

FELICIDAD MANGALI, BENJAMIN MANGALI, BENITO MANGALI, AND JULIO MANGALI, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS, TRINIDAD MANUEL VDA. DE MENDOZA, BERNARDO MENDOZA I, BER...*G.R. No. L-47296. August 21, 1980*

Ponente: BARREDO, J.

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Petition for review of the decision of the Court of Appeals in G. R. No. L-6124-SP, a petition for mandamus and certiorari, filed by herein private respondents Trinidad Manuel Vda. de Mendoza et al., seeking to compel the Court of First Instance of Bulacan, Br. VII, to give due course to their appeal from its decision in its Civil Case No. 4426-M, an action for "quieting of title and/or removal of clouds and declaration of ownership" which herein petitioners who were the plaintiffs won.

As a fitting background, We deem it best, in the interest of substantial justice, to quote the pertinent portions of the decision of the trial court in said Civil Case No. 4426-M which private respondents would like to be appealed notwithstanding that their amended record on appeal, as found by the trial court, was filed out of time:

"RESOLUTION OF THE CASE

"From the evidence submitted by both parties and particularly from the stipulated facts found in the PRE-TRIAL ORDER dated August 23, 1974, there is NO DISPUTE that Lot No. 2 (one of the nine lots included in O.C.T. No. 12192 of the Bulacan Registry of Property) was sold a retro on October 8, 1929 by the registered owner Arcadio Mendoza in favor of one Gregorio dela Cruz for P500.00; that Arcadio Mendoza on May 2, 1935, subsequently in a deed of absolute sale, sold his 'right to redeem' to Liberato Mangali for P500.00; and that Liberato Mangali, thru a deed of reconveyance executed by Gregorio dela Cruz on May 6, 1935, redeemed the property also for the sum of P500.00. These transactions are not only registered or annotated on the Original Certificate of Title No. 12192; they have also been expressly stipulated upon, as can be seen from the PRE-TRIAL ORDER.

"(1) On the Issue of Alleged Reconveyance

"Now then the allegation by the plaintiffs that Arcadio Mendoza actually returned or paid back to Liberato Mangali the sum of P500.00 is completely unavailing first because if true, there was no actual reimbursement to Liberato Mangali of the total P1,000.00 he is supposed to have spent (P500.00 as the purchase price of Arcadio Mendoza's 'right to redeem', and P500.00 as the price consideration given by Liberato Mangali for the reconveyance executed by Gregorio dela Cruz), and secondly, because there is absolutely NO EVIDENCE that said P500 had been given to Liberato Mangali with the latter's obligation of giving back to Arcadio Mendoza the ownership of Lot No. 2 - for the simple reason that the evidence of this point attempted to be introduced was NOT ADMITTED by the Court, for to do so, despite defendants' objection, would be to run counter to the Dead Man's Statute ordained in Rule 130, Section 20 (a) of the Revised Rules of Court. x x x" (Pp. 117-118, Rec.)

"x x x The annotations and entries in the title are documentary evidence, yes but not of the alleged reconveyance by Liberato Mangali in favor of Arcadio Mendoza. For the rule is clear: documentary, not testimonial, evidence can be given against a deceased person. Since there is no documentary evidence on the point, no testimonial evidence on the same matter can be given effect - despite documentary evidence on OTHER MATTERS, such as those enumerated hereinabove. And even conceding that the oral testimony may be regarded as part of the testimony of witnesses, still this Court holds that the testimony thereon is vague, uncertain, biased, self-serving and unbelievable. Besides, why was not a written document executed when after all, the other transactions here were all WRITTEN and REGISTERED? This is undubitable proof that no such reconveyance to Arcadio Mendoza was ever made by Liberato Mangali." (Pp. 119-120, Rec.)

