

**ROMAN OZAETA, JR. AND ALFONSO SANDOVAL, PETITIONERS, VS.
HON. COURT OF APPEALS, ONOFRE ESPIRITU, POTENCIANA
ESPIRITU, FELIX ESPIRITU AND CASIMIRO ES-PIRITU,
RESPONDENTS.**

G.R. No. L-26938. October 29, 1971

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal by certiorari from the decision of the Court of Appeals in CA-G. R. No. 37971-R - a petition for mandamus wherein, in the language of said court "petitioners seek to compel the respondent Judge of the Court of First Instance of Rizal, Branch II, to approve and give due course to their appeal from the order of February 18, 1966, denying their petition to set aside the decision in Land Registration Case No. N-1903, LRC Rec. No. N-15348, rendered by said court on December 12, 1958; to annul and set aside the decree of title issued by respondent Commissioner of Land Registration, and the original certificate of title to the property involved issued pursuant thereto by respondent Register of Deeds of Rizal; to restrain respondents Roman Ozaeta, Jr. and Alfonso Sandoval from making any transaction or negotiation, or exercising any act of ownership, over the property covered by the certificate of title issued in their names, and to enjoin the Register of Deeds of Rizal from registering any document that may, or would, in any way affect said property and certificate of title."

The factual setting is also set forth in the appealed decision thus:

"The incidents in the Court of First Instance of Rizal, Branch II, which impelled this petition are briefly as follows:

"On December 12, 1958, the above-mentioned court rendered a decision in Land Registration Case No. N-1903, LRC Rec. No. N-15348, declaring respondents Roman Ozaeta, Jr. and Alfonso Sandoval and their wives as the true and absolute owners of the parcel of land, subject matter thereof, and ordering its registration in their names.

"The herein petitioners moved to set aside the decision and for leave to file their opposition to the application on the ground, among others, of lack of notice to them as possessors of the parcel of land claimed by them to have been included in the application for registration. Pursuant to their motion, the trial court issued an order, dated March 25, 1959, requiring the applicants, now respondents Roman Ozaeta, Jr. and Alfonso Sandoval, to answer petitioners' motion within 15 days from notice thereof and ordering the Commission not to issue any decree or title until further orders from the court.

"After due hearing of the motion to set aside the decision and for leave to file an opposition, the respondent judge issued an order, dated February 18, 1966, denying said motion and authorizing the Commissioner of Land & Registration Commission to issue the decree of title in favor of the applicants.

"On March 31, 1966, petitioners served on respondents Roman Ozaeta, Jr. and Alfonso Sandoval copies of their notice of appeal, record on appeal and appeal bond, and on April 1, 1966, they filed said appeal papers

with the trial court.

"There being no statement in the record on appeal as to when the order of February 18, 1966, was actually received by the petitioners, respondents Roman Ozaeta, Jr. and Alfonso Sandoval filed a motion to dismiss the appeal taken by the petitioners from the order of February 18, 1966.

"On April 14, 1966, petitioners objected to the motion to dismiss the appeal, alleging that the record of the case in the possession and under the custody of the trial court, which was available at all times for examination, shows that the petitioners received on March 2, 1966, a copy of the order of February 18, 1966 (See Annex L). Hence the filing of their appeal papers on April 1, 1966, after service of copies thereof on respondents Roman Ozaeta, Jr. and Alfonso Sandoval on March 31, 1966, was done on the last day of the 30-day period within which to appeal. Petitioners likewise *motu proprio* amended the record on appeal by filing a 'Supplementary Record on Appeal', including therein the pleadings which were omitted in the original Record on Appeal.

"On May 10, 1966, the respondent Judge issued an order dismissing the appeal from the order of February 18, 1966, on the ground that the availability of the original record of the case for verification of the date when the order sought to be appealed was received by herein petitioners, is not a valid reason for petitioners' failure to state in the Record on Appeal the date of receipt of the order of February 18, 1966.

"The motion for reconsideration of the order of May 10, 1966, having been denied by the respondent Judge in an order dated June 25, 1966, this petition for mandamus with preliminary injunction was filed."

Upon these facts the Court of Appeals granted the writs prayed for holding:

"The sole issue presented for determination in this case is whether the dismissal of the petitioners' appeal from the order of February 18, 1966, is justifiable, considering that it is not shown on the face of the record on appeal whether the notice of appeal, record on appeal and appeal bond were filed within the reglementary period, the date of receipt of the order to be appealed from not having been stated or indicated in the record on appeal.

