

**PABLO GARBO, PETITIONER, VS. HON. COURT OF APPEALS,
CIPRIANO GARBO, EUSEBIO GARBO, PEDRO GARBO, MARIANO
GARBO, RESTITUTO GARBO, LEONILA GARBO AND ANICETA
GARBO, RESPONDENTS.**

G.R. No. L-39384. June 22, 1984

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

A Petition assailing the Resolution of the then Court of Appeals in G. R. No. 54862-R, entitled Cipriano Garbo, et al., vs. Pablo Garbo, dated July 3, 1974, which dismissed the latter's appeal on the ground of failure of the Record on Appeal to show on its face that the appeal was perfected on time.

Following the liberalized interpretation and application of the "material data rule"[1], an outright reversal of respondent Court's Resolution is called for. However, there is a related question that has to be resolved, as posed in petitioner's Motion for Reconsideration before the Appellate Court. Was the judgment rendered by the Court of origin (the then Court of First Instance of Cebu, Branch VIII) interlocutory in character and, therefore, not appealable?

The case before the Trial Court was, one for Partition between brothers and sisters of a parcel of land of 2,677 sq. ms. located at Tabunok, Sogod, Cebu. Petitioner brother claimed exclusive ownership relying on a deed of sale in his favor. Private respondents, the other brothers and sisters, insisted on co-ownership, contending that it was their late father, Francisco Garbo, who had purchased the disputed property and that petitioner merely occupied the same in trust.

After hearing, the Trial Court rendered judgment, dated September 15, 1972, the dispositive portion of which reads:

"IN THE LIGHT OF THE FOREGOING OBSERVATIONS, this Court is constrained to render judgment declaring the parcel of land described in paragraph 2 of the amended complaint as belonging to the estate of Francisco Garbo. Consequently, the plaintiffs and the defendant being the only children of Francisco Garbo now own pro indiviso the said parcel of land in question. Hence, the complaint for partition is in order, and the Court now decrees that the land in question described in paragraph 2 of the mended complaint be subdivided and partitioned in equal shares among Cipriano Garbo, Eusebio Garbo, Pedro Garbo, Mariano Garbo, Restituto Garbo, Leonila Garbo, Anecita Garbo and Pablo Garbo, or to be specific into eight equal shares. Said plaintiffs and defendant are ordered to submit a project of partition to be approved by this Court within 20 days from receipt of this judgment. Should they fail to submit the project of partition within 20 days, the Court shall appoint a commissioner who will undertake the partition, the expenses of which shall be charged prorata against the plaintiffs and the defendant. No costs.

SO ORDERED."

As the parties had failed to submit the Project of Partition, the Trial Court appointed a Commissioner who

submitted his report on December 11, 1972. On July 3, 1973, the Trial Court approved said Report over petitioner's objection. Petitioner received said Order on July 7, 1973.

Petitioner appealed from the judgment of September 15, 1972 by filing on July 16, 1973, a Notice of Appeal; on July 30, 1973, an Appeal Bond; and on August 1, 1973, the Record on Appeal.

If the Decision rendered on September 15, 1972 were final in character, petitioner's appeal would have been out of time as he had received the judgment on October 11, 1972[2] and the expiry date for interposing an appeal would then have fallen on November 10, 1972.

Petitioner submits that the lower Court judgment is inter-locutory and not appealable as something more remained to be done in the said Court for the complete disposition of the partition case, namely, the appointment of a Commissioner, the proceedings before him, the submission of his report, and the approval of the Project of Partition. In support, petitioner relied on the cases of *Vda. de Zaldarriaga vs. Hon. Eduardo D. Enriquez, et al.*, [3] and the sequel case, *Vda. de Zaldarriaga, et al., vs. Pedro Zaldarriaga, et al.* [4]

The ruling in the cited cases, however, has been abandoned by this Court in *Miranda vs. Court of Appeals* [5], which expressly held that the general rule of partition that an appeal will not lie until the partition or distribution proceedings are terminated will not apply where appellant claims exclusive ownership of the whole property and denies the adverse party's right to any partition. This ruling was reiterated in *Valdez vs. Bagaso* [6] and *Cease vs. Court of Appeals*. [7]

Herein, petitioner precisely claims exclusive ownership of the disputed property against the pro indiviso claim of private respondents. The judgment of the Trial Court declaring that the said property belongs to the estate of Francisco Garbo and is, therefore, of common ownership to be partitioned share and share alike, squarely resolved the very issue of ownership. It is thus a definitive judgment as it decided the rights of the parties upon the issue submitted by specifically granting the remedy sought by the action. Thereby, it was not an inter-locutory order but a final judgment on the merits.

Considering that petitioner, as the losing party, had failed to file his appeal from the judgment of September 15, 1972 of the Trial Court, which petitioner had received on October 11, 1972, his appeal, perfected only on August 1, 1973, must be held to have been filed beyond the reglementary period and the judgment of the Court of origin declared to have become final and executory.

ACCORDINGLY, the instant Petition is hereby dismissed, and the partition of the disputed property among the parties in implementation of the appealed judgment may now be effected. No costs. SO ORDERED.

Teehankee, (Chairman), Plana, Relova, Gutierrez, Jr., and De La Fuente, JJ., concur.

[1] *Republic vs. Court of Appeals*, 118 SCRA 409 (1982); *Trans World Airlines, Inc. vs. Court of Appeals*, 106 SCRA 566 (1981), among others.

[2] Certification by Clerk of Court, p. 37, Rollo.

[3] 1 SCRA 1188 (1961).

[4] 2 SCRA 356 (1961).

[5] 71 SCRA 295 (1976).

[6] 82 SCRA 22 (1978).

[7] 93 SCRA 483 (1979).

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