

**PAULINA MARGATE, HEIRS OF TARCELA MARGATE, NAMELY,
RAYMUNDO VILLAMOR, FELIPE VILLAMOR, WINEFREDA
VILLAMOR, HEIRS OF ANTONIA MARGATE, NAMELY, FRANCISCO
IBAY, EUSTAQUIO IBAY, FELI...**

G.R. No. L-42366. December 15, 1982

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Petition for review on certiorari of the Resolution of respondent Court of Appeals, dated September 16, 1975, dismissing the appeal of petitioners, and its subsequent Resolution, dated November 21, 1975, denying the motion for reconsideration.

From the records, it appears that in an action for partition filed by herein private respondents against petitioners, the Court of First Instance of Zamboanga de Norte, Branch II, rendered a decision on October 10, 1974 in favor of private respondents. A copy of the decision was undisputedly received by petitioners on October 14, 1974; that on October 25, 1974, petitioners filed their notice of appeal, serving copy of the same upon counsel for private respondents on the same date; the appeal bond was filed on November 5, 1974, serving copy thereof also upon counsel for private respondents; and the Record on Appeal was filed on November 3, 1974. All the foregoing acts had, therefore, been done within the reglementary period for perfecting appeal.

On January 17, 1975, the trial court issued an order approving the Record on Appeal, without any opposition from private respondents. The case was elevated to the Court of Appeals, and upon order of said court, petitioners paid the sum of P53.00 as appellate docket fee and submitted typewritten copies of the record on appeal, in lieu of printed record on appeal. On August 8, 1975 private respondents filed a motion to dismiss appeal on the ground that private respondents' counsel was not furnished his copy of the record on appeal within the period to appeal. Petitioners filed an opposition to the motion to dismiss appeal on August 22, 1975.

On September 16, 1975, respondent Court of Appeals issued the questioned Resolution dismissing petitioners' appeal on the ground that "having admittedly failed to serve copy of the Record on Appeal into adverse party within the period to appeal, and for the period of more than a month beyond that, and having served by registered mail only after that, it is clear that appeal by then had lapsed."

Petitioners filed a motion for reconsideration of said resolution, but the respondent appellate court denied the motion in its Resolution of November 21, 1975. Hence, the present recourse, petitioners submitting the following arguments:

1. The appeal of petitioners was perfected in the lower court because –

"(a). The notice of appeal and appeal bond were filed in court and furnished the adverse party within the reglementary period; and

"(b). The record on appeal was likewise submitted and filed in court within the period for perfecting appeal, although the copy for respondent Talang's counsel was not received by him on time."

2. The Court of Appeals committed grave error when it disturbed the order of the lower court in favor of allowing the appeal in the absence of a showing that said lower court abused its discretion or acted without jurisdiction in ordering the appeal to push through.

3. When the Court of Appeals ordered the petitioners to pay appellate docket fee and to print (mimeograph or typewritten - accepted) the record on appeal within the period fixed of which the petitioners have complied willingly without even asking for any extension this circumstance, in itself, evinces an honest and earnest desire to pursue the appeal, so that equity demands that the appeal ought not to be dismissed.

4. No harm was caused to the adverse party when a copy of the record on appeal, thru excusable negligence, did not reach the hands of the counsel for respondents. Attempts were made to contact him but he could not be found, and that in any case, the correctness of the record of appeal has never been challenged and was thus readily approved by the lower court.

5. That the Margates have a very meritorious defense sufficient to alter the judgment of the lower court.

We find the present petition meritorious.

Although the Court of Appeals has discretion to dismiss or not to dismiss petitioners' appeal, such discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in both case.[1] In the case at bar, there is no showing that the rights of herein private respondents were adversely affected when they failed to receive a copy of the record on appeal on time. Moreover, the fact that petitioners timely filed their notice of appeal, appeal bond and record on appeal and complied with respondent appellate court's requirements to submit twelve (12) copies of record on appeal and to pay the appellate docket fee without even asking for any extension of time, shows that the court of origin knew that petitioners had no intention to delay the case, a fact which should have merited the leniency of the respondent appellate court. Thus, when no substantial rights are affected, and there is no intention to delay, it is sound judicial discretion for respondent appellate court to admit petitioners' appeal. This is specially true where the procedural lapse is only in furnishing the adverse party with a copy of the Record on Appeal within the reglementary period, considering that the filing of the Record on Appeal may be extended by the court beyond the period prescribed by the rules.

Excusable imperfections of form and technicalities of procedures and lapses in the literal or rigid observance of a procedural rule or non-jurisdictional deadline provided therein should be overlooked and brushed aside as trivial and indecisive in the interest of fair play and justice when public policy is not involved, no prejudice has been caused the adverse party, and the court has not been deprived of its authority or jurisdiction.[2] At any rate, the undeniable fact remains that private respondents' counsel was actually, although belatedly, furnished a copy of the record on appeal.

Moreover, it must be noted that the trial court had issued an order on January 17, 1975,[3] approving the record on appeal without opposition from private respondents. This Court, in a number of cases, has consistently held that where the trial court finds and declares in its order of approval a record on appeal that it was filed on time or within the reglementary period and the correctness, accuracy and veracity of such findings are not impugned, questioned or disputed by the adverse party, the order of approval of the record on appeal is for all intents and purposes a finding of the timeliness of the appeal.[4] Respondent Court of Appeals, therefore, committed grave abuse of discretion when it ruled that petitioners' appeal had already lapsed because private respondents' counsel was not furnished a copy of the record on appeal within the reglementary period. What merits calling attention to

is why it took private respondents' counsel so long to file a motion to dismiss appeal on August 8, 1975, when the order affirming the Record on Appeal was issued on January 17, 1975, an inaction clearly surpassing petitioners' delay in furnishing adverse party with copy of the Record on Appeal.

IN VIEW OF THE FOREGOING, the Resolution of respondent Court of Appeals dated September 16, 1975 dismissing petitioners' appeal and the Resolution of November 21, 1975 denying motion for reconsideration are set aside, and the case is hereby remanded to said respondent Court for proper proceedings and prompt disposition of the appeal on the merits. No costs.

SO ORDERED.

Makasiar, (Chairman), Aquino, Concepcion, Jr., Guerrero, Abad Santos, and Escolin, JJ., concur.

[1] *Obut vs. Court of Appeals*, 70 SCRA 546.

[2] *Rabina vs. Court of Appeals*, 70 SCRA 546. *Alonzo vs. Villamor*, 16 Phil. 315.

[3] p. 22, *Rollo*.

[4] *Manipol vs. Court of Appeals*, 89 SCRA 513 and cases cited therein; *Pajarillo vs. Court of Appeals*, 74 SCRA 151; *Trans World Airlines Inc. vs. Court of Appeals*, 106 SCRA 566.

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