

TIMOTEO SIMSIM, PETITIONER, VS. THE HON. JUDGE FELICIANO BELMONTE, OF THE COURT OF FIRST INSTANCE OF THE CITY OF BAGUIO AND HECTOR DONATO, RESPONDENTS.*G.R. No. L-25388. August 31, 1970*

Ponente: MAKALINTAL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/44f73499d713/>**MAKALINTAL, J.:**

This petition for certiorari was filed by Timoteo Simsim, plaintiff in Civil Case No. 1298 of the Court of First Instance of the City of Baguio against Felicisimo Z. Mostajo, Francisca A. Mostajo, Hector V. Donato and the Immaculate Concepcion, Inc. That action was for partition of a parcel of land, referred to in the record merely as Lot No.147-B, portions of which had been sold by the owner, petitioner's father, to the petitioner himself and to the aforesaid defendants. At about the same time another action was filed by Felicisimo Mostajo against the seller to compel delivery of the portion sold to him, with an area of 35,000 square meters. That action was docketed as Civil Case No. 1276.

The two cases were tried and decided jointly by the Honorable Feliciano Belmonte, now one of the respondents herein. In the decision the older Simsim, seller, was ordered to deliver to Felicisimo Mostajo 11,000 square meters in addition to the 24,000 square meters alleged to pertain to him in the complaint for partition, evidently to complete the 35,000 square meters claimed by him in his own complaint against Simsim. The record is not clear as to these facts, but it seems that the totality of the areas of the portions sold exceeded the actual area of the entire parcel, and so in its decision the Court ordered that the additional 11,000 square meters to be given to Mostajo should be taken from the portions which had been sold to "Timoteo Simsim and/or Hector V. Donato."

The decision was dated July 8, 1965. Donato prayed for and was given an extension of time - up to August 31, 1965 - within which to file a motion for recon-sideration. He actually filed the motion on July 29, 1965. The same was denied and he filed a second motion on August 13, which was granted. The Court reconsidered and amended its previous decision on August 30, 1965, ordering Simsim the elder, defendant in Civil Case No. 1276, to comply with the deed of sale he had executed in favor of therein plain-tiff Felicisimo Mostajo by delivering to the latter an addi-tional area of 11,000 square meters, to be taken from the portion which Simsim had sold to his son Timoteo; and declaring Hector V. Donato the absolute owner of the portion which had been sold to him, identified as lot No. 147-B-4, without any reduction.

On the other hand, Timoteo Simsim filed a record on appeal from the first decision, together with an appeal bond; and the same was approved by the Court, in the absence of any opposition, on August 13, 1965. That was the same day Donato filed his second motion for reconsideration. This motion was granted, as already noted, on August 30, and the next day, August 31, the Court motu proprio issued an order directing Timoteo Simsim to amend his record on appeal so as to incorporate therein the order reconsidering the decision.

Timoteo Simsim balked at the order to amend the record on appeal, contending that it was beyond the power of the Court to issue once his appeal had been perfected by the approval of the record. The court overruled the

contention and on October 4, 1965 set aside his order of August 13, 1965 approving the said record on appeal and directed Timoteo Simsim to amend the same by incorporating therein the pleadings filed and orders issued since its approval.

Timoteo Simsim thereafter came to this Court on the present petition, challenging the last mentioned order as having been issued without or in excess of jurisdiction, or with grave abuse of discretion.

This petition is palpably without merit. The petitioner relies on Section 9 of Rule 41, which says that "the appeal is deemed perfected upon the approval of the record on appeal and of the appeal bond... and thereafter the trial court loses its jurisdiction over the case..." This rule must be construed and applied reasonably and conjointly with other pertinent rules so as to avoid impractical and absurd situations. Section 1 of Rule 37 provides that within the period of perfecting an appeal an aggrieved party may move the Court to set aside the judgment and grant a new trial. Such a motion, of course, may in effect be merely motion for reconsideration if the ground alleged is that the evidence already of record is insufficient to justify the decision or that the decision is against the law. The second motion for reconsideration filed by Hector Donato was filed on time, and the order amending the decision on the basis thereof was issued while the case was still within the court's jurisdiction. To allow the appeal as it was allegedly perfected by the petitioner would be to place before the appellate court for review a decision which had already been set aside and which, even in case of affirmance, would not be susceptible of execution. Furthermore, such a view would place it within the power of one of the parties, by the simple expedient of immediately perfecting his appeal, to deprive the other party of the right to ask for a reconsideration of the decision, let alone to have the court approve his own appeal if such a motion is denied. These consequences find no justification in the Rules.

The proper procedure for the trial court to have taken in this case was to defer approval of the herein petitioner's appeal until the other party's motion for reconsideration had been finally resolved; but its inadvertently premature action in the premises was not beyond recall, and its order to have the record on appeal amended so as to incorporate therein its real decision in the case was entirely within its power.

The instant petition is therefore dismissed, and the writ prayed for denied, with costs against the petitioner.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.