"Petitioners contend that the dismissal of the appeal is unjustifiable for the reason that the record of the case in the possession and under the custody of the trial court shows that a copy of the order of February 18, 1966, was received by the petitioners on March 2, 1966.

"On the other hand, the respondents maintain that the availability of said record to the respondent court is not a valid ground for excusing the petitioners from stating in the record on appeal the date when the order of February 18, 1966, was actually received by them. Respondents cite section 6, Rule 41, of the Rules of Court, which, among other things, provides that the record on appeal shall include 'such data as will show that the appeal was perfected on time.' It is urged that since it does not include any statement of the date when the order of February 18, 1966, was received by the petitioners, there was no way of ascertaining whether or not the appeal was perfected on time and its dismissal was, therefore, in order. To bolster up their stand, respondents further cite the case of 'Government of the Philippines vs. Luis Antonio, et al., G.R. No. L-23736, Oct. 19, 1965,' wherein the Supreme Court, after approval and elevation to it of the record on appeal by the trial court, ordered the dismissal of the appeal upon motion of the appellee filed in said court on the ground that the record on appeal does not show on its face the date when the appellants received notice of the pertinent order or judgment appealed from. x x x

x x x x

"The (cited) ruling of the Supreme Court is apparently applicable to this case. But a close and careful analysis of the facts of the Antonio case will reveal disparities which warn us against adopting in toto for this case the rule therein established. One thing that should be borne in mind in connection with the Antonio case is that the motion to dismiss the appeal was directly filed with the Supreme Court where the only record that was

available for scrutiny or examination was the record on appeal which could not on its face give any data or information as to whether the appeal was perfected on time. Consequently, the Supreme Court had no alternative but to dismiss the appeal.

"In the present case the situation is different. Here the motion to dis-miss the appeal on the ground that the record on appeal does not show on its face the date when the order of February 18, 1966, was actually received by the petitioner, was filed with the lower court which, by an examination of its own record, of which it can take judicial notice, could have very well ascertained the date when said order was received. Considering the date when the notice of appeal, record on appeal and appeal bond were filed, it could have easily determined whether the appeal papers were filed within the reglementary period. Stated in other words, the trial court was in the best position to know whether the appeal was perfected on time, whereas the Supreme Court in the Antonio case had no way of knowing it because the original record of the case was not elevated and all that it had was the record on appeal.

"When the attention of the trial court was called to the fact that the date of receipt of the order of February 18, 1966, was not stated in the record on appeal, it should have directed, in accordance with Section 7 of Rule 41, its amendment by including the omitted data, instead of ordering outright dismissal of the appeal. The petitioners could have done so within the period fixed by the court or, in the absence thereof, within ten (10) days from receipt of the order directing them to amend accordingly the record on appeal. It was, therefore, rather precipitate and hasty on the part of the respondent Judge to have dismissed the appeal without giving the petitioners the opportunity to amend the record on appeal by incorporating a statement as to when the order of February 18, 1966, was received by them. Consequently, the respondent Judge acted with grave abuse of discretion in dismissing the appeal."

Petitioners' motion for the reconsideration of this decision having been denied, the present appeal by certiorari is before Us for the resolution of the following assignment of errors:

'I. THE RESPONDENT COURT ERRED IN DECLARING THAT THE TRIAL COURT SHOULD HAVE DIRECTED, IN ACCORDANCE WITH SECTION 7 OF RULE 41, THE AMENDMENT OF THE RECORD ON APPEAL 'BY INCLUDING THE OMITTED DATA, INSTEAD OF ORDERING OUTRIGHT DISMISSAL OF THE APPEAL.'

'II. THE RESPONDENT COURT ERRO-NEOUSLY FAILED TO APPLY THE DOCTRINE LAID DOWN IN THE CASE OF GOVERNMENT VS. LUIS ANTONIO ET AL., G. R. NO. L-23736, OCTOBER 19, 1965.

'III. THE RESPONDENT COURT ERRED IN DISREGARDING THE RULINGS OF THIS HONORABLE COURT IN THE FOLLOWING CASES: (i) ALICE FOLEY DE MARCELO ET AL VS. HON. JUDGE RAFAEL SISON, G.R. NO. L-22626, SEPTEMBER 28, 1964; and (ii) J.A. ARANETA VS. MADRIGAL & CO., INC. ET AL., G.R. NOS. L-26227 and L-26228, OCTOBER 25, 1966."