"x x x x x x x x

"(2) On the Issue of the Effect of Adverse Possession, Prescription, and Laches on Entries, Conveyances, Liens, Burdens or Encumbrances Annotated on a Torrens Certificate of Title

"It is alleged by the plaintiffs that because neither the defendants nor their predecessors-in-interest made any attempt or step to procure a separate title for Lot No. 2 or to make effective their rights under the entries annotated on the Title (from May 6, 1935 when Liberato Mangali repurchased Lot No. 2 from Gregorio dela Cruz) up to and until the death of Liberato Mangali on July 9, 1938, and up to and until the death of Guadalupe Mendoza Mangali on March 30, 1970 (resulting in the fact that up to now, Original Certificate of Title No. 12192 is still in the name of Arcadio Mendoza, with the defendants having no separate title or titles under their own names or of their immediate predecessors), and because the plaintiffs have been in possession of the property complete with tax declarations and tax receipt payments - the defendants have lost whatever rights they previously had over the property by laches, possession, and prescription with the result that the plaintiffs have already acquired the ownership of Lot No. 2.

"Such a contention against a backdrop of well-settled postulates in the ownership of land and the registration of title or real rights thereto does not find legal or argumentative support. Suffice it to state that laches, adverse possession, and prescription can have absolutely no effect on the ownership of the registered owner or of his successors-in-interest. This is a cardinal rule under the Land Registration Law. One important point however has been raised - it is claimed that the defendants are not and have never been the registered owners of Lot No. 2, and in fact, up to now Lot No. 2 is still registered in the name of Arcadio Mendoza, ergo, the defendants do not have the protection of the principle above adverted to. This contention is COMPLETELY UNTENABLE. In the first place, even assuming arguendo that the defendants are not the registered owners, still they are undeniably successors-in-interest of the successor-in-interest (Liberato Mangali) of the registered owner (Arcadio Mendoza), with respect to Lot No. 2 - the succession of Liberato Mangali to the ownership of Lot No. 2 being clearly indicated on the Original Title itself in view of the purchase by Liberato Mangali of the 'right to redeem' and the 'redemption' itself in Entries Nos. 13541 and 13542, respectively. Hence, the defendants' right cannot be lost by laches, adverse possession, and prescription. Secondly, the real rights of the defendants to Lot No. 2 have not only been acquired by public instruments (thus they have acquired ownership) but have actually been registered. Hence, in a very real sense, an examination of the Original Certificate of Title would show that defendants' father, Liberato Mangali, was himself a REGISTERED OWNER, being a co-owner of the entire property embraced by the Original Certificate of Title (in the sense that he was exclusive owner of Lot No. 2, while Arcadio Mendoza was exclusive owner of the other seven lots embraced in the Title). This was a right obtained by Liberato Mangali not only as against Arcadio Mendoza but as against the entire world, in view of the REGISTRATION (thru the entry or annotation) of the real right. Thus Liberato Mangali and his successors-in-interest are entitled to the full protection offered by the principle that laches, adverse possession, and prescription cannot militate against the ownership of the registered owner and his successors-in-interest. Plaintiffs further claim that defendants have delayed too much in making effective the rights they may have acquired by redeeming the property from Gregorio dela Cruz. There was no such delay for the simple reason that there is NO LAW requiring them to take steps to obtain a separate title, NO LAW requiring them to make

