

SOTERO RECTO, PETITIONER, VS. THE HONORABLE COURT OF APPEALS (FIFTH DIVISION) AND CLAUDIO FRANCISCO, RESPONDENTS.

G.R. No. L-39026. September 30, 1982

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This Petition for Review on Certiorari calls for an interpretation of the material data rule.

Respondent Court of Appeals[1], in its Resolution of April 25, 1974, in CA-G.R. No. 41197-R, dismissed *motu proprio* petitioner Sotero Recto's appeal by reason of non-compliance with the material data rule, and on June 18, 1974, denied reconsideration of its said Resolution.

The Petition originated from Civil Case No. T-130 entitled " Sotero Recto vs. Claudio Francisco" for legal redemption filed on July 13, 1964 before the Court of First Instance of Camarines Sur. The latter Court dismissed the complaint in its Decision of June 26, 1967 on the principal ground that the land involved was not subject to legal redemption and that the action had prescribed.

Petitioner-plaintiff filed a Notice of Appeal and a cash appeal bond on September 2, 1967, and on September 5, 1967, submitted the Record on Appeal. There is no indication on the said Record as to when petitioner received copy of the judgment of the trial Court. Absent, too, is any showing of an objection to the Record on Appeal by respondent as the adverse party. On the contrary, the trial Court approved the Record on Appeal in its Order of October 25, 1967 "there being no objection thereto."

The appeal took its course, with the parties submitting their respective Briefs, petitioner on December 28, 1968, and respondent on March 27, 1969.

On April 25, 1974, or approximately five years thereafter, respondent Court, *motu proprio*, dismissed the appeal for failure of the Record on Appeal to show on its face that the appeal was perfected on time since petitioner did not state therein the date of his receipt of the trial Court's Decision.

In seeking reconsideration, petitioner argued that the Record on Appeal complied substantially with the requirements of Section 6, Rule 41, Rules of Court; that the parties had already filed their respective Briefs; that the case had been submitted for decision since March 27, 1967 without any objection from respondent; and that he had a meritorious case.

Respondent Court denied reconsideration on June 18, 1974 ruling that non-compliance with the material data rule is fatal and cannot be cured by the trial Court's approval of the Record on Appeal; and concluding that as it had no jurisdiction to entertain the appeal, it had no alternative but to dismiss it notwithstanding its alleged merits.

Thus, the review presently sought.

We reverse respondent Court.

Concededly, the Record on Appeal does not show on its face the date petitioner received the lower Court Decision. That deficiency, however, is not fatal to the appeal and is not a ground for dismissal where it is a fact of record that the trial Court approved the Record on Appeal. The defect of lack of data in the record on appeal is cured by the Trial Court's approval of the record on appeal.[2]An Appellate Court may properly rely on the Trial Court's Order of approval and determination of timeliness of the appeal.[3]

And this is so because, as pointed out in *Berkenkotter vs. Court of Appeals*, 53 SCRA 228 (1973), "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."

It is true that this Court had previously adhered to the rigid application of the material data rule, which was relied upon by respondent Court. Since *Berkenkotter vs. Court of Appeals*, et al., supra, however, followed by *Pimentel vs. Court of Appeals*, supra; *Morales vs. Court of Appeals*, supra; *Republic vs. Court of Appeals*, 67 SCRA 322 (1975); *Luna vs. Court of Appeals*, 67 SCRA 503 (1975); and still others, this Court had modified and liberalized that doctrine to avoid sacrificing substantial rights of litigants before the "altar of technicalities" and with a view to achieving consistency with substantial justice.

WHEREFORE, the Resolutions of respondent Court of Appeals dated April 25, 1974 and June 18, 1974, respectively, are hereby SET ASIDE, and this case remanded to respondent Court for further proceedings and determination of the appeal on the merits, with the directive that said appeal be acted on with reasonable dispatch.

No pronouncement as to costs.

SO ORDERED.

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

[1] Per Justice Mariano Serrano, concurred in by Justices Ruperto G. Martin and Emilio A. Gancayco.

[2] *Santos vs. Court of Appeals*, 90 SCRA 223 (1979); *Compagnie Des Messageries Maritimes vs. Court of Appeals*, 99 SCRA 639 (1980).

[3] *Morales vs. Court of Appeals*, 67 SCRA 304 (1975); *Pimentel vs. Court of Appeals*, et al., 64 SCRA 475 (1975); *Cabalzavs. Court of Appeals*, et al., 73 SCRA 593 (1976); *Saura Import & Export Co., Inc. vs. Court of Appeals*, 83 SCRA 275 (1978).

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