

HEIRS OF CEFERINO MORALES, REPRESENTED BY MARCELINA SALVADOR VDA. DE MORALES, PETITIONERS, VS. HON. COURT OF APPEALS, PURITA MORALES, FLORO MORALES, EUSTAQUIO MORALES, ENRIQUETA...

G.R. No. L-37229. October 21, 1975

Ponente: MARTIN, J.

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MARTIN, J.:

This is a petition to review on certiorari on April 2, 1973 Resolution of the respondent Court of Appeals, dismissing petitioners' appeal against private respondents in C.A.-G.R. No. 52127-R, with the petitioners urging Us to give meaning and substance to a trial court order approving, after no objection has been interposed by the opposing party, a record on appeal which was later discovered to be lacking in some material data.

Below, in the Court of First Instance of Davao Oriental (Mati, Davao Oriental), private respondents filed a petition on May 27, 1973 against petitioners herein, the heirs of one Ceferino Morales, seeking the review of a decree of registration in favor of Ceferino Morales of a 220, 261 — square meter land. The land was previously owned by the late Graciana Morales, the predecessor-in-interest of private respondents. During his lifetime, Ceferino Morales was appointed by the same court as an administrator of the estate of Graciana Morales; however, when cadastral proceedings were initiated in 1959 at Mati, Davao Oriental, Ceferino Morales claimed absolute ownership of the same parcel of land. As a result, the land was adjudicated to him and registered in his name.

After trial, the Court of First Instance of Davao Oriental held that Ceferino Morales's acquisition of the disputed land was fraudulent and prohibited under civil law. It declared decree of Registration No. N-389174 and Original Certificate of Title No. C-1716 in the name of Ceferino Morales null and void and ordered the registration of the controverted land in the name of private respondents.

Forthwith, petitioners proceeded to the Court of Appeals and sought a review of the unfavorable judgment, but the appeal was dismissed in this wise:

"RESOLVED: There being really nothing in the original Record on Appeal that shows when appellant received copy of the decision, therefore, the Record on Appeal was fatally defective; note that decision was dated 1 August 72 while Record on Appeal is dated 13 Sept. 72. In view whereof, appeal dismissed."

The motion for reconsideration filed by petitioners was denied in the Appellate Court resolution of May 30, 1973.

Pertinently, petitioners' printed record on appeal shows:[1]

"XX

"That on August 1, 1972, Judge Vicente P. Bullecer issued a Decision which reads as follows:

(contents omitted)

"Given in chambers, this 1st day of August, 1972 at Mati, Davao Oriental, Philippines.

"XXI

"That a Notice of Appeal was sent to petitioners and filed with this Hon. Court, pursuant to the provisions of Sec. 4, Rule 41 of the Rules of Court, within the reglementary (sic) period.

"XXII

"That on September 11, 1972, the sum of P120.00 was deposited with the Clerk of Court, per Sec. 5, Rule 41 of the Rules of Court, as APPEAL BOND, under Official Receipt No. 00579052 in the herein case."

It is obvious that the central issue in this case is whether petitioners' record on appeal sufficiently complies with the "material data rule" under Section 6, Rule 41 of the Rules of Court.

The adjective law on the matter provides that if an appeal is pursued to the Appellate Tribunal from the judgment or order of a Court of First Instance, a notice of appeal, an appeal bond, and a record on appeal must be served upon the adverse party or filed with the trial court within thirty (30) days from notice of order or judgment.[2] The record on appeal must contain "such data as will show that the appeal was perfected on time." [3]

The main purpose of the requirement is to enable the appellate court to determine on the basis of the record on appeal itself and without the need of any independent evidence, that the appeal has been made on time,[4] because in cases appealed by record on appeal, the records of the trial courts are not forwarded to the reviewing tribunal and for the appellate court to examine the respective proofs of the parties on the due perfection of the appeal would delay the speedy administration of justice.[5] It is principally intended for the benefit of appellate courts in order that they can speedily facilitate appeal and may not be invoked by the trial court which has before it the complete records and data for such a determination.[6]

In the case before Us, it is readily noticeable that petitioners' record on appeal failed to indicate the date when they (petitioners) received a copy of the trial court decision of August 1, 1972, thus embarrassing the respondent Court of Appeals in determining with ease the timely perfection of their appeal. The mere statement that they sent to the private respondents and filed with the trial court their Notice of Appeal "within the reglementary (sic) period" affords no accurate relief to the Appellate Court to determine the timeliness of petitioners' appeal. Such quoted phrases, according to previous decisions of this Court, is "not a fact but a mere conclusion"[7] which does not indicate the seasonable perfection of the appeal.[8] The subsequent attempt to show the missing data cannot cure the prior omission,[9] since, for such allegation to merit any consideration, it should be so stated in the record on appeal.[10]

But, there is an inescapable 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 November 9, 1972,[11] which materially reads:

"It was shown by movants-counsel [petitioners' counsel] that the notice of appeal and the posting of a cash bond, as required by the Rules of Court for appeals, were made within the reglementary period. Likewise, the record on appeal was filed on time. However, petitioners' counsel [respondents' counsel] pointed out that there were some typographical errors in the record on appeal. It was agreed upon by movants' counsel to have such errors corrected and in fact they have already been corrected. No objection was interposed for the approval of the record on appeal.