a demand for the physical possession of the property, NO LAW requiring them to be in actual possession of the property, NO LAW requiring them to ask for a physical partitioning of the property. In fact, the rule is that the right to demand partition (whether metaphysical or actual) does not prescribe, and this is particularly true in the case of owners or co-owners protected by a Torrens Certificate of Title. Where there is no duty, there can be no neglect, and where there is no neglect, there cannot be laches. Finally, even if there be laches, the rule is clear: the ownership of the registered owner and his successors-in-interest must prevail. Thus the case of *Alzona v. Capuniton*, 4 SCRA 450, 454 (wherein plaintiffs-appellants were neither children nor grandchildren, but only nephews and nieces, and where, no right was ever annotated or entered in favor of the parents of said nephews and nieces) can have no application in the instant case for as already shown, the title to Lot No. 2 is effectively already in the name of Liberato Mangali, and therefore those of his successors in interest (See *Eugenio et al. vs. Perdido*, L-7083, May 19, 1955; *Guinto v. CA, et al.*, L-5541, June 25, 1955). In fact, it cannot even be said that it is still Arcadio Mendoza who is the registered owner of Lot No. 2. He is indeed the registered owner of the seven other lots embraced in the Original Certificate of Title, but he is NOT THE REGISTERED OWNER OF LOT NO. 2, for the person whose right to Lot No. 2 is registered is clearly Liberato Mangali - a fact evident in the Original Certificate of Title itself." (Pp. 120-124, Rec.)

After this decision was promulgated, it appears that within the reglementary period for appeal, private respondents filed their notice of appeal, appeal bond and record on appeal, but due to objections on the part of petitioners, the trial court issued on January 29, 1976 the disputed order as follows:

"In view of the arguments stated in the Opposition to Approval of Plaintiffs' Record on Appeal dated January 27, 1976 and filed with the Court on January 28, 1976 and finding that the arguments therein appear to be reasonable, this Court hereby orders the defendants (plaintiffs) to include in the Record on Appeal all the pleadings referred to in said Opposition before the approval thereof can be made. (Word in parenthesis and underscoring supplied)."

Purportedly in compliance with the foregoing order, respondents filed on March 1, 1976 their amended record on appeal. This was already nineteen (19) days after their having received the said order. In consequence, on March 15, 1976, petitioners filed a motion to dismiss the appeal for having been filed out of time allegedly in violation of Section 7 of Rule 41 which provides:

"SEC. 7. Hearing and approval of record. - Upon the submission for approval of the record on appeal, if no objection is filed within five (5) days, the trial judge may approve it as presented or, upon his own motion or at the instance of the appellee, may direct its amendment by the inclusion of any matters omitted which are deemed essential to the determination of the issue of law or fact involved in the appeal. If the trial judge orders the amendment of the record, the appellant, within the time limited in the order, or such extension thereof as may be granted, or if no time is fixed by the order within ten (10) days from receipt thereof, shall redraft the record by including therein, in their proper chronological sequence, such additional matters as the court may have directed him to incorporate, and shall thereupon submit the redrafted record for approval, upon notice to the appellee, in like manner as the original draft."

After due hearing of such motion to dismiss appeal, on July 2, 1976 the trial court issued the following order:

"The 'Motion to Dismiss Appeal' dated March 15, 1976, after due hearing and after considering the other pleadings of the parties on the matter, including the 'Opposition to Motion to Dismiss Appeal' and the 'Reply to Plaintiffs' Opposition to Motion to Dismiss Appeal' is hereby GRANTED, in view of the failure of the plaintiffs to perfect their appeal within the period provided for by the Rules of Court, more specifically, the plaintiffs failed to comply with the order of this Court dated January 29, 1976 within the 10-day period fixed by the Rules of Court.

x x x x

"WHEREFORE, as already stated, the appeal in this case is hereby DISMISSED."

Their two motions for reconsideration of the foregoing order having been denied, private respondents filed with the Court of Appeals the mandamus proceedings which culminated on May 26, 1977 in the judgment now under review thus:

"WHEREFORE, the instant petition is granted as prayed for, the orders dismissing the appeal and the motions for reconsideration are hereby set aside, and respondent judge is ordered to approve the amended record on appeal and give due course to petitioners' appeal. The writ of preliminary injunction heretofore issued is declared permanent. Without pronouncement as to costs."

The motion for reconsideration of said judgment timely filed by respondents was, after respondents had filed their comment thereon, denied on October 25, 1977, hence the instant petition for review.

