

JUAN C. PIMENTEL AND SALUD DE LOS REYES, PETITIONERS, VS. HONORABLE COURT OF APPEALS, PAULINO O. ORIEL, AND MACARIA RUIZ, RESPONDENTS.

G.R. Nos. L-39423 & 39684. June 27, 1975

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This petition filed by petitioners Juan C. Pimentel and Salud de los Reyes seeks to annul the resolutions of respondent Court of Appeals dated July 15, 1974 and September 11, 1974 dismissing this appeal (CA-G.R. Nos. 54866-R and 54867-R), which resolutions We hereby set aside as null and void.

The Court resolved to consider this petition as a special civil action, the comment and/or opposition of herein private respondents to the petition as well as the supplement thereto as answer and the case submitted for decision.

It appears that petitioners-spouses filed on October 2, 1969 an application for the registration of a small residential lot before Branch XIV of the Court of First Instance of Pangasinan docketed as Land Case No. 06-R, LRC Rec. No. N-37717, which application was opposed by private respondents, who earlier or on September 24, 1968 filed their own application for the registration of the same residential lot which was docketed as Land Case No. 05-R, LRC Rec. No. N-35758 also in the same court, to which herein petitioners filed their opposition. After a joint trial of the two cases, a decision was rendered on September 20, 1973 in favor of private respondents, which decision was received on September 25, 1973 by herein petitioners.

On October 13, 1973, herein petitioners filed their notice of appeal in the two cases.

On October 22, 1973, they deposited an appeal bond in said two cases in the total amount of P240.00 together with an urgent ex-parte motion for extension of time to file their record on appeal.

On October 23, 1973, the trial court granted them a 30-day extension from October 25, 1973 to perfect their record on appeal.

On November 19, 1973, herein petitioners filed two records on appeal and moved for the approval of the same, setting the hearing thereof on December 7, 1973. Due to the oral objections interposed by private respondents to the records on appeal because of minor typographical errors and omissions, the trial court ordered the correction of the same and on January 4, 1974, the corrected records on appeal were filed.

On January 14, 1974, the trial court directed the herein petitioners to finalize the amended records on appeal within five (5) days.

On January 24, 1974, the trial court finally approved the said records on appeal stating: "There being no more objections interposed to the corrected records on appeal x x x and it appearing that the notice of appeal, records on appeal and appeal bonds have been filed within the reglementary period, the said records on appeal are hereby

APPROVED."

Because both the original and printed records on appeal did not include (1) the motion for a 30-day extension within which to perfect the records on appeal, (2) the order of the court granting the 30-day extension from October 25, 1973, and (3) the order of the court of January 14, 1974 giving herein petitioners five [5] days to finalize the amended records on appeal, the respondent Court of Appeals dismissed the appeal for failure to show all the material data indicating that the appeal was seasonably perfected, upon motion of herein private respondents.

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 x x x and it appearing that the notice of appeal, records on appeal and appeal bonds have been filed within the reglementary period, x x x ." 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.

This view finds support in Our ruling in *Berkenkotter vs. Court of Appeals and Isidro Climaco* (L-36629, Sept. 29, 1973, 53 SCRA 228, 233, 236). In said case, We found that the petitioner therein "actually filed on June 13, 1972 (within the 30-day reglementary period), his notice of appeal, appeal bond and an ex-parte motion for extension of five days from June 13th to file the record on appeal. Before the expiration of the time asked, or on June 15, 1972, he filed his record on appeal which was approved by the Court after defendant's objection and hearing thereof on November 14, 1972. Admittedly, the court neither approved nor denied the ex-parte motion for extension of time to file record on appeal" (53 SCRA 233). Accordingly, We ruled therein that "the mere absence of a formal order granting the motion for extension of time to file the record on appeal should not be fatal to the petitioner if the record on appeal filed within the requested extension period was approved by the Court a quo. As previously stated, the approval thereof carries with it the approval of the motion for extension and the mere failure of the record on appeal to show such approval should not defeat the right to appeal. 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" (53 SCRA 236).

The respondent Court therefore acted with grave abuse of discretion in issuing the challenged resolutions dismissing the appeal.

WHEREFORE, THE RESOLUTIONS OF RESPONDENT COURT OF APPEALS DATED JULY 15, 1974 AND SEPTEMBER 11, 1974 ARE HEREBY SET ASIDE AS NULL AND VOID; AND THE RESPONDENT COURT OF APPEALS IS HEREBY DIRECTED TO GIVE DUE COURSE TO THE APPEAL. WITHOUT COSTS.

Makalintal, C.J., Fernando, Barredo, Antonio, Esguerra, Aquino, Concepcion, Jr., and Martin, JJ., concur.

Castro, J., did not take part.

Teehankee and Munoz Palma, JJ., on official leave.

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