

**J. ANTONIO ARANETA, PETITIONER, VS. MADRIGAL & CO., INC.,
AND THE HONORABLE JOSE S. RODRIGUEZ, ANTONIO G. LUCERO,
AND ANGEL MOJICA, AS MEMBERS OF THE FIFTH DIVISION OF THE
COURT...**

G. R. Nos. L-26227-28. October 25, 1966

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

These are two (2) original actions for certiorari and mandamus against the Court of Appeals and Madrigal & Co., Inc.

The records show that petitioner J. Antonio Araneta had filed Civil Cases Nos. 37327 and 40703 of the Court of First instance of Manila against respondent, Madrigal & Co., Inc., for the recovery of damages resulting from the destruction caused in an orchard of Araneta, in Las Piñas, Rizal, by several fires that had allegedly crept into said property from the adjoining orchard of Madrigal; that, after a joint hearing of said two (2) cases, decision was, in due course, rendered therein sentencing Madrigal to pay to Araneta, by way of damages, the aggregate sum of P24,996.00, with interest thereon at the legal rate, from the date of the filing of the action until fully paid, and , the costs; that a reconsideration of said decision having been denied, Madrigal filed the corresponding notice of appeal, appeal bond and record on appeal, which was approved by the trial court; that the appeals were thereafter docketed in the Court of Appeals as CA-G.R. Nos. 35044-R and 35045-R; that, after the submission of the printed record on appeal and of the briefs of both parties therein, Araneta filed in the Court of Appeals a motion to dismiss the appeal, upon the ground that, in violation of Rule 41, Section 6, of the present Rules of Court, Madrigal's records of appeal did not contain "such data as will show that the appeal was perfected on time;" that said motion to dismiss the appeal was eventually denied by the Court of Appeals; that the same, likewise, denied a motion to reconsider the action it had thus taken; and that, thereupon, Araneta commenced these actions for certiorari and mandamus, to set aside the resolutions of the Court of Appeals denying his aforementioned motion to dismiss the appeal and motion for reconsideration.

By resolution dated July 5, 1966, we, at first, dismissed the petitions filed by Araneta with this Court, "without prejudice, to action, if any, in the Court of Appeals." However, on motion for reconsideration filed by Araneta, we set aside said resolution and gave due course to the petitions, as well as required respondent to answer thereto.

In its answer, Madrigal does not deny that its records on appeal in the basic cases do not comply with the aforementioned requirement of the Rules of Court. It, however, maintains that said records on appeal had been actually perfected within the reglementary period; that such fact had been proven to the satisfaction of the Court of Appeals; and that, under Rule 41, Section 6, of the Rules of Court, the Court of Appeals has discretion to give due course to respondent's appeals, upon proof of the seasonable perfection of said appeals.

This pretense is, however, inconsistent with our ruling in *Government of the Philippines vs. Luis Antonio, G. R. No. L-23736* (October 19, 1965), in which we held:

"That the records of appeal submitted to this Court violate the provisions of Rule 41, Section 6, as contended by the appellee, is obvious from an examination thereof. Nowhere is it stated therein the date when the appellants or their counsel received notice of the appealed order of March 25, 1963 dismissing their petition for cancellation of appellee's Certificates of Title and for a resurvey of Lot 2959-A of the Cuyapo Cadastre.

"It is thus impossible to determine from the records of appeal, as submitted, whether or not the appeals were taken within the periods prescribed by the rules. x x x.

"The deficiencies pointed out are fatal. For the reason that in ordinary appeals the original record is not forwarded to the appellate court, and because the dates when an applicant received the notice of the pertinent orders or judgment under appeal, and of the denial of his motion for reconsideration or new trial, are facts within the conclusive knowledge of said appellant, the Revised Rules of Court place upon the appellant the burden of showing that his appeal is timely, and for that purpose prescribe (Rule 41, sec. 6) that the record of appeal shall include 'such data as will show that the appeal was perfected on time'. This requirement is mandatory and jurisdictional, for unless appeal is perfected on time the appellate court acquires no jurisdiction over the appealed case, and has power only to dismiss the appeal (*Bello vs. Fernando*, G.R. No. L-16970, Jan. 30, 1962; *Caisip vs. Catangon*, G.R. No. L-14684, August 26, 1960; *Espartero vs. Ladaw*, 49 Off. Gaz., 1439). The certification of the record on appeal by the trial court after expiration of the period to appeal can not restore the jurisdiction which has been lost (*Alvero vs. de la Rosa*, 76 Phil. 428, 433, and cases cited). The principle is confirmed by Rule 50, section 1, subpar. (a), heretofore quoted."

In this connection, it should be noted that, prior to the promulgation of the Rules of Court now in force, the first sentence of Section 6 of Rule 41, was as follows: "The full names of all the parties to the proceeding 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 all pleadings, petitions, motions and all interlocutory orders relating to the appealed order or judgment".

This Court noticed, however, that issues were often raised in appellate courts on whether the appeal had been perfected on time or not, owing to the fact that the data pertinent thereto were not set forth in the record on appeal. Inasmuch as the records of trial courts, in cases appealed by record on appeal, are not forwarded to appellate courts, the latter had no means of checking or verifying the conflicting allegations of fact made, either in the briefs, or in the motion to dismiss the appeal and the opposition thereto, filed by the parties. As a consequence, appellate courts had to examine such evidence as the parties may have submitted thereto, in support of their respective contentions. This entailed additional work and unnecessary waste of time, that contributed to the delay in the final determination of appealed cases. To eliminate such obstacles to the speedy administration of justice, this Court deemed it best, not only to rephrase the first sentence of said Section 6, so as to read:

"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", but, also, to add, at the end thereof, the clause: "together with such data as will show that the appeal was perfected on time".

Obviously, this amendment would become useless and its purpose completely defeated, if we gave thereto the interpretation advocated by the main respondent herein. In other words, we would have the same issues and the same waste of time that were sought to be eliminated by the amendment. Hence, our ruling in *Government vs. Antonio* (supra), which, it should be noted, was made, not in a decision, but, in a resolution, so that the public may know immediately - instead of waiting for the decision on the merits, which might require more time - the effect of said amendment, and the injurious consequences of a failure to grasp its full import could thus be minimized.

It is urged that said ruling should not affect retroactively the cases at bar, inasmuch as the records on appeal

therein were filed and approved almost one year prior thereto, or in November, 1964. We should not overlook, however, the fact that the record on appeal in *Government vs. Antonio*, was filed even earlier. Besides, the amendment of Section 6 of Rule 41 had been in force since January 1, 1964. The case cited merely expounded on its meaning, which we hereby reiterate.

WHEREFORE, the resolutions complained of are hereby set aside, and respondent Court of Appeals directed to dismiss the appeal taken in the aforementioned cases, with costs against respondent *Madrigal & Co., Inc.*

IT IS SO ORDERED.

Reyes, J. B. L., Dizon, Regala, Makalintal, Bengzon, J. P., Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

Barrera, J., on leave.

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