Reasoning out its conclusion favorable to respondents' pose, in its impugned decision, the Court of Appeals held:

"x x x While it may be true that Section 7 has fixed the period of 10 days from receipt of the order to redraft the record on appeal, in case no time as here was limited in the order, however, it can be fairly and justly deduced from the order directing petitioners 'to include in the record on appeal all the pleadings referred to in the opposition thereto before the approval thereof can be made' that petitioners were granted 'an indefinite period of time as would be reasonably necessary' for them to comply therewith, especially so when the petitioners had already complied with all the requirements for perfecting their appeal but were merely required to incorporate additional pleadings or matters because of the opposition submitted after the original record on appeal was filed.

"In the recent case of Micaela Aggabao v. Philippine Commercial & Industrial Bank, et al., G.R. No. L-39833, promulgated on Feb. 20, 1976, the Supreme Court has held thus -

While the trial court did not fix a specific time limit in its May 25, 1973 Order for the filing of the amended record on appeal, it certainly did not mean thereby that the alternative fixed 10-day period supplied by the cited Rule 'if no time is fixed by the order' should apply since it had precisely provided therein that it was 'holding in abeyance' its resolution on the approval of petitioner's original record on appeal until after incorporation therein of its amendatory order of the preceding day amending the original decision and of certain objections thereto after which petitioner was yet to comply with its order to set for hearing the approval of the amended record on appeal (when under the cited rule, a record on appeal, whether original or amended, need not be set for hearing).

In other words, it is quite clear that the trial court was granting petitioner an indefinite period of time as would be reasonably necessary for her to comply with the directive in the May 25, 1973 Order, apparently having in mind that petitioner had already complied with all the requirements for perfecting her appeal but that petitioner was now required to incorporate additional pleadings and orders because of its amendment of the original decision after the filing of the original record on appeal.

That the trial court did not thereby mean that the 10-day period supplied by the cited Rule 'if no time is fixed by the order' should apply and that this was likewise the understanding of the parties is manifestly evident from the following factual and legal considerations: -

- No objection was presented by respondents to the indefinite period of time granted by the trial court, during which time it would 'hold in abeyance' its resolution on the approval of the record on appeal:
- Upon the lapse of the Rule's ten-day period on June 29, 1973, no motion to dismiss the appeal was filed by respondents:
- On the contrary, after the lapse of over a month without the amended record on appeal having been filed, the trial court issued *motu proprio* its July 31, 1973 Order this time specifying a definite period and giving

petitioner a final fixed period of 20 days within which to do so, under pain of having her appeal declared abandoned, and again no objection whatever was heard from respondents; and

- Petitioner's period for perfecting her appeal after the trial court amended its decision per its previous day's amendatory Order of May 24, 1973 commenced anew for another thirty (30) days and could not legally be shortened to ten (10) days, even if the trial court were minded (which it obviously was not) to so expressly shorten it in its May 24, 1973 Order.

Under the facts and circumstances of record, the Court is satisfied that since the amended record on appeal was admittedly filed within the 20-day extended period granted in the trial court's July 31, 1973 Order, the lesser ten-day period supplied by Rule 41, Section 7 'if no time is fixed in the order' finds no application, and mandamus should issue for the giving of due course to the appeal timely perfected by petitioner-appellant (Underscoring Supplied)."

"True it may be that the facts and circumstances in the Aggabao case are not entirely similar to those obtaining in the case at bar. However, it is clear in that case that the Supreme Court would allow as it did the granting of an 'indefinite period of time as would be reasonably necessary' for a party to comply with the trial court's order to incorporate additional pleadings and orders in the record on appeal. Likewise, it is clear that when respondent judge in the instant case simply ordered petitioners 'to include in the Record on Appeal all the pleadings referred to in said Opposition before the Approval thereof can be made', he had granted them an 'indefinite period of time' as would be reasonably necessary' to comply therewith. Such being the case, the 10-day rule should not be applied, more so strictly, as respondent judge did, considering that petitioners filed their compliance only 9 days after the tenth day and there is no showing whatsoever of needless delay or that prejudice of any kind had been caused to private respondents thereby. As ably argued by petitioners in their Second Motion for Reconsideration dated August 27, 1976, in the Aggabao case the counsel forgot to file the amended record on appeal for more than one (1) month from receipt of the court's order, not merely 9 days as in the case at bar, and yet the Supreme Court ruled that no delay was incurred and the order meant to give Aggabao 'an indefinite period of time as would be reasonably necessary for her to comply with the directive in the May 25, 1973 Order'. It even sustained the trial court's order extending the period to comply for another 20 days.