It is true, as pointed out by petitioners, that even as early as October 19, 1965,[1] this Court has emphasized that the Revised Rules of Court place upon the appellant the burden of showing that his appeal is timely, and, for that purpose, Section 6 of Rule 41[2] prescribes that the record of appeal shall include "such data as will show that the appeal was perfected on time"; and that "this requirement is mandatory and jurisdictional, for unless appeal is perfected on time the appellate court acquires no jurisdiction over the appealed case, and has power only to dismiss the appeal" and that the same view has thereafter been reiterated in various cases;[3] in eleven (11) cases jointly decided by this Court just recently,[4] the Chief Justice again the need for compliance with the rule as thus construed. As pointed out, however, by the Court of Appeals, the situation here presented should be distinguished from those obtaining in the majority of the cited cases, for while in the said cases, the records of the trial courts were not forwarded to the appellate courts, so that there was no way of checking whether or not said

appeals had been perfected on time, when that point was put in issue only either in the briefs or in the motions to dismiss the appeals and oppositions there-to filed by the parties, in the case at bar the motion to dismiss the appeal was filed with the trial court when the records were still there and by an examination of the same, His Honor could have very well ascertained the said date for purposes of determining - after his attention was called by petitioners to the alleged defect of re-spondents' record on appeal - whether or not said appeal had been actually perfected on time. As We see it, this is precisely what the trial judge should have done, rely-ing therefor on Section 7 of Rule 41, which allows the amendment of a record on appeal in order to include there-in any relevant omitted data.

Under these circumstances, it is plain that the Court of Appeals acted within the law. In *Guerra Enterprises[5] Company, Inc. vs. Court of First Instance of Lanao del Sur*, We held:

"On the second ground relied upon by the court a quo, which is that the record of appeal tendered by appellant failed to specify the date when certain orders were received by counsel for petitioner-appellant, it is enough to observe that since the record of appeal was still within the control of the respondent court, all that was needed was to order appellant to make the requisite amendments, and not to bar the appeal. x x x." (Underscoring sup-plied)

Expressive of this same view is the opinion of the Chief Justice in one of the eleven (11) cases hereto-fore mentioned:[6]

"5. G.R. No. L-29753 refers to an action commenced in the Court of First In-stance of Zamboanga del Sur (Civil Case No. 336 thereof) to recover the possession of a land, as well as damages. After appropriate pro-ceedings, judgment was rendered by said court on December 9, 1967, in favor of plaintiff Zoilo de los Reyes. Copy of said decision was received by the defendants on Jan-uary 9, 1968. Twenty (20) days later, or on January 29, 1968, the defendants filed a motion for new trial. This was denied in an order dated February 24, 1968, copy of which was served on the defendants on March 8, 1968. Three (3) days later, or on March 11, 1968, the defendants filed a notice of appeal, an appeal bond and a motion for ex-tension of ten (10) days within which to file their record on ap-peal. This motion was denied on the same day, March 11, 1968. On March 14, 1968, or within the reg-lementary period to perfect the appeal - without the extension sought by the defendants and denied by the trial court - the defendants filed their record on appeal. On March 18, 1968, plaintiff De los Reyes filed a motion for the execution of the afore-mentioned decision upon the ground that it had become final. This mo-tion was granted on March 22, 1968, and the writ of execution was issued on March 25, 1968. Five (5) days later, or on March 30, 1968, the Record on Appeal was heard. On July 8, 1968, the trial Judge disapproved the record on appeal of the defend-ants (Zacarias de la Torre and Neme-sio de la Torre) and dismissed their appeal, upon the ground that said re-cord on appeal 'does not indicate the date when defendant-appellant received a copy of the order dated February 24, 1968, denying the motion for new trial.' Soon after, said defendants filed with the Court of Appeals an original action (CA-G.R. No. 41577-R) for certiorari and mandamus to annul the orders of March 22 and July 8, 1968, and the writ of execution issued on March 25, 1968, as well as to compel the trial judge to give due course to the appeal taken by said defendants. After appropriate pro-ceedings, the Court of Appeals rend-ered the decision annulling the orders of the court of first instance, dated March 11 and 22, and July 8, 1968, as well as the writ of execution on March 25, 1968, and commanding the trial judge to allow the amendment of the record on appeal so as to indicate therein the date when appellants re-ceived notice of the order denying their motion for new trial.

x x x x

"The main issue in G.R. No. L-29753 differs from that of the other cases disposed of in this decision, in that the suf-ficiency of the facts set forth in the record on appeal involved in L-29753 was assailed in and passed upon by the trial court. Moreover, the data lacking in said record on appeal - date on which petitioners herein received copy of the order of said court dated February 24, 1968, denying their mo-tion for new trial - is

supposed to be available in the record of Civil Case No. 336 of the same court which was before respondent Judge. There can be no question, therefore, that he could determine, by examining the whole record before him, what said date was and, consequently, whether or not the appeal had been perfected on time. He seems to be, however, under the impression that - even if said record warranted an affirmative answer - he could not order the amend-ment of petitioners' record on appeal by the insertion therein of the date on which they had received copy of his order aforementioned.

