justified respondent court's resolutions denying dismissal of the appeal and which augured the now prevailing liberal doctrine enunciated in *Pimentel vs. Court of Appeals*[7], the appellate court properly relied on the trial court's order of approval and determination that the record on appeal was "in order", since the correctness and veracity of such determination by the trial court are not impugned or disputed by petitioners as the adverse party.

As recently reaffirmed by the Court last August,[8] the reason for the material data rule is to obviate and eliminate waste of time that would be incurred by the appellate tribunal in requiring the lower court to forward the original record and in examining such record to determine the timeliness of the appeal; and where the trial court in its order approving the record on appeal finds and declares that the same was timely perfected or in order and the correctness and veracity of such finding and declaration are not disputed by the adverse party, the reason for the rule ceases because thereby the appellate court can rely thereon without the need of sending for, and of any further examination of, the original records of the case.

As to petitioners' contention that the appeal is "manifestly groundless", suffice it to state that respondent's extensive arguments as reproduced in his record on appeal and answer to the petition do not bear out the same, and respondent's right of appeal must be therefore upheld.

ACCORDINGLY, the petition is dismissed and the case is remanded for proper determination of the appeal on the merits. Without costs.

Makasiar, Muñoz Palma, Concepcion, Jr., and Martin, JJ., concur.

[*] Tenth Division composed of JJ. R. Fernandez, chairman, G. P. Ramos and F. Tantuico, Jr., members. The two members as of September 6, 1974 when reconsideration was denied were JJ. R. Puno and S. Domondon.

[1] Rec. on Appeal, pp. 119-120.

[2] Idem, page 121.

[3] Idem, pages 122-123,

[4] Idem, page 125.

[5] Annex D, petition; Rollo, page 20.

[6] 53 SCRA 228 (Sept. 28, 1973).

[7] 64 SCRA 475 (June 27, 1975) per Makasiar, J.

[8] Joint decision in L-38270, San Pedro vs. Court of Appeals and L-38351, Villa-Abrille vs. Court of Appeals, prom. August 31, 1976, citing Andaya vs. Court of Appeals, L-37124, May 5, 1976, and cases cited.

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