"In this regard, it may be well to cite the rule that the provisions of the Rules of Court should be liberally construed to the end that the object thereof be promoted and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding (Sec. 2, Rule 1). Hence, it has been held that 'a party who, acting in good faith and mis-interpreting Section 7, Rule 41 of the Rules of Court, submitted, within the period allowed him by the court, an amended record on appeal which, although substantially in conformity with said provision, was not strictly in accordance with the same as regards matters merely of form, may be allowed to comply fully therewith by submitting another, even beyond the reglementary period' (Italics supplied; Francisco, The Revised Rules of Court, Annotated & Commented, Vol. II, p. 113).

"Moreover, the respondent judge's opinion in his order dated July 2, 1976, dismissing the appeal, to the effect that the doctrine in the case of *Silvestra Deymos Vda. de Oyson v. Hon. Demetrio G. Vinzon, et al.*, 8 SCRA 455 allowing the incorporation of additional pleadings within a reasonable period is no longer applicable as it was promulgated on July 26, 1963 when the former Rules of Court was still in force, wherein the 10-day period was not fixed, unlike the present Rules of Court, cannot be sustained in view of the decision of the Supreme Court in *Rodriguez v. Court of Appeals*, 68 SCRA 262, promulgated much later or on Nov. 28, 1975, the pertinent portion of which is as follows:

'As early as the case of *Vda. de Oyson 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***'.

'Here, private respondents do not dispute the fact that the amended record on appeal was filed within the fifteen-day period prescribed by the court. It was for this reason that the trial court declared that the amended record on appeal 'is in order and in accordance with law'. As We emphasized in *Berkenkotter v. Court of Appeals, and Morales, et al. v. Court of Appeals, et al.*, '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.' Indeed, the trend of the rulings of this Court is to afford every party-litigant the amplest opportunity for the proper and just determination of his cause, freed from the constraints of technicalities." (Pp. 60-65, Record.)

We are, to be sure, in full agreement with the Court of Appeals in that in the disposition of judicial controversies, reasonable and justifiable liberality in the application of procedural rules should be the guiding principle, where otherwise substantial justice would be jeopardized. Inadequacies and errors of form should be overlooked when they would defeat rather than help the judge in arriving at a just and fair result as to the essential merits of any case. But all these is not to say that the rules fixing periods within which certain acts must be done either by the parties or by the court come within the realm of the above rules of liberality in adjective law. Public interest demands that there be limits of time in the procedure laid down for the administration of justice, lest through inadvertence, negligence or indolence, not to speak of malice, suits may be unduly prolonged, thereby giving truth to that lamentable situation of justice delayed, justice denied. In other words, when it comes to compliance with time rules, the Court cannot afford unexcusable delay.

"In a long line of decisions, this Court has repeatedly held that while the rules of procedure are liberally construed, the provisions on reglementary periods are strictly applied as they are deemed indispensable to the prevention of needless delays and necessary to the orderly and speedy discharge of judicial business' (*Alvero vs. de la Rosa, et al.* 42 O.G. 316; *Valdez vs. Ocumen, et al.* L-14536, Jan. 30, 1930). The same is true with respect to the rules on the manner and periods for perfecting appeals (*Gutierrez vs. Court of Appeals*, 26 SCRA 32).'*(Italics supplied)*. (*Provincial Sheriff of Rizal vs. Court of Appeals*, 68 SCRA 329, 336.)