"WHEREFORE, finding that the notice of appeal, appeal bond, and record on appeal were all filed within the reglementary period, and finding further that the herein appeal is deemed perfected, the record on appeal is hereby approved." (p. 112, Original Record on Appeal)

Since the validity and accuracy of this approval order of the trial court has not been questioned by private

respondents,[12] respondent Appellate Court should have relied thereon and held that the petitioners' appeal had been made on time. Thus, in the recent case of *Pimentel v. Honorable Court of Appeals*,[13] 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 * * * and it appearing that the notice of appeal, records on appeal and appeal bonds have been filed within the reglementary period, * * *." 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.

"The reason for Section 6, Rule 41 of the Revised Rules of Court in requiring that the record on appeal shall include such data as will show that the appeal was perfected on time, was to obviate and eliminate waste of time that would be incurred by the Appellate Tribunal in requiring the lower court to forward the original record and in examining such records to determine the timeliness of the appeal (*Araneta vs. Madrigal & Co., Inc.*, L-26227-28, Oct. 25, 1966, 18 SCRA 446, 449-50; *Government vs. Antonio*, L-23735, Oct. 19, 1965, 15 SCRA 119). With the existence of the aforementioned order of January 24, 1974 approving the records on appeal because the trial court found that the notice of appeal, the records on appeal and appeal bonds were all filed within the reglementary period and because of the absence of further objections to the corrected records on appeal, the veracity of the grounds stated in said order, not being disputed by herein private respondents, the reason for the rule ceases; because thereby the Appellate Court can rely thereon without need of sending for, and of any further examination of, the original records of the case." (Italics supplied)

And rightly so, because, as pointed out in *Berkenkotter v. Court of Appeals*,[14] "(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."

The intent is thus clear that every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities. At length, the ruling in *Valera vs. Court of Appeals*[15] that the theory of estoppel does not operate against a party who interposed no objection to the approval of the record on appeal in the court below as well as the holding in *Director, Bureau of Printing & Real Property Management v. Court of Appeals*[16] that the mere statement that the record on appeal, notice of appeal, or appeal bond had been filed "within the period" or "within the reglementary period" is a "mere conclusion, not a fact indicative of the seasonable perfection of the appeal," despite the non-objection on the part of the opposing party to the approval of the record on appeal by the trial court as filed on time, have therefore lost what appears to be their "ephemereal vitality".

Finally, We cannot entertain the view of petitioners that the requirements of Section 6, Rule 41 of the Rules of Court should not operate in cadastral cases. The trial of a contested case in a cadastral court is the same as that in a court of first instance, and the usual rules of practice, procedure and evidence govern.[17] In *Sinbengco vs. Arellano, et al.*,[18] the Court held that "the requirements of our Rules of Court relative to the perfection of an appeal in an ordinary case apply in the same manner and with equal force and effect on appeals from a decision of a court of first instance in registration and cadastral proceedings." A fortiori, Section 6, Rule 41 of the Rules of Court operates *ex proprio vigore* in cadastral appeals.

ACCORDINGLY, the resolution of the Court of Appeals, dated April 2, 1973, dismissing petitioners' appeal, and the subsequent resolution, dated May 30, 1973, denying their motion for reconsideration, are hereby reversed and set aside. Case remanded to the Court of Appeals for decision on the merits.

No pronouncement as to costs.

SO ORDERED.

Teehankee, (Acting Chairman), Makasiar, Muñoz Palma, and Aquino, JJ., concur.

Esguerra, J., on leave.

[1] Printed Record on Appeal, at 113, 120, 121. Petitioners concede that their original Record on Appeal does not likewise contain the date of receipt of the trial court decision; see Petition, at 7.

[2] Sec. 3, Rule 41, Rules of Court.

[3] Sec. 6, Rule 41, Rules of Court.

[4] Marcelo Steel Corporation vs. Court of Appeals, L-35851, October 8, 1974, Second Division, 60 SCRA 181.

[5] Araneta vs. Madrigal & Co., Inc., L-26227-28, October 25, 1966; Reyes vs. Carrasco, 39 SCRA 309, March 31, 1971; Government vs. Antonio, L-23735, October 19, 1965, 15 SCRA 11.

[6] Tanalega vs. Tizon, L-30345, March 27, 1974, Second Division, 56 SCRA 117, 118.

[7] Government vs. Antonio, see fn. 5, ante.

[8] Director, Bureau of Building & Real Property Management vs. Court of Appeals, et al., L-31054, March 31, 1971, 38 SCRA 317; Marsman vs. Syquia, L-28027, March 29, 1972, 44 SCRA 118.

[9] Marsman vs. Syquia, ante

[10] Sison vs. Gatchalian, L-34709, June 15, 1973, 51 SCRA 267.

[11] See Brief, petitioners, at 30-31. Copy of subject Order was forwarded to the Court of Appeals on November 29, 1972. Emphasis supplied.

[12] See Motion to Dismiss Appeal filed by private respondents with the Court of Appeals.

[13] L-39423 & L-39684, June 27, 1975, En Banc, per Makasiar, J.

[14] L-36629, September 28, 1973, per Esguerra, J., 53 SCRA 236.

[15] L-29416, January 28, 1971, 37 SCRA 86, followed in Palanca vs. PCI Bank, L-28713, May 31, 1972, 45 SCRA 336.

[16] L-31054, March 31, 1971, 38 SCRA 317.

[17] Director of Lands vs. Aba, et al., 7474-R, August 23, 1952, 48 O.G. 4869, November 1952.

[18] 99 Phil. 959, Emphasis supplied.

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