

**FLORENTINA NUGUID VDA. DE HABERER, PETITIONER VS.
FEDERICO MARTINEZ, BALDOMERO MANALO, FAUSTINO
BAGALAWIS, FEDERICO STA. TERESA, ANGELITO KING, GREGORIO
DEL ROSARIO, LEODOVICO T...**

G.R. Nos. L-39386 & L-39620-29. January 29, 1975

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court sets aside the appealed resolutions of respondent Court of Appeals dismissing petitioner's appeal from the adverse consolidated decision of the trial court in eleven cases for recovery of possession of real property. The statement of material dates and data given in the Court's opinion shows manifestly that contrary to respondent court's erroneous premises and computation petitioner duly and timely perfected her appeal within the reglementary period and in compliance with the material data rule requiring that the Record on Appeal state "such data as will show that the appeal was perfected on time." When the trial court vacates or sets aside its original decision of dismissal and amendatory order by an order for new trial and after holding the new trial issues a second order of dismissal, the reglementary period for perfection of appeal is counted not on the basis of the original decision of dismissal nor of the amendatory order but commences anew from the second and final order of dismissal.

Petitioner and eleven (11) private respondents are plaintiff-appellant and defendants-appellees, respectively, in an ordinary consolidated appeal[1] from the adverse consolidated decision rendered by Judge Pedro C. Navarro of the Rizal court of first instance in eleven (11) separate civil cases for recovery of possession of petitioner's duly titled parcel of land in Mandaluyong, Rizal[2] filed by petitioner against each of said respondents who had allegedly illegally built their houses on her property.

The cases were jointly heard (respondents having filed identical answers to the complaints through one and the same counsel and the issues being identical) and the trial court rendered a consolidated decision.

Petitioner's voluminous record on appeal was approved without objection on December 23, 1972 by the trial court[3] and in due course petitioner submitted to the Court of Appeals the printed record on appeal totalling three hundred and eighty (380) pages and ninety-one (91) separate items of pleadings, motions and orders related to the appealed judgment and amendatory orders.

On August 15, 1974, respondent appellate court through its Sixth Division[4], (after a previous motion to dismiss appeal filed by respondents on October 17, 1973 had failed with a Special Division of Five[4-a] which after first ordering the dismissal by a split vote, later unanimously ordered reinstatement of the appeal) granted per its extended Resolution of August 15, 1974 a so-called "urgent joint omnibus motion" filed by respondents on April 12, 1974 which merely reiterated the same grounds for dismissal already rejected in effect by the Special Division of Five in an earlier Resolution of April 3, 1974. Respondent court denied reconsideration per its Resolution of September 17, 1974.

Hence, the present petition for review. The Court per its Resolution of December 6, 1974 resolved to treat the petition as a special civil action and respondents' sixty-page comment with annexes as their answer to the petition in order to dispense with the need and expense of filing of briefs and to expedite the disposition of the simple procedural and legal issues involved.

There is no dispute as to the material dates and data of petitioner's perfection of her appeal, as evidenced by the printed Record on Appeal, as may be seen from the following statement:

On June 2, 1971, petitioner received copy of the trial court's adverse decision dated May 26, 1971 in favor of respondents, dismissing all the complaints;[5]

On June 17, 1971, petitioner filed a Motion for Reconsideration and/or New Trial of the original Decision of May 26, 1971;[6]

On July 2, 1971, petitioner received copy of the trial court's Amendatory Order dated June 21, 1971 (partially granting an Ex-parte Motion for Clarification and/or Modification of the Decision with Petition for Writ of Execution filed earlier by respondents on June 5, 1971 without service on petitioner[7]) wherein the trial court substantially modified its original decision by directing the Rizal Register of Deeds to cancel petitioner's torrens title to the property and to issue new titles in favor of respondents, in addition to its original judgment which merely dismissed the complaints;[8]

On July 23, 1971[9] (not July 26, 1971 as erroneously stated by respondent appellate court in its decision) petitioner filed a Motion for Reconsideration of the Amendatory Order of June 21, 1971;

On July 26, 1971, petitioner received copy of the trial court's Order dated July 17, 1971 granting her original Motion for Reconsideration and/or New Trial of June 17, 1971, supra, and setting the case "for reception of newly discovered evidence on September 23, 1971 at 8:30 o'clock in the morning;"[10]

On October 5, 1972, petitioner received copy of the trial court's second and final Amendatory Order dated September 15, 1972 (after it had reopened the case and received petitioner's newly discovered evidence) wherein the trial court: —

— categorically set aside its original Amendatory Order of June 21, 1971 ordering the cancellation of petitioner's torrens title and the issuance of new titles in respondent's favor;

— revived or reaffirmed its original decision of May 26, 1971 "insofar as it denies the ejectment of the present occupants of the land" (respondents), which dismissed the complaints;[11]

