

DOLORES DE MESA ABAD AND CESAR DE MESA TIOSECO, PETITIONERS, VS. THE COURT OF APPEALS AND HONORIA EMPAYNADO, ET ALS., RESPONDENTS.

G.R. No. L-42225. July 09, 1985

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Petitioners' two attempts at appeal from Orders of the probate Court having failed, they now seek, through the Petition for Certiorari filed in this case, the reversal of the Orders of said Court disallowing their appeal, and of the Decision of respondent Appellate Court affirming them.

In Special Proceedings No. 86792 of the then Court of First Instance of Manila, Branch XXIX, petitioners sought the settlement of the intestate estate of Ricardo de Mesa Abad, their brother who died single. Except for themselves, the Petition for Letters of Administration made no mention of other heirs. Petitioner Cesar de Mesa Tioseco was appointed Administrator on July 17, 1972.

On July 24, 1972, private respondents Honoria Empaynado, Cecilia Abad y Empaynado, Marian Abad y Empaynado and Rosemarie Abad y Saracho, claiming to be the rightful heirs, filed a Motion for Reconsideration praying for the revocation of Cesar de Mesa's appointment. Honoria Empaynado is the surviving common-law wife of the deceased; Cecilia and Marian, his acknowledged natural children with her; and Rosemarie, another acknowledged natural child with Dolores Saracho.

The trial Court denied reconsideration but allowed private respondents to appear and establish their rights as heirs of Ricardo Abad.

1.

The First Appeal

1. On November 2, 1973, after receiving evidence, the trial Court issued an Order declaring private respondents as heirs, to the exclusion of petitioners, and entitled to succeed to the entire estate.

(a) On November 8, 1973, petitioners moved for reconsideration, which was denied by the lower Court on December 19, 1973. Petitioners received the Order of denial on December 29, 1973.

(b) On January 9, 1974, petitioners filed their Notice of Appeal and Cash Appeal Bond. Their Record on Appeal, however, was filed only on January 16, 1974.

(c) On July 11, 1974, the lower Court held that the appeal was filed out of time because the Motion for Reconsideration was a pro-forma Motion and did not suspend the period for appeal.

Because of this ruling, petitioners instituted Certiorari and Mandamus proceedings with the then Court of Appeals in CA-G.R. No. SP-03268-R entitled "Dolores de Mesa, et al. vs. Hon. Mariano Agcaoili, et al."

(d) On November 2, 1974, the Appellate Court granted the Petition and ordered the lower Court to give due course to petitioners' appeal.

(e) On January 7, 1975, the lower Court held in abeyance resolution on petitioners' Notice of Appeal and Record on Appeal until petitioners had incorporated (1) Motion to Suspend Hearing on the Determination of Heirship dated October 31, 1972; and (2) Order dated January 23, 1973 setting the hearing on the heirship after petitioners had withdrawn their Motion to suspend the hearing on the determination of heirship.

(f) On February 12, 1975, petitioners filed their Amended Record on Appeal but without incorporating the data ordered included.

(g) On March 18, 1975, the lower Court issued an Order dismissing petitioners' appeal on the grounds that the Amended Record on Appeal was filed out of time and did not include such data as will show that the appeal was perfected on time.

2.

The Second Appeal

2. (a) On October 4, 1973, private respondents filed a Motion for Annulment of certain documents and titles, which Motion was opposed by petitioners.

(b) On November 19, 1974, the lower Court issued an Order granting the Motion for Annulment, which Order, according to petitioners was received on December 9, 1974 by Atty. Vicente Millora of the Millora, Tobias and Calimlim Law Office, but which according to the Appellate Court was received by their counsel of record, Atty. Escolastico R. Viola, on November 22, 1974. If it is the latter date, the appeal would really be out of time.

(c) On January 4, 1975, through Atty. Ernesto D. Tobias, petitioners filed their Notice of Appeal and Cash Appeal Bond as well as a Motion for Extension of the period to file a Record on Appeal.

(d) On January 24, 1975, petitioners filed their Record on Appeal.

(e) On February 3, 1975, private respondent Rosemarie Abad moved for reconsideration of the Order granting petitioners' Motion for Extension of the period within which to file a Record on Appeal on the ground that the 30-day period had already expired when the Motion for Extension was filed.

(f) On March 21, 1975, the lower Court issued another Order dismissing petitioners' appeal on the grounds that the appeal was filed out of time and considering further that petitioners failed to incorporate therein pleadings, motions, petitions and interlocutory Orders as are related and necessary for the proper understanding of the issues involved.

3.

Due to the dismissals of the two appeals, petitioners again elevated their cause to respondent Appellate Court on Certiorari and Mandamus in CA-G.R. No. SP-04352, entitled "Dolores de Mesa, et al. vs. Hon. Pedro A. Ramirez, etc., et al." wherein they prayed for the approval of their appeals.

