

DOLORES LOPEZ VDA. DE JISON, HEIRS OF ALBINO JISON AND HEIRS OF JOAQUINA ALBORO, PETITIONERS VS. THE HONORABLE COURT OF APPEALS, DOMINADOR LACSON AND VISITACION LACSON, RESPONDE...*G.R. No. L-8454. April 13, 1956*

Ponente: CONCEPCION, J.

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This is an appeal, taken by Dolores Lopez Vda. de Jison, the Heirs of Albino Jison and the Heirs of Joaquina Alboro, from a decision of the Court of Appeals dismissing their petition for a writ of mandamus to enjoin respondent Hon. Francisco Arellano, as Judge of First Instance of Negros Occidental, to certify the joint record on appeal filed, by said petitioners, in Cadastral Case No. 27 of said province, G.L.R.O. No. 284, in connection with the decision therein rendered as regards lots Nos. 606, 609, 610, 631 and 818 of the Cadastre of Sagay, Negros Occidental.

The only question raised in this action is whether or not petitioners' appeal from said decision of the Court of First Instance of Negros Occidental has been perfected in due time. The pertinent facts are not disputed.

On October 17, 1952, said Court of First Instance rendered decision, penned by Honorable Lorenzo C. Garlitos, Judge, adjudicating said lots to respondents herein, the spouses Dominador Lacson and Visitacion Lacson. Notice of this decision was received by the petitioners, as claimants of said lots, on November 17, 1952. Twenty-one days later, or on December 8, 1952, petitioners gave the corresponding notice of appeal. On December 12, 1952, they asked permission to file a joint record on appeal. Leave of absence having been taken by Judge Garlitos, during the Christmas of 1952, said request was not acted upon until January 10, 1953, when said Judge issued an order authorizing petitioners "to file and submit for approval a joint record on appeal within the reglementary period as required by law." Copy of this order was, on February 19, 1953, served upon petitioners' counsel, who filed said joint record on appeal, and the corresponding appeal bond, immediately thereafter, or on February 20, 1953. Respondents Dominador and Visitacion Lacson, later objected to the approval of said joint record on appeal and moved for the dismissal of petitioners' appeals, upon the ground that said joint record on appeal and the appeal bond had been filed beyond the reglementary period. This pretense, was overruled by Judge Garlitos in an order dated April 23, 1953. Soon after, said Judge ceased, however, to preside the Court of First Instance of Negros Occidental, and respondent Judge, Hon. Francisco Arellano, to whom the case had, meanwhile, been assigned, reconsidered said order and dismissed the appeal, on motion of Dominador and Visitacion Lacson. Consequently, petitioners instituted the present action, in the Court of Appeals, for the purpose of compelling said respondent Judge, by mandamus, to approve and certify the aforementioned joint record on appeal. The case is now before us on appeal from the decision of the Court of Appeals dismissing said petition for mandamus, with costs against the petitioners.

At the outset, the Court of Appeals seems to have been under the impression that petitioners' motion for

permission to submit a joint record on appeal had been filed on January 10, 1953, inasmuch as the decision of said Court states:

"It appears that petitioners, among the five different claimants, filed answer for said lots. Their claim was adversely decided and, having received notice of the decision on 1 November 17, 1952, they filed notice of appeal on December 12, 1952. On January 10, 1953, they filed a motion asking the court to allow them to the a joint record on appeal together with the other appellants. (*Italics supplied.*)

Obviously, the conclusion of the Court of Appeals to the effect that the appeal had not been perfected within the reglementary period would be correct if the foregoing narration were accurate. Over fifty (50) days having elapsed from November 17, 1952—when petitioners received notice of the decision of the Court of First Instance—to January 10, 1953, said decision—would have been final several weeks prior to the date last mentioned, had the motion for authority to submit a joint record on appeal not been filed prior thereto.

However, the very decision of the Court of Appeals quotes, in support thereof, the order of Judge Garlitos of January 10, 1953, which indicates—and respondents admit—that said motion was filed on December 12, 1952. Moreover, , said decision of the Court of Appeals significantly states, quite inaccurately, that petitioners had given notice of their intention to appeal on December 12, 1952, although the record shows, and respondents admit, that said notice was filed on December 8, 1952. These circumstances suggest, to our mind, that the dismissal of the petition for mandamus by the Court of Appeals was prompted mainly by its erroneous belief that the motion for permission to submit a joint record on appeal had been filed on January 10, 1953, and that what petitioners had attached to the record on December 12, 1952 was, not said motion, but their notice of appeal. In fact, however, said motion was filed on December 12, 1952— or five (5) days before the expiration of the reglementary period to perfect the appeal—the notice of appeal having been recorded four (4) days before, or on December 8, 1952.

It is urged that the filing of said motion did not suspend the running of the period to perfect the appeal; that an extension of said period was not asked in said motion; that the lower court, in its order of January 10, 1953, merely authorized the filing of said joint record on appeal "within the reglementary period," which, respondent contend, expired on December 17, 1952; that said order did not extend the period within which to perfect the appeal; and that petitioners should have filed, therefore, their joint record on appeal on or 'before December 17, 1952. Upon the other hand, petitioners herein maintain that they could not have done so after the filing of said motion on, December 12, 1952 and until receipt of notice of the order of January 10, 1953, granting said motion.

