

REPUBLIC OF THE PHILIPPINES REPRESENTED BY THE DIRECTOR OF LANDS, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, MELITONA ALAGAD, SPOUSES CARMEN ALAGAD AND ESPIRIDION KOLIMLIM,...

G.R. No. L-35718. November 19, 1982

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

We are here concerned with a Petition to review on Certiorari the Resolutions of the Court of Appeals in CA-G.R. No. 49778-R ordering the dismissal of petitioner's appeal for failure to state in the Record on Appeal that the appeal was perfected on time, and denying petitioner's Motion for Reconsideration.

The issue is whether or not the failure to state in the Record on Appeal data showing that the appeal was perfected on time is fatal to the appeal.

It is a fact that petitioner, as appellant from an adverse Decision of the Court of First Instance of Laguna, in Civil Case No. SC-1016, failed to state in the Record on Appeal the number of days granted by the Trial Court in extending for the second time the period within which to file its Record on Appeal. Based on this omission, and while petitioner's appeal was pending in the Court of Appeals, private respondents filed a Motion to Dismiss the appeal, which Motion was granted over and above petitioner's opposition.

The evidence discloses that no objection whatsoever to the approval of the Record on Appeal was raised in the lower Court and that petitioner's Record on Appeal was approved by said Court in its Order dated January 10, 1972.

Since *Berkenkotter vs. Court of Appeals*, promulgated on September 28, 1973, 53 SCRA 228, this Court has departed from its rigid interpretation of Section 6, Rule 41 of the Rules of Court[1] dismissing appeals for sheer failure to show categorically on the Record on Appeal that the appeal was perfected on time. In that case we held:

"The mere absence of a formal order granting the motion for extension of time to file the record on appeal should not be fatal to the petitioner if the record on appeal filed within the requested extension period was approved by the Court a quo. As previously stated, the approval thereof carries with it the approval of the motion for extension and the mere failure of the record on appeal to show such approval should not defeat the right to appeal. No trial Judge in his right mind and who is aware of the serious responsibilities of his office, would approve a record on appeal that was not timely filed. There is every reason, therefore, to apply the principle of substantial justice to the instant case for the following considerations: first, the Court is given the discretion to extend the period for filing the record on appeal, notice of appeal and appeal bond, provided the notice for extension of time is filed within the 30-day reglementary period; second, there is every reason to assume that the record on appeal was 'filed on time' because it was approved after due hearing by the Court in its Order dated November 14, 1972; and last, but not the least, considering the merits of the case, to dismiss petitioners appeal would not serve the ends of justice."

The above doctrine has been followed by the Court in *Pimentel vs. Court of Appeals*, 64 SCRA 475 (1975); *Morales vs. Court of Appeals*, 67 SCRA 304 (1975); *Krueger vs. Court of Appeals*, 69 SCRA 50 (1976); *San Pedro vs. Court of Appeals*, 72 SCRA 536 (1976); *Aznar vs. Court of Appeals*, 85 SCRA 372 (1978), and a host of other cases.

Our perusal of the records likewise convinces us that it would be more in keeping with the ends of substantial justice if petitioner's appeal were to take its course. Petitioner's Complaint below (Civil Case No. SC-1016) was for annulment of title and re-version. The subject matter is a piece of land with an area of 1.42 hectares situated in Barrio Aplaya, Pila, Laguna. About 100 families live in the area and face eviction, as they had in fact been ordered evicted by the Municipal Court of Pila, Laguna, in Civil Case No. 48, but for the Writ of Preliminary Injunction issued by the Trial Court. It is foreshore land and the Government claims that it is outside the jurisdiction at the land Registration Court, which adjudicated the property in the names of private respondents, and that consequently the Decision and Orders of said Court are void ab initio.

WHEREFORE, granting the Petition, the Resolutions of respondent Court of Appeals dated August 12, 1972 and September 22, 1972 are hereby SET ASIDE, and said Court hereby ordered to reinstate and give due course to petitioner's appeal in CA-G.R. No. 49978-R.

The Restraining Order, issued by this Tribunal on October 31, 1972, enjoining the Municipal Judge of Pila, Laguna, and the Provincial Sheriff of Laguna from enforcing the Writ of Execution issued in Civil Case No. 48 and/or any similar Orders of eviction against the present occupants of the land in question shall continue in full force and effect until petitioner's appeal is resolved on the merits.

No costs.

SO ORDERED.

Teehankee, (Chairman), Plana, Vasquez, and Gutierrez, Jr., JJ., concur.

Relova, J., no part.

[1] "SEC. 6. Record on appeal; form and contents thereof. - The full names of all the parties to the proceedings shall be stated in the caption of the record on appeal and it shall include the order or judgment from which the appeal is taken, and, in chronological order, copies of only such pleadings, petitions, motions and all interlocutory orders as are related to the appealed order or judgment and necessary for the proper understanding of the issue involved, together with such data as will show that the appeal was perfected on time. If an issue of fact is to be raised on appeal, the record on appeal shall include by reference all the evidence, oral and documentary, taken upon the issue involved. The reference shall specify the documentary evidence by the exhibit numbers or letters by which it was identified when admitted or offered at the hearing, and the oral evidence by the names of the corresponding witnesses. If the whole oral and documentary evidence in the case is to be included, a statement to that effect will be sufficient without mentioning the names of the witnesses or the numbers or letters of exhibits. Every record on appeal exceeding twenty (20) pages must contain a subject index.

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