On November 5, 1975, respondent Appellate Court promulgated its Decision finding Certiorari and Mandamus without merit on the ground that both Records on Appeal were filed out of time. In reference to the First Appeal, respondent Court held:

"Pursuant to the decision in CA-G.R. No. SP-03268, Judge Agcaoili issued an order dated January 7, 1975 directing the petitioners to file an amended record on appeal incorporating the motion to suspend the hearing on the determination of heirs and the order dated January 23, 1973. In a supplemental order dated January 16,

1975 the petitioners were directed to comply with the order dated January 7, 1975 within 10 days from receipt thereof. The supplemental order was received by the petitioners on January 29, 1975. Said petitioners filed a substantially the same record on appeal on February 12, 1975, without incorporating the motion and order mentioned in the order of Judge Agcaoili dated January 7, 1975.

"The record on appeal was filed out of time. Hence, Judge Agcaoili did not abuse his discretion in issuing the order dated March 18, 1975 dismissing the appeal from the order dated November 2, 1973." [1]

And with respect to the Second Appeal, respondent Court stated:

"As regards the order dismissing the appeal from the order dated November 19, 1974, it is a fact that Atty. Escolastico R. Viola and his associate, as counsel of record of the petitioners, received a copy of the said order dated November 19, 1974 on November 22, 1974. The order became final on December 23, 1974. Atty. Ernesto D. Tobias, another counsel of petitioners, filed the notice of appeal and motion for extension of the period within which to file the record on appeal only on January 4, 1975. Both the notice of appeal and the motion for extension were filed out of time.

"Atty. Escolastico R. Viola was still counsel of record of the petitioners on November 22, 1974 when he received a copy of the order dated November 19, 1974. Said lawyer had not withdrawn his appearance as counsel for the petitioners. Hence, the period within which to appeal from the order dated November 19, 1974 should be counted from November 22, 1974.

"The respondent judge did not abuse his discretion in denying petitioners' motion for reconsideration of the orders dated March 18, 1975 and March 21, 1975." [2]

It is a fact that, in reference to the First Appeal, the Amended Record on Appeal was filed beyond the 10-day period granted by the trial Court and that the Orders ordered to be incorporated were still missing. It should be noted, however, that the original Record on Appeal was filed within the reglementary period on January 16, 1974. Consequently, the Amended Record on Appeal should be deemed to have been filed upon the presentation of the original. Failure to comply with the period granted by the lower Court within which to file the Amended Record on Appeal, although not to be condoned, does not necessarily render the appeal untimely. It is the date of presentation of the original Record on Appeal which is controlling. This rule found expression in *Rodriguez, et al. vs. Court of Appeals*, 68 SCRA 262 (1975).

"As early as the case of *Vda. de Oyzon v. Vinzon*, We ruled that: 'The fact that the amended record on appeal was submitted after the reglementary 30-day period, did not render the perfection thereof untimely, because the amended record on appeal is deemed to have been filed on the presentation of the original, which was done within the reglementary period.' As We explained in *Philippine Independent Church v. Juana Mateo, et al.*, 'amendment presupposes the existence of something to be amended, and, therefore, the tolling of the period should relate back to the filing of the pleading sought to be amended'."

And, as to non-compliance with the material data rule, strict adherence thereto has since been relaxed starting from the case of *Berkenkotter vs. Court of Appeals*, 53 SCRA 228 (1973).

Moreover, the Orders required by the trial Court to be incorporated in the Record on Appeal, namely, the Motion to Suspend Hearing on the Determination of Heirship dated October 31, 1972 and the Order dated January 23, 1973 setting the case for hearing, after the Motion to Suspend had been withdrawn, are not that indispensable for the proper understanding of the main issue involved in that appeal — that of heirship.

Coming now to the Second Appeal — respondent Court reckoned the period of appeal from the time petitioners' original counsel, Atty. Escolastico R. Viola, received the Order granting the Motion for Annulment of documents and titles on November 22, 1974. But, as petitioners stress, Atty. Vicente Millora of the Millora, Tobias and

Calimlim Law Office had filed an "Appearance and Manifestation" on July 17, 1974. While there may have been no specific withdrawal by Atty. Escolastico R. Viola, for which he should be admonished, by the appearance of a new counsel, it can be said that Atty. Viola had ceased as counsel for petitioners. In fact, Orders subsequent to the aforesaid date were already sent by the trial Court to the Millora, Tobias and Calimlim Law Office and not to Atty. Viola.

Under the circumstances, December 9, 1974 is the controlling date of receipt by petitioners' counsel and from which the period of appeal from the Order of November 19, 1974 should be reckoned. That being the case, petitioners' second appeal filed on January 4, 1975 was timely filed.

Overriding all the foregoing technical considerations is the trend of the rulings of this Court to afford every party-litigant the amplest opportunity for the proper and just determination of his cause, freed from the constraints of technicalities.[3]

ACCORDINGLY, the judgment under review is hereby set aside and the Regional Trial Court of Manila, which has succeeded the former Court of First Instance, Branch XXIX, is hereby directed to give due course to petitioners' appeals from (1) the Order of November 2, 1973 declaring private respondents heirs of the deceased Ricardo Abad; and (2) the Order, dated November 19, 1974, annulling certain documents appertaining to the intestate estate of said deceased. No costs.

SO ORDERED.

Teehankee, (Chairman), Plana, Relova, Gutierrez, Jr., De la Fuente, and Alampay, JJ., concur.

[1] Rollo, pp. 31-32.

[2] *ibid.*, pp. 32-33.

[3] *Rodriguez vs. Court of Appeals*, 68 SCRA 262 [1975].

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