Upon consideration of the circumstances surrounding the case, we are of the opinion that petitioners' appeal had been seasonably perfected. To begin with, if, as respondents contend, the party seeking an extension of time may not assume that the same would be granted, petitioners herein were, by the same token, not entitled to take it for granted that their motion for authority to file a joint record on appeal would merit favorable action." Hence, they cannot be said to be under legal obligation to file said joint record on appeal pending the granting of said motion.

Again, the question whether or not the presentation of a joint record on appeal shall be authorized, is principally addressed to the sound discretion of the court, to be exercised in the light of the condition obtaining in each case. In connection therewith, Judge Garlitos said in his order of April 23, 1953:

"This Court was aware of the shuttling- back and forth of the records of this case from the Office of the Clerk of Court in Bacolod City to the Municipality of Escalante, Negros Occidental, at which latter place this Court had been holding sessions in connection "with Cadastral Cases involving lots of the Escalante Cadastre. The said Municipality is 102 kilometers away from the City of Bacolod, and that there were times when the records of this case were brought to Eescalante and then returned to the City of Bacolod and' vice-versa, making it thereby really hard and inconvenient for the parties-claimants to perfect their Record on Appeal due to the unavailability of the records of this case to the attorneys for the claimants-appellants who are all residents of

Bacolod City. The Court is also aware of the circumstance that this is a case involving reconstitution of the records which have been destroyed during the war as well as the hearing of the many witnesses of the claimants which made the record voluminous as to necessitate a longer period of time for the preparation of the Joint Record on Appeal. The Court having been conscious of these facts, acting within the proper bounds of both, justice and equity, and in the exercise of its sound discretion, had to be liberal in granting extensions of time to the parties concerned to enable them to file their Records on Appeal."

* * * * *

"The records, likewise, disclose that the heirs of Raymuhdo Tupaa received the copy of the decision rendered by this Court on November 4, 1952; that on November 26, 1952, the corresponding Notice of Appeal dated November 12, 1952, was filed by the said heirs; that on November 25, 1952, before the expiration of the original thirty-day period, the heirs of Raymundo Tupas prayed for an extension of time which was granted by the Court as may be seen in its order dated November 29, 1952, allowing them fifteen (15) days extension within which to file their Record on Appeal; that on the 12th day of December, 1952, the heirs of Albino Jison and the heirs of Joaquina Alboro prayed that the Joint Record on Appeal with the other claimants-appellants be affected; that on January 10, 1953, after the undersigned presiding this Court had returned from Manila after a leave of absence of fifteen (15) days, the Court resolved the aforesaid petition and authorized the heirs of Albino Jison and the heirs of Joaquina Alboro to file and submit for approval a Joint Record on Appeal within the reglementary period as required by law; that this order was received by the heirs of Albino Jison, Dolores L. Vda. de Jison and the heirs of Joaquina Alboro on the 19th day of February 1953; that on the other hand the heirs of Raymundo Tupas filed on January 14, 1953, a pleading entitled "Confirmity to the Motion of Dolores Lopez Vda. de Jison for the Joint Record on Appeal and a Motion which prayed among other things that the parties submit their Record on Appeal which was acted upon by this Court on January 23, 1953, and a copy of which was received by the heirs of Raymundo Tupas on the 3rd day of February 1953; that in the said order this Court authorized the heirs of Raymundo Tupas to withdraw their record on appeal and in lieu thereof the parties concerned were thereby enjoined to submit their Joint Record on Appeal within the reglementary period as required by law; and, that on the 20th day of February, 1953, the heirs of Raymundo Tupas, the heirs of Albino Jison, Dolores L. Vda. de Jison and the Heirs of Joaquina Alboro submitted their Joint Record on Appeal together with their appeal bond.

"On the strength, of the facts mentioned above and after a mature perusal of the pleadings of the parties concerned as well as the oral arguments of their lawyers, the Court is of the considered judgment, and it so holds, that the motion to dismiss the Appeals submitted by the heirs of Raymundo Tupas, the heirs of Albino Jison, Dolores L. Vda. de Jison and the heirs of Joaquina Alboro is without merit, and it is, therefore, hereby overruled."

These facts and the conclusion drawn therefrom by Judge Garlitos strongly suggest that said Judge issued his order of January 10, 1953, with the intention, either of suspending the running of the period to file the record on appeal during the pendency of petitioners' motion of December 12, 1952, or of granting, petitioners herein, from notice of said order of January 10, 1953, an additional time, for the filing of said joint record on appeal, equivalent to the portion of the reglementary period which had not expired at the time of the filing of said motion. In view of the foregoing, and considering that the joint record on appeal and the appeal bond were filed the day immediately following receipt of the notice aforementioned, and that the Rules of Court should be construed liberally, in order that litigants may have a reasonable opportunity to defend and enforce their substantive rights (Rule 1, section 2, Rules of Court), the decision of the Court of Appeals should be, as it is hereby, reversed, and let the writ of mandamus prayed for be issued, with costs against respondents Dominador Lacspn and Visitation Lacson. It is so ordered.

Parás, C. J., Bengzon, Padilla, Montemayar, Reyes, A., Jugo, Labrador, Reyes, J. B. L., and Endencia, JJ., concur.

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