"The reason for this impression of respondent Judge seems to be that, since the requirements of section 6, Rule 41 of the Rules of Court, are 'mandatory and jurisdictional,' a record on appeal that fails to comply with said requirement is a worthless piece of paper which does not suspend the running of the period to perfect the appeal, so that, upon the expira-tion thereof - as, he claims, in the case at bar - he may no longer order the amendment of the record on appeal for the completion of the data lack-ing in the original record on appeal.

"We have held that the provision in section 6 of Rule 41 - to the ef-fect that the record on appeal should, inter alia, state 'such data as will show that the appeal was perfected on time' - is 'mandatory and jurisdic-tional,' in the sense that, if the appeal is not so perfected, the deci-sion or final order sought to be re-viewed would have become final and executory, so that the appellate court would have no jurisdiction to enter-tain the appeal, and that, accordingly, compliance with said requirement is 'mandatory,' in view of which, fail-ure of the appellee to object to the approval of the record on ap-peal would not bar him from asking the appellate court to dismiss the appeal for non-compliance with the aforementioned requirement.

"Then, again, one other reason for the requirement under considera-tion is that, in cases appealed by record on appeal, the original re-cord of the case remains in the trial court, so that the appellate court has no means of determining if the record on appeal does not comply with said Rule - whether or not the appeal has been duly per-fected, unless evidence thereon were introduced, and this, precisely, is sought to be avoided by section 6 of Rule 41. Indeed, the reception of such evidence would consume time which is badly needed by appellate courts for other cases and more me-ritorious issues and could be saved by complying with the provisions of said section.

"In the light of the spirit and purpose thereof, We hold, therefore, that the filing of petitioners' re-cord on appeal, with the deficiency adverted to above, suspended the running of the period to perfect their appeal and that the Court of Appeals has not erred in ordering the trial court to permit an amend-ment of said record on appeal so as to state therein the date when peti-tioners received notice of the order denying their motion for new trial."

Accordingly, We find no error in the appealed deci-sion of the Court of Appeals.

WHEREFORE, the decision of the Court of Appeals is affirmed, with costs against petitioners.

Concepcion, C.J., Reyes, Makalintal, Zaldivar, Castro, Fernando, Teehankee, Villamor, and Makasiar, JJ., concur.

[1] Gov't. of the Phil. vs. Luis Antonio, et al., L-23736, 15 SCRA 119.

[2] Indeed, this provision has been in the revised rules since they first went into effect on January 1, 1964, hence the Court sees no reason why up to the present cases of the nature of the one at bar keep on recurring. It is time trial judges themselves saw to it that this rule is properly observed.

[3] See Araneta v. Madrigal, L-26227-28, Oct. 25, 1966; DBP v. Santos, L-26387, Sept. 27, 1966; Atlas Cons. Mining & Dev. Corp. v. Progressive Labor Ass. L-27125, Sept. 15, 1967; Jocson v. Robles, L-23433, Feb. 10, 1968; Cadiz v. Sec. of Nat. Defense, et al., L-25150, Sept. 30, 1968; Luzon Stevedoring Corp. v. Court of Appeals, L-27726, July 31, 1970; Valera v. Court of Appeals, L-29416, Jan. 28, 1971.

[4] Reyes v. Carrasco, et al., L-28783; Atengco v. Court of Appeals & Samia, L-28818; Laperal v. Court of Appeals & Herrera, L-29225 & L-29731; De la Torre v. Ericta, et al., L-29753; Dominguez v. Court of Appeals & Hong, L-29970; Halili, et al. v. Court of Appeals, et al., L-30525; Dir. of the Bu. of Bldg. & Real Property Management v. Court of Appeals, et al., L-31054; Design Masters, Inc. v. Court of Appeals, et al., L-31510; Bragais & Bragais v. Court of Appeals, et al., L-31875; and Tello, et al. v. Court of Appeals, et al., L-32395 - all decided (under one decision) on March 31, 1971, 38 SCRA 296.

[5] L-28310, April 17, 1970, 32 SCRA 314, 317-318.

[6] See, De la Torre v. Ericta, et al., supra.

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