

MACARIO ALQUIZA, ET AL, PETITIONERS, VS. PLACIDO ALQUIZA, ET AL AND THE COURT OF APPEALS, RESPONDENTS.*G.R. No. L-23342. February 10, 1968*

Ponente: CONCEPCION, C.J.

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Appeal by certiorari from a decision of the Court of Appeals.

This is an action for partition mostly of real estate, initiated in the Court of First Instance of Pangasinan. In due course, the same rendered judgment for the plaintiffs and against the defendants, who sought a review by the Court of Appeals; but, on January 26, 1959, the latter dismissed the appeal on account of defendants' failure to file their brief within the reglementary period. On motion of the defendants, said appeal was, subsequently, reinstated, over plaintiffs' objection thereto. After appropriate proceedings thereafter, said appellate court rendered a decision reversing that of the trial court and dismissing plaintiffs' complaint. Hence, the present petition, for review on certiorari, of plaintiffs herein, who maintain that the Court of Appeals erred in reinstating defendants' appeal and, later, in rendering judgment for the defendants.

It appears that the defendants had been given by the Court of Appeals the reglementary period of forty-five (45) days, from notice, within which to file their brief, said period to expires January 24, 1959; that no such brief was filed on or before this date; that, nine (9) days later, or on February 2, 1959, defendants mailed a motion, dated January 31, 1959, praying for the suspension of the running of said period, upon the ground of illness of their counsel; that plaintiffs objected thereto and move, to dismiss the appeal; that, on February 26, 1959, the appellant court denied said motion for suspension and dismissed the appeal; that defendants moved for a reconsideration of the order to this effect and submitted a medical certificate attesting to the illness of their counsel; that plaintiffs objected to this motion; and that, this notwithstanding, the Court of Appeals granted the same, reinstated defendants' appeal, and extended the period for the filing of defendants' brief, which, eventually, was filed seasonably.

Plaintiffs contend that the Court of Appeals had thereby committed a grave abuse of discretion amounting to lack of jurisdiction, inasmuch as defendants' motion for suspension of the period to file their brief was filed after the period prescribed therefor had lapsed and the alleged illness of their counsel was not supported by a medical certificate. As regards the one submitted by the defendants, almost two (2) months later, in support of their motion for reinstatement of their appeal, plaintiffs allege that the certificate at best shows that defendants' counsel, Atty. Crispin Fernandez, had hypertension, which does not necessarily incapacitate him from preparing his brief or, at least, filing a motion for extension or suspension of the period therefor before its expiration, and that said illness must have been feigned, because the records of the Court of First Instance of Pangasinan show that Atty. Fernandez had appeared before the same, several times, from January 7 to January 29, 1959, in connection with some cases specified in annexes A-1 to E-1 to plaintiff's opposition to said motion of the defendants.

It should be noted, however, that, in passing upon the question whether or not an appeal should be dismissed for

fail-ure of the appellant to file his brief or to explain the same, or whether an appeal shall be reinstated, an appellate court may exercise, not only its judgment, but, also, its discretion, hav-ing in mind the circumstances obtaining in each case, includ-ing, if not particularly, the demands of substantial justice.[1] In the case at bar, the aforementioned medical certificate[2] shows that Atty. Fernandez had had a "cerebral attack" in May, 1958; that he had not fully recovered therefrom; that his power of speech had, also, been impaired; that "now and then" he had "amnesia;" and that, as late as February 10, 1959, and subsequent days, he had been under medical treatment, due to the recurrence of his illness. Considering this background, and the view taken by the appellate court on the merits of the case, we do not feel that a grave abuse of dis-cretion had been committed in reinstating defendants' appeal.

Let us now take up the merits of the case. The same is an action for partition. Plaintiffs are the descendants, and/or heirs of Pedro Alquiza by his first marriage.[3] Defendants are his descendants and/or heirs by a second marriage.[4] Plain-tiffs contended that some properties described in the complaint belonged to the conjugal partnership of the first marriage and that the other properties described in the same pleading belong-ed to the conjugal partnership of the second marriage.[5] Upon the other hand, defendants alleged that all of the properties in litigation belong to them exclusively, some by purchase from Pedro Alquiza or from other persons, and some by donation made by Pedro Alquiza, and that, moreover, they (defendants) had acquired title to said properties, as sole and exclusive owners thereof, by prescription.

Thus the main issue was one of fact, on which both parties introduced testimonial and documentary evidence. His Honor, the trial Judge did not find the testimony of the witnesses for the de-fense worthy of belief. Neither did he give full faith and credence to the documentary evidence presented by the defendants. Indeed, "the lower court had in effect annulled six (6) notarial documents," in the language of the Court of Appeals. In a detailed and careful-ly prepared decision, the latter, after analyzing that of the Court of First Instance, as well as the evidence on record, and the ar-guments pro and con, reached, however, the opposite conclusion Inasmuch, as the same depended upon the credibility of the testi-mony of said witnesses and upon an appraisal of the surrounding circumstances, as factors affecting the faith and credence to be accorded to defendants documentary evidence, it is clear that, insofar as the merits of the case, the decision thereon hinges on the determination of the pertinent facts, the findings on which of the Court of Appeals are conclusive upon us and beyond our power of review.

WHEREFORE, the appealed decision of the Court of Appeals must be, as it is hereby, affirmed, with costs against plaintiffs herein.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] *Ordoveza v. Raymundo*, 63 Phil. 275; *Chavez v. Ganzon*, L-13831, May 16, 1960. See, also, *The Palmera*, 12 Wheat, 9, 6L. ed. 531; *Bank of U.S. v. Swan*, 3 Pet. 68, 7L. ed. 605,

[2] Dated March 29, 1959.

[3] His first wife, Josefa Mores, had died in 1891.

[4] The original parties were children of the deceased, but, owing to the demise of some of them, during the pendency of this case, the deceased parties were substituted by their descendant, and/or heirs, thus requiring several amendments of the original complaint.

[5] The second wife, Susana Mirador, had died before the institution of this case in May, 1939

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