On October 12, 1972 (or seven days after service of the second and final Amendatory Order of dismissal of September 15, 1972), petitioner filed a Consolidated Notice of Appeal dated October 7, 1972 and tendered an appeal bond in the sum of P120.00;[12]

On the next day, October 13, 1972, petitioner paid in cash the prescribed P120.- appeal bond, making of record the official receipt number;[13]

On November 11, 1972, respondents filed a lengthy "Opposition to Plaintiff's Motion for Extension to Record on Appeal and Motion for Execution" dated November 7, 1972, praying that petitioner's Motion for Extension of Time to file Record on Appeal dated October 10, 1972 (such date of petitioner's motion for extension of time is expressly stated in respondents' Opposition) be denied "for lack of merit;"[14]

On November 29, 1972, petitioner received copy of the trial court's Order dated November 17, 1972 granting petitioner "over the objection of counsel for the defendants . . . an extension of thirty days, from this date within

which to submit her record on appeal;"[15]

On December 15, 1972, or two days before the expiration of the extended deadline on December 17, 1972, petitioner filed her voluminous Record on Appeal for the approval of the trial court;[16] and

On December 23, 1972 at the scheduled hearing on the Record on Appeal, the trial court issued its Order of the same date approving the same "there being no opposition to the Record on Appeal" and ordering its elevation to the Court of Appeals.[17] As already stated above, the same was thereafter duly printed and filed with the appellate court, containing a total of 380 pages and 91 separate items.

Respondent court dismissed the appeal on two grounds: Its erroneous premise that the period for appeal be computed from service on petitioner on July 2, 1971 of the discarded Amendatory Order of June 21, 1971 instead of from the service on October 5, 1972 of the second and final order of dismissal of September 15, 1972 and its equally erroneous ruling that petitioner's Record on Appeal did not comply with the material data rule simply because petitioner's motion for extension of time to file Record on Appeal was not reproduced therein, notwithstanding that respondents' lengthy opposition thereto, and the trial court's order of November 17, 1972 granting petitioner a specific 30-day extension of time from said date were reproduced in full therein together with the order of December 23, 1972 approving without opposition the same as filed two days ahead of the extended deadline, all of which material data appear on the face of the Record on Appeal, as shown above.

Respondent court's dismissal of the appeal should therefore be set aside, as prayed for in the petition.

1. A mere reading of the statement of material dates and data shows manifestly that contrary to respondent court's erroneous premises and computation, petitioner duly and timely perfected her appeal within the reglementary period and in compliance with the material data rule that the Record on Appeal state "such data as will show that the appeal was perfected on time." [18]

The established principle as stated in Rule 37, section 5 is that by the granting of a new trial "the original judgment shall be vacated, and the action shall stand for trial de novo." [19]

Here, the trial court granted new trial for the reception of newly discovered evidence per its Order of July 17, 1971, which thereby vacated and effectively swept away and rendered without effect (until its issuance of a definitive decision or order after the new trial) its original decision of May 26, 1971 as well as its Amendatory Order of June 21, 1971.

Petitioner's period for appeal therefore commenced only from and after service on October 5, 1972 of the trial court's determinative second and final Amendatory Order of September 15, 1972. As already shown above, petitioner timely filed her Notice of Appeal and tendered the appeal bond on the 7th day after receipt of such final order and filed her Record on Appeal two days ahead of the extended deadline granted her per the trial court's order of November 17, 1972.

Respondent court's computation of the period for appeal using the discarded Amendatory Order of June 21, 1971 as the base Order appealed from and its service on July 2, 1971 on petitioner as the starting point is therefore patently erroneous. This first Amendatory Order of June 21, 1971 which ordered the cancellation of petitioner's titles in favor of respondents was expressly discarded and set aside by the trial court's second and final order of dismissal of September 15, 1972 and was thereby completely wiped away and of no force and effect, such that it could no longer be the object of petitioner's appeal.

Respondent court came up with the computation that petitioner's notice of appeal filed on the 7th day (October 12, 1972) after service on October 5, 1972 of the second and final Amendatory Order of September 15, 1972 (after

"tacking 24 days" that petitioner had "used up" when she filed her motion for reconsideration of said discarded Amendatory Order) "was filed one (1) day late, the 30-day period having ended on October 11, 1972." Even using arguendo respondent court's erroneous premise that such discarded Amendatory Order was the base order appealed from and assuming that the "tacking" principle were applicable, the record shows that it further erred factually in "tacking 24 days" since petitioner had only used up, 21 days having filed her motion for reconsideration of said discarded order on July 23, 1971 (and not on July 26, 1971 as mis-stated by respondent court) and therefore, the notice of appeal was filed not one (1) day late as wrongly computed by said court but on the 28th day or two (2) days ahead of the expiration of the 30-day period.)