We reiterated the same ruling in *Macabingkil vs. People's Homesite and Housing Corporation*, thus:

"x x x. These provisions of the Rules of Court prescribing the time within which certain acts must be done or certain proceedings taken, are considered absolutely indispensable to the prevention of needless delays and to the orderly discharge of judicial business (*Alvero vs. de la Rosa*, 76 Phil. 428). The time can be extended only if a motion for extension is filed within the time or period provided therefor. In the case at bar, no motion for extension was ever filed by petitioner *Macabingkil* before March 23, 1968, and, as such, the said decision of March 1, 1968 has already become final and executory. To reiterate, perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional, and failure to perfect an appeal as required by the Rules has the effect of rendering the judgment final and executory." *(Italics supplied)*. (L-29080, August 17, 1976, 72 SCRA 326, 339.)

In *Trans-Philippines, Inc. vs. Court of Appeals, et al.*, G. R. No. L-42184, July 29, 1977, 78 SCRA 154, We went as far as to emphasize once more that non-compliance with the period for appeal is jurisdictional. We held:

"Private respondent *Luzon Stevedoring Corporation*, however, argues that it filed this record on appeal within the period granted by the trial court in its Order of February 4, 1975 and it does not have to plead fraud, accident, mistake or excusable negligence to secure approval of its record on appeal. This argument fails to consider the circumstance that at the time when the trial court issued its Order of February 4, 1975, the period to file the record on appeal had already expired, hence the trial court had no longer any authority to grant the extension, as there was no longer any period to extend. Compliance with the period provided by law for the

perfection of an appeal is not merely mandatory but it is jurisdictional requirement, and failure to perfect an appeal within the reglementary period renders the judgment of the court final (*Antique Sawmills, Inc. v. Zayco, et al.*, 17 SCRA 316.)”

Indeed, very apt, in the light of the circumstances of the case at bar, is what We said in *Workmen's Insurance Co., Inc. vs. The Court of Appeals*, 40 SCRA 124; and We quote:

"For as Justice Reyes also observed for the Court in *Bello vs. Fernando*, 'the right to appeal is not a natural right nor a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law'. It has long been recognized that strict compliance with the Rules of Court is indispensable for the prevention of needless delays and for the orderly and expeditious dispatch of judicial business. For Petitioner to seek exception for its failure to comply strictly with the statutory requirements for perfecting its appeal, strong compelling reasons such as serving the ends of justice and preventing a grave miscarriage thereof must be shown, in order to warrant the Court's suspension of the Rules. No such reasons have been shown to exist in this case." (*Italics supplied*).

The above doctrinal principles on liberality in the application of procedural rules qualified by the indispensability, in the greater interest of justice and public policy, of adhering strictly to the time limits set by the rules, specially in making an appeal which, after all is neither a matter of expressed constitutional right nor inherently a part of due process being fundamental and elementary and, therefore, ought to be within the easy grasp of every practicing member of the bar and, more so, of every worthy occupant of a judicial office, it may be said that in a sense the real issue in the instant case actually revolves around the proper construction of the order in question of the trial judge, quoted earlier, regarding the filing and approval of the respondents' amended record on appeal. Stated differently, Our problem is whether by the terms of his order, the trial judge gave private respondents an indefinite period within which to amend their record on appeal or, on the contrary, fixed no time for the filing of such amendment.

As can be seen, His Honor ordered respondents "to include in the Record on Appeal all the pleadings referred to in said Opposition (petitioners') before the approval thereof can be made." Construing such order, the Court of Appeals held that "it can be fairly and justly deduced from" therefrom "that petitioners (herein private respondents) were granted 'an indefinite period of time as would be reasonably necessary' for them to comply therewith x x x." And to support such construction, the case of *Aggabao vs. Philippine Commercial & Industrial Bank*, 69 SCRA 354 is cited. We disagree with such ratiocination of respondent court.

