

GENEROSA CAWIT AND BRAULIO LUMAYNO, PETITIONERS, VS. THE HON. COURT OF APPEALS AND NOE, TOMAS AND GERARDO, ALL SURNAMED DINO, RESPONDENTS.

G.R. No. L-38039. October 04, 1988

Ponente: BIDIN, J.

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BIDIN, J.:

This is a petition assailing the Resolution dated January 25, 1973 of the Court of Appeals in CA-G.R. No. 50644-R which dismissed herein petitioners' appeal on the ground that the Record on Appeal does not contain sufficient data, particularly, the date of receipt of the trial court's decision to show that the appeal was perfected on time.

Private respondents, as co-owners of lot No. 2318 Escalante Cadastre, instituted a civil action for legal redemption before the then Court of First Instance of Negros Occidental at San Carlos City against petitioners to redeem the 1/7 share of said parcel of land belonging to one of the co-owners which was purchased by the petitioners.

After trial and hearing, the lower court, on January 20, 1972, rendered a decision against petitioners, allowing private respondents to redeem the questioned property.

On February 21, 1972, petitioners filed with the trial court a notice of appeal and appeal bond. On February 24, 1972, the record on appeal was filed and the same was approved by the court a quo in its Order dated March 16, 1972 without private respondents' opposition.

Petitioners submitted before the Court of Appeals forty (40) copies of the printed record on appeal. On December 5, 1972, private respondents filed a motion to dismiss appeal on the ground that the record on appeal did not contain sufficient data to show that the appeal was perfected on time.

On January 25, 1973, as previously stated, the Court of Appeals dismissed the appeal. Petitioner sought reconsideration of the said resolution but the same was denied on November 20, 1973, hence, this petition.

The issue in this case is whether or not the failure to state in the Record on Appeal the date of receipt by petitioners of the trial court's decision to show that the appeal was perfected on time is fatal to the appeal.

In the early case of *Berkenkotter vs. Court of Appeals*, promulgated on September 28, 1973, 53 SCRA 228, We departed from the rigid interpretation of Section 6, Rule 41[1] of the Rules of Court to the effect that failure to state and/or show in the Record on Appeal that the appeal was perfected on time is a sufficient cause for the dismissal of the appeal. In that case, We said:

"The mere absence of a formal order granting the motion for extension of time to file the record on appeal should not be fatal to the petitioner if the record on appeal filed within the requested extension period was approved by the Court a quo. As previously stated, the approval thereof carries with it the approval of the

motion for extension and the mere failure of the record on appeal to show such approval should not defeat the right to appeal. 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. There is every reason, therefore, to apply the principle of substantial justice to the instant case for the following considerations first, the Court is given the discretion to extend the period for filing the record on appeal, notice of appeal and appeal bond, provided the notice for extension of time is filed within the 30-day reglementary period; second, there is every reason to assume that the record on appeal was 'filed on time' because it was approved after due hearing by the Court in its Order dated November 14, 1972; and last, but not the least, considering the merits of the case, to dismiss petitioners' appeal would not serve the ends of justice."

The above doctrine has been followed in *Pimentel vs. Court of Appeals*, 64 SCRA 475 (1975); *Morales vs. Court of Appeals*, 67 SCRA 304 (1975); *Krueger vs. Court of Appeals*, 69 SCRA 50 (1976); *San Pedro vs. Court of Appeals*, 72 SCRA 536 (1976); *Aznar vs. Court of Appeals*, 85 SCRA 372 (1978); *Trans World Airlines, Inc. vs. Court of Appeals*, 106 SCRA 566 (1981); *Republic vs. Court of Appeals*, 118 SCRA 409 (1982); and *Garbo vs. Court of Appeals*, 129 SCRA 616 (1984).

Although petitioners' record on appeal failed to indicate when they (petitioners) received a copy of the trial court's decision dated January 20, 1972, there is a compensating feature that redeems petitioners' record on appeal from its apparent deficiency. It is a fact of record that the trial court approved petitioners' record on appeal in an Order dated March 16, 1972 without objection on the part of private respondents. Since the validity and accuracy of this order of approval of the record on appeal by the trial court has not been questioned by private respondents, respondent Appellate Court should have relied thereon and held that the petitioners' appeal had been perfected on time. Thus, in *Pimentel vs. Court of Appeals*, supra, We ruled:

"But the herein private respondents do not question the correctness of the order of the trial court dated January 24, 1974, approving the records on appeal on the ground that 'there being no more objections to the corrected records on appeal x x x and it appearing that the notice of appeal, records on appeal and appeal bonds have been filed within the reglementary period, x x x.' Inevitably they admit the facts stated in said order. Hence, implicit in the said order are the data required to show the fact that the appeal was perfected within the reglementary period. Because the said order approving the records on appeal is part of both the original and printed records on appeal and the accuracy and truth of the factual statements therein are not impugned by herein private respondents, the respondent Appellate Court should have relied on the same and could have determined therefrom that the appeal in both cases was perfected on time."

As pointed out, in *Berkenkotter* and previously quoted herein, "(n)o 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."

Furthermore, the records show that the questioned decision dated January 20, 1972 of the trial court whose station is in San Carlos City, Negros Occidental, was sent by registered mail on January 22, 1972 to petitioners' counsel at Escalante, Negros Occidental. The said decision was received by the Post Office of Escalante on February 4, 1972. The same was delivered and received by the addressee on February 11, 1972 (p. 11, Rollo). The record on appeal was filed on February 24, 1972 or only after a lapse of 13 days. Even assuming that the questioned decision was delivered to petitioners' counsel on February 4, 1972, the same day when the decision was received by the Post Office of Escalante, still the record on appeal was filed within the 30-day reglementary period to perfect the appeal.

An appeal is an essential part of our judicial system. Courts should proceed with caution so as not to deprive a party of the right to appeal. It would be in keeping with the ends of substantial justice if petitioners' appeal were to take its course. Petitioners believe that the questioned property can no longer be redeemed because it was sold to them way back on July 25, 1959 and private respondents have actual knowledge of the sale. On the other hand,

private respondents' stand is that the 30-day redemption period should be counted from December 19, 1969 when they were notified in writing by the vendor and co-owner Teodoro Dino of the sale of the land; and that the offer to redeem was made on December 23, 1969, which was within the redemption period.

WHEREFORE, the resolutions of the Court of Appeals dated January 25, 1973 and November 20, 1973 are hereby Reversed and Set Aside and the said court is hereby ordered to reinstate and give due course to petitioners' appeal in CA-G.R. No. 50644-R.

No pronouncement as to costs.

Fernan, C.J., Feliciano, and Cortes, JJ., concur.

Gutierrez, Jr., J., on leave.

[1] Sec. 6. Record on appeal; form and contents there-of. - The full names of all the parties to the proceedings shall be stated in the caption of the record on appeal and it shall include the order or judgment from which the appeal is taken, and, in chronological order, copies of only such pleadings, petitions, motions and all interlocutory orders as are related to the appealed order or judgment and necessary for the proper understanding of the issue involved, together with such data as will show that the appeal was perfected on time. If an issue of fact is to be raised on appeal, the record on appeal shall include by reference all the evidence, oral and documentary, taken upon the issue involved. The reference shall specify the documentary evidence by the exhibit numbers or letters by which it was identified when admitted or offered at the hearing, and the oral evidence by the names of the corresponding witnesses. If the whole oral and documentary evidence in the case is to be included, a statement to that effect will be sufficient without mentioning the names of the witnesses or the numbers or letters of exhibits. Every record on appeal exceeding twenty (20) pages must contain a subject index.

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