2. However, as already shown above, respondent court was in complete error in using the discarded Amendatory Order of June 21, 1971 as the basis for computing the period for appeal, since such amendatory order and the original decision of dismissal were wiped away completely and rendered *functus officio* by the trial court's order of July 17, 1971 granting petitioner a new trial for the reception of newly discovered evidence.

In the language of the analogous case of *Lucas vs. Mariano*,^[20] the order of new trial "wiped away completely the previously ordered dismissal of the case" giving rise to "the emergence of a new period for appeal," such that "if after a restudy, the judge deemed it proper to order again a dismissal, this later dismissal must be considered as a newly appealable order and the period for its appeal must be correspondingly computed from the date of its service as prescribed by the rules."

Hence, where the trial court dismisses a complaint in a decision or order, then on motion for reconsideration sets it aside and orders a new trial or pre-trial as the case may be, and later acting upon a motion for reconsideration of the second order, again orders the dismissal of the complaint (as in *Lucas*) or issues an amendatory order amending its decision which it vacates and proceeds to the new trial after which it issues a second and final order expressly discarding the first amendatory order but again ordering the dismissal of the complaint, (as in the case at bar) the 30-day reglementary period for appeal is counted not on the basis of the first order of dismissal nor of the amendatory order but commences anew from the second order of dismissal. The trial court's order setting aside the first order of dismissal or vacating the same with the order for a new trial wiped away and erased completely the previously ordered dismissal of the complaint, giving rise to the emergence of a new period for appeal which is computed anew from the date of service of the second order of dismissal.

3. The second ground cited by respondent court for dismissing the appeal was that "as can be gathered from page 360, Item 89 of the printed record on appeal, plaintiff-appellant had filed a motion for extension of time to file record on appeal. However, this motion was not reproduced in said printed record on appeal. Likewise, there is no such motion in the original (typewritten) record on appeal. There is not even an allegation when it was filed."

Respondent court's statement is only half-correct. As shown in the detailed statement of material dates and data, *supra*, the Record on Appeal reproduces as Item 89 thereof the lengthy opposition of respondents to petitioner's motion for extension of time to file Record on Appeal dated October 10, 1972 (5 days after service of the second and final dismissal order). The opposition covered about every conceivable ground but not that the motion for extension was not timely filed.^[21]

The Record on Appeal further reproduces as Item 90 the trial court's order of November 17, 1972 granting petitioner a "last" and only extension of 30 days from said date for the purpose over the objection of respondents, as well as a last item the trial court's order of approval of the Record on Appeal as filed within the extended deadline without opposition on respondents' part, despite due notice and hearing.

There was clearly then substantial if not literal compliance with the material data rule, because the Record on Appeal does show on its face that petitioner did timely file a motion for extension of time to file Record on

Appeal which the trial court granted over the adamant objection of respondents and that petitioner did file the voluminous Record on Appeal well within the extended deadline granted her.

The teaching of *Berkenkotter vs. Court of Appeals*[22] controlling in the case at bar. There, the Court unanimously set aside the appellate court's dismissal of the appeal and held that "petitioner filed his record on appeal within the period of time requested and although no order of approval nor denial of the ex-parte motion for extension was issued, the Order of the Court on November 14, 1972, approving the notice of appeal, appeal bond and record on appeal amounts to and should be construed as a ratification or approval of the motion for extension."

Petitioner's position in the case at bar is much stronger for here not only is the fact of the timely filing of her motion for extension implicitly admitted in respondents' opposition as reproduced in the Record on Appeal, but the order of the trial court granting the 30-day extension and the fact of the filing of the Record on Appeal two days ahead of the expiration of the extended deadline are likewise reproduced and shown on the face of the Record on Appeal.

The rationale of *Berkenkotter* is fully applicable to the case at bar, *mutatis mutandis*, as follows:

"... What decisively matters is that the motion for extension of time to file the record on appeal is filed before the expiration of the 30-day period prescribed by the rules. In *Valero vs. CA, et al.*, L-36667, June 29, 1973, this Court, through Mr. Justice Barredo, sustained the petitioner's claim that he appealed on time, considering that the record on appeal was filed within the extended period given to her upon motion filed before the expiration of the reglementary period but approval of which was granted thereafter. It may not be amiss to state here that although there is no vested right in technicalities (*Alonso vs. Villamor*, 16 Phil. 315), in meritorious cases like the present case a liberal (not literal) interpretation of the rules becomes imperative and technicalities should not be resorted to in derogation of the intent and purpose of the rules — the proper and just determination of a litigation (*Ronquillo vs. Marasigan*, 5 SCRA 312).

