

**ANGELES CHIQUILLO AND EMETERIO CHIQUILLO, PETITIONERS,
VS. HON. ELIAS B. ASUNCION, JUDGE OF THE COURT OF FIRST
INSTANCE OF LEYTE, BRANCH IV, AND PAZ PARADO, RESPONDENTS.**

G.R. No. L-27732. May 18, 1978

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for certiorari impugning the exercise of appellate jurisdiction by respondent Court of First Instance of Leyte in Civil Case No. 3925 over a case appealed to it by respondent Paz Parado from the adverse decision of the Municipal Court of Palo, Leyte in its Civil Case No. 443, for the recovery of a small sum of money, petitioners herein, Angeles and Emeterio Chiquillo, alleging that Parado's appeal was filed out of time, which contention respondent court overruled as without merit.

It is not denied that Respondent Parado was served copy of the decision of the inferior court by registered mail on June 6, 1966; that on June 17, 1966, she filed by registered mail her motion for reconsideration thereof; that she was served copy of the order denying her motion on August 3, 1966; and that she perfected her appeal on August 5, 1966. Since from June 6, 1966 to June 17, 1966, there were only eleven (11) days and from August 3, 1966 to August 5, 1966, there were only two (2) days, it is obvious that respondent consumed only fourteen (14) days of her appeal period, hence her appeal was on time.

Petitioners disregard entirely the fact that respondent's motion for reconsideration was filed by registered mail and insist on the notation of the clerk appearing on the motion that the same was actually received on July 29, 1966. But the filing by registered mail is attested by respondent judge himself in the answer he has filed jointly with private respondent, accompanied by the certification of the postmaster. And as to the reference made by petitioners to the date stated in respondent's record on appeal as to when she filed her motion for reconsideration, We are inclined to believe that the same was nothing more than a clerical error.

Petitioners' contention that respondent judge has found that the decision of the municipal court has already become final has no basis in the record. All that respondent judge appears to have held on this point is contained in his order of April 24, 1967 as follows:

"As regards the first ground of the Motion for Reconsideration, the Court finds the same unmeritorious considering the fact that when this Court exercised appellate jurisdiction over the case, the plaintiffs failed to file any motion to dismiss and voluntarily submitted to a trial of the case on its merit. Consequently, such ground that the judgment has already become final not being one which goes into the jurisdiction of this Court is deemed to have been waived by the plaintiffs." (Page 18, Record.)

In other words, considering that petitioners raised the issue of jurisdiction for the first time after the case had already been tried de novo and decided, His Honor apparently preferred to overrule petitioners by invoking waiver, instead of passing squarely on the factual issue of whether or not respondent's appeal was made on time and the inferior court's decision has actually become final already.

Petitioners further argue that respondent court's ruling on waiver is erroneous, inasmuch as their action in the inferior court which involved not more than P300.00 was within the exclusive jurisdiction of the latter court. That may be so, but the fact still remains that respondent's appeal was filed on time and respondent court has already passed on the merits of petitioners' claim and decided the case against them.

Thus, the petition herein is without merit. And inasmuch as petitioners have opted to come by certiorari instead of resorting to an appeal which was available, and considering further that the matter in dispute in the basic action is almost trivial, We further hold that the decision of respondent court has already become final and unappealable, thereby writing finish to this insignificant litigation which started way back in 1966, but which ought not to have reached the courts at all.

WHEREFORE, the petition is dismissed and the decision of respondent court adverse to petitioners is hereby declared final. No costs.

Fernando, (Chairman), Antonio, Aquino, Concepcion, Jr., and Santos, JJ., concur.

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