The very opening statement of *Aggabao* betrays the appellate court's erroneous reliance thereon. This Court said:

"The Court reverses the appealed decision of the Court of Appeals and issues the writ of mandamus for the giving of due course to petitioner's timely appeal from the trial court's orders that it granted petitioner-appellant at first an indefinite reasonable period within which to file an amended record on appeal due to its having amended its original decision and later a final fixed period of twenty days, the limited ten-day period supplied by Rule 41, section 7 'if no time is fixed in the order' for the filing of an amended record on appeal has no application and the trial court gravely erred in rejecting the appeal timely filed within the extended period granted by it." (69 SCRA at p. 355.)

Indeed, the exact words of the trial court's pertinent order in said case were as follows:

"The resolution on the approval of the record on appeal filed by plaintiff is held in abeyance until after the amendatory order of this Court dated May 24, 1973 and the objections thereto by defendant Espada spouses shall have been incorporated in said record on appeal, after which the plaintiff is ordered to set for hearing the approval of the amended record on appeal with notice to opposing parties." (69 SCRA at p. 356.)

And explaining why such order did not amount to 'no time fixed by the order' to file the amended record on appeal, Mr. Justice Teehankee pointed out that:

"While the trial court did not fix a specific time limit in its May 25, 1973 Order for the filing of the amended record on appeal, it certainly did not mean thereby that the alternative fixed 10-day period supplied by the cited Rule 'if no time is fixed by the order' should apply since it had precisely provided therein that it was 'holding in abeyance' its resolution on the approval of petitioner's original record on appeal until after incorporation therein of its amendatory order of the preceding day amending the original decision and of certain objections thereto after which petitioner was yet to comply with its order to set for hearing the approval of the amended record on appeal (when under the cited Rule, a record on appeal, whether original or amended, need not be set for hearing).

"In other words, it is quite clear that the trial court was granting petitioner an indefinite period of time as would be reasonably necessary for her to comply with the directive in the May 25, 1973 Order, apparently having in mind that petitioner had already complied with all the requirements for perfecting her appeal but that petitioner was now required to incorporate additional pleadings and orders because of its amendment of the original decision after the filing of the original record on appeal.

"That the trial court did not thereby mean that the 10-day period supplied by the cited Rule 'if no time is fixed by the order' should apply and that this was likewise the understanding of the parties is manifestly evident from the following factual and legal considerations: -

- No objection was presented by respondents to the indefinite period of time granted by the trial court, during which time it would hold in abeyance' its resolution on the approval of the record on appeal:
- Upon the lapse of the Rule's ten-day period on June 29, 1973, no motion to dismiss the appeal was filed by respondents:
- On the contrary, after the lapse of over a month without the amended record on appeal having been filed, the trial court issued motu proprio its July 31, 1973 Order this time specifying a definite period and giving petitioner a final fixed period of 20 days within which to do so, under pain of having her appeal declared abandoned, and again no objection whatever was heard from respondents; and
- Petitioner's period for perfecting her appeal after the trial court amended its decision per its previous day's amendatory Order of May 24, 1973 commenced anew for another thirty (30) days and could not legally be shortened to ten (10) days, even if the trial court were minded (which it obviously was not) to so expressly shorten it in its May 25, 1973 Order." (69 SCRA at pp. 358-359.)

None of those peculiarities in *Aggabao* just mentioned exist in the case at bar. Here there was no amended decision, the promulgation of which naturally renewed the period for appeal. In the present case petitioners opportunely objected to any construction of the court's questioned order in the sense claimed by private respondents, unlike in *Aggabao* where the party concerned made no timely move to correct any misimpression as to the period granted by the court. To put it differently, in *Aggabao*, there seemed to be a common understanding by both parties that the appellant had been granted an indefinite period to amend her record on appeal. In the instant case, there was no such common understanding. On the contrary, soon after petitioners noted that private respondents filed their amended record on appeal beyond the ten (10) day period fixed in Section 7 of Rule 41, they filed their motion to dismiss the appeal on March 15, 1976.

