

**ROGELIA, ROLANDO, LORNA, EVA, RAFAEL, EBENEZER,
EVANGELINE AND YOLANDA, ALL SURNAMED PERARTILLA,
PETITIONERS, VS. COURT OF APPEALS AND HEIRS OF GONZALO DE
LA PEÑA, NAMELY, ELSA ...**

G.R. No. L-37766. October 27, 1983

Ponente: AQUINO, J.

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AQUINO, J.:

The petitioners, the Perartillas, assail the resolution of the Court of Appeals dated June 16, 1973, dismissing their appeal (from the decision allowing Gonzalo de la Peña to exercise the right of redemption as a co-owner), because their printed amended record on appeal does not show that such record on appeal was filed on time.

The original record on appeal was filed on December 29, 1970 or within the thirty-day reglementary period. Because plaintiff De la Peña filed a motion for execution pending appeal, which the trial court denied in its order of January 23, 1971, the record on appeal had to be amended.

The petitioners (defendants below) were not allegedly served with a copy of the order of January 23, 1971. They learned of that order more than one year later or on April 7, 1972. They submitted an amended record on appeal on April 12, 1972. The lower court in its order of September 2, 1972 required the petitioners to amend further their record on appeal, giving them an extension up to September 23, 1972 to effect the amendment.

On November 4, 1972, the lower court issued an order approving petitioners' second amended record on appeal (p. 4, Rollo). No objection was interposed by De la Peña. The record was elevated to the Court of Appeals.

After the docket fee had been paid and the second amended record on appeal was printed, De la Peña filed a motion to dismiss the appeal on the ground that the said printed record on appeal does not contain material data showing that the appeal was perfected on time. As already stated, the Appellate Court dismissed the appeal.

We hold that the dismissal of the appeal is erroneous. The lawyers of the parties were negligent in not seeing to it that action on the record on appeal was expedited by the lower court. The material data rule in section 6, Rule 41 of the Rules of Court was construed as mandatory and jurisdictional (*Director of Lands vs. Antonio*, 122 Phil. 529 and other cases).

But later cases relaxed the rule. The approval of the record on appeal by the trial court should be accorded great weight. "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" (*B. E. Berkenkotter vs. Court of Appeals*, L-36629, September 28, 1973, 53 SCRA 228, 236).

In this case the original record on appeal was unquestionably filed on time. The record on appeal was amended twice although the amendments were made more than one year after the expiration of the thirty-day reglementary period. The amended record on appeal is "deemed to have been filed on the presentation of the original, which

was done within the reglementary period" (Diola vs. Court of Appeals, L-36455, April 30, 1976, 70 SCRA 511, 515-6).

WHEREFORE, the resolution of dismissal of the Court of Appeals is reversed and set aside. The Intermediate Appellate Court is directed to give due course to petitioners' appeal. No costs.

SO ORDERED.

Makasiar, (Chairman), Concepcion, Jr., Guerrero, Abad Santos, and Escolin, JJ., concur.
De Castro, J., on sick leave.

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