

EDILBERTA P. ANOTA, AND SINFOROSO B. ANOTA, PETITIONERS, VS. EDUARDO BERMUDO, JR., VALENTIN BERMUDO AND PERFECTO BERMUDO, HEIRS OF EDUARDO BERMUDO, SR., DECEASED; JOAQUIN JACA,...

G.R. No. L-29417. September 27, 1968

Ponente: DIZON, J.

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DIZON, J.:

Petition to review by certiorari a resolution of the Court of Appeals dated March 1, 1968 dismissing herein petitioners' appeal in CA-G.R. No. 37521-R on the ground that their record on appeal did not contain "such data as will show that the appeal was perfected on time". A motion for reconsideration filed by petitioners was denied by said court. Attached to the petition is the printed record on appeal in question. At pages 51-67 thereof the decision of the Court of First Instance of Manila dated April 5, 1965 appears reproduced. Right after it (Record on Appeal p. 67) appears a statement to the effect that "On May 14, 1965 defendants, having been notified of the above decision, filed the following motion for reconsideration:". It is thus obvious that the record on appeal does not show upon its face the date when herein petitioners received notice of the aforesaid decision of the trial court—a factor indispensable for the proper and correct computation of the period of appeal. Moreover, said decision is dated April 5, 1965, while the motion for reconsideration was allegedly filed on May 14 of the same year. In between these two dates is a period of thirty-nine (39) days.

Then on page 71 of the record on appeal appears the order of the trial court of July 26, 1965 denying petitioners' motion for reconsideration. Again, the record on appeal does not show upon its face the date when herein petitioners received notice of said order. What appears after said order is a statement to the effect that petitioners had been notified of said order dated July 26, 1965—without stating when the notice was received—and that on August 7, 1967 they filed their notice of appeal.

The foregoing shows that the Court of Appeals correctly dismissed the appeal upon the ground already mentioned.

It will be noticed, however, that the action commenced in the trial court is one for partition (see complaint, record on appeal, PP- 2-7). As a matter of fact, the decision from which petitioners appealed provides for the partition of Cadastral Lot No. 2274 of the Cadastral Survey of Tacloban (Idem. p. 66) and requires the parties to submit the corresponding project of partition. It is clear, therefore, that said decision is not final in character but interlocutory and, therefore, not appealable until the filing and approval of the project of partition ordered by the court and after the latter has rendered the final judgment in the case in accordance with Section 7, Rule 69 of the Rules of Court (Fuentebella vs. Carascoso, G.R. No. L-48102, May 27, 1942).

PREMISES CONSIDERED, the petition under consideration is dismissed.

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

Petition dismissed.

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