Moreover, it should be emphasized that in relation to the point in dispute, there is a world of difference between granting an indefinite period", on the one hand, and "fixing no time", on the other, for the filing of an amended record on appeal, just as there is a difference also between "holding in abeyance" a court's resolution on the approval of a record on appeal until certain things required by it are done, on the one hand, and on the other,

"order(ing) defendants to include in the Record on Appeal" certain pleadings "before approval thereof can be made." As We read this latter order, there is no indication at all in it of any intent on the part of the court to hold in abeyance its action on the record on appeal until defendants would comply. What is clear to Us is that defendants were ordered to amend their record on appeal, and the court would act on its approval after they have made the amendment, without fixing the time when such amendment should be made, much less giving the defendants, herein private respondents, an indefinite period, or all the time they wanted, within which to comply. Our construction of said order is that the judge simply ordered private respondents to amend their record on appeal, and he would act on its approval after such amendment has been made, assuming, as the rule commands, that said amendment is filed within ten (10) days from receipt of the order, the court not having fixed any time therefor, much less given them an indefinite period. That the judge did not intend, unlike in *Aggabao*, to give respondents an indefinite period is confirmed in the very subsequent orders His Honor issued dismissing their appeal and denying their motion for reconsideration of such denial.

All that We need to add to the foregoing to sustain the petition herein is to say that both the case of *Rodriguez vs. Court of Appeals*, 6 SCRA 262, and the one therein cited, that of *Vda. de Oyson vs. Vinson*, 8 SCRA 455, are inapplicable here. The *Oyson* case was decided before Section 7 of Rule 41, now providing for the ten (10) day period where no time is fixed by the court, was amended in 1964. Under the 1940 rules, the period was simply such reasonable time as might be needed under the circumstances. *Rodriguez*, on the other hand, involved merely the omission by appellants to state in the record on appeal when the order to amend the same was received by them, thereby making it impossible to determine on the face of the record on appeal whether or not the amended one was filed within the reglementary period. As the Court was by then already pursuing its more liberal policy of not adhering literally to the words of the provision, in the application of Section 1 (a) of Rule 50, We deemed such omission as not fatal. *Rodriguez* did not deal with a disputed application of Section 7 of Rule 41.

In the end, what the Court considers to be most important to perceive is where in the circumstances of this particular case substantial justice lies. Is it in the right, surely not constitutional, of the respondents to appeal, or, is it in the probability or improbability of the judgment of the trial court being reversed, considering the nature of the case, the grounds on which such judgment is based and the legal principles involved, as they unmistakably appear on the face of the judgment itself? In other words, are We to liberalize the application of the rules regarding the period within which an appeal is to be taken in a given case, when it is already obvious to Us from the terms of the judgment in issue that the chances of its reversal or modification is remote, if not improbable, based on the Court's careful appreciation of all relevant and extant circumstances? Let it be recalled at this point, that according to the decision of the Bulacan court, petitioners' evidence consist of transactions in their favor duly registered in accordance with Act 496, the Land Registration Act, whereas, on the other hand, private respondents have nothing but the words of their witness to support a claim of repurchase of real estate. We hold that to allow an appeal questionably taken from a decision that appears to be one that can be hardly improved upon is to sacrifice substantial justice by delaying it at the altar of pure technicality and misunderstood liberality.

IN VIEW OF ALL THE FOREGOING, the decision of the Court of Appeals herein under review is reversed and the judgment of the Court of First Instance of Bulacan, Branch VII in Civil Case No. 4426-M aforementioned is hereby declared final and executory, with costs against private respondents.

Concepcion, Jr., Guerrero, and De Castro, JJ., concur.

Aquino, J., concurs in the result.

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