"x x x x x x x x

"x x x x x 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. There is every reason, therefore, to apply the principle of substantial justice to the instant case for the following considerations: first, the court is given the discretion to extend the period for filing the record on appeal, notice of appeal and appeal bond, provided the notice for extension of time is filed within the 30-day reglementary period; second, there is every reason to assume that the record on appeal was 'filed on time' because it was approved after due hearing by the Court in its Order dated November 14, 1972; and last, but not the least, considering the merits of the case, to dismiss petitioner's appeal would not serve the ends of justice."

4. As indicated in the earlier part of this opinion, *supra*, [23] the Court has noted *motu proprio* that respondents' motion to dismiss appeal had previously failed before a Special Division of Five of respondent court, which by a split 3 to 2 vote first ordered the dismissal of the appeal [24] "on the sole ground that the appeal bond of (P120.00) was insufficient" [25] and upon petitioner's motion for reconsideration unanimously set aside the dismissal and ordered reinstatement of all the dismissed appeals upon petitioner's posting an additional amount of P1,200.00 as appeal bond, per its resolution of April 3, 1974.

While petitioner has not raised the question which after all is moot because of this Court's disposition on the merits in her favor, it should be noted that the competence and jurisdiction of respondent court's regular Sixth

Division (composed of three members, supra,[26] to act on respondents' so-called "urgent joint omnibus motion" of April 12, 1974 (reiterating the same grounds for dismissal already earlier rejected in effect by the Special Division of Five) and to order the dismissal of the appeal after the Special Division of Five had unanimously ordered its reinstatement are open to grave doubt — since it is not conducive to the proper administration of justice that a division of three members of respondent court should appear to overrule the unanimous action of a Special Division of Five.

ACCORDINGLY, judgment is hereby rendered setting aside respondent court's resolutions of August 15, 1974 and September 17, 1974 and reinstating the eleven appealed cases and remanding the same to respondent Court of Appeals for proper proceedings and disposition on the merits. With costs against private respondents.

SO ORDERED.

Castro, (Chairman), Makasiar, Esguerra, and Muñoz Palma, JJ., concur.

[1] Docketed as CA-G.R. Nos. 53680-90-R of respondent Court of Appeals.

[2] T.C.T. No. 15043 of the Register of Deeds of Rizal.

[3] Record on Appeal, page 379.

[4] Composed of Reyes, A., ponente, Pascual and Chanco, JJ.

In 1973, prior to the creation of the Special Division of Five, the Sixth Division was composed of Reyes A., Gancayco and Serrano, JJ.

[4-a] Composed of Reyes A., chairman, Gancayco, Pascual, Puno and Chanco, JJ. See *infra.*, p. 10.

[5] Record on Appeal, p. 206.

[6] *Idem*, p. 253.

[7] *Idem*, p. 217.

[8] *Idem*, p. 265.

[9] This date clearly appears on p. 295 of the Record on Appeal and is not disputed. Petitioner called appellate court's attention to this error in her motion for reconsideration (Annex B, petition, page 6) but said court simply denied reconsideration in its minute resolution of Sept. 17, 1974 (Annex C, petition).

[10] Record on Appeal, p. 293.

[11] *Idem*, p. 355. The dispositive part reads:

"WHEREFORE, as prayed, the order dated June 21, 1971, is set aside. However, the decision dated May 26, 1971, insofar as it denies the ejectment of the present occupants of the land as stated in the decision, stands."

[12] *Idem*, pp. 357, 359.

[13] *Idem*, p. 360.

[14] *Idem*, pp. 360-376.

[15] *Idem*, p. 377.

[16] *Idem*, pp. 377-378.

[17] *Idem*, p. 379.

[18] Rule 41, section 6.

[19] "SEC. 5. Effect of granting of motion for new trial. — If a new trial be granted in accordance with the provisions of this rule, the original judgment shall be vacated and the action shall stand for trial *de novo*; but the recorded evidence taken upon the former trial so far as the same is material and competent to establish the issues, shall be used at the new trial without retaking the same" (Rule 37).

[20] 44 SCRA 501, 507-508, 512 (Apr. 27, 1972), per Barredo, J., italics supplied. See also *Cuento vs. Paredes*, 40 Phil. 346; *Capistrano vs. Carino*, 93 Phil. 710, setting forth established rule that "The 30-day period begins to run from notice of order or judgment but when the order or judgment is amended, said period begins to run from notice of amendment" quoted by respondent court but incorrectly applied in its decision, Annex A, petition, Rollo, p. 29.

[21] This date of petitioner's motion for extension of time and the fact of its filing are expressly stated in respondents' very opposition thereto, *supra*, at page 4 hereof.

[22] 53 SCRA 288 (Sept. 28, 1973), per Esguerra, J.

[23] *Supra*, at page 2 hereof.

[24] With Reyes, Gancayco and Pascual, JJ. voting for dismissal and Puno and Chanco, JJ. dissenting.

[25] Appealed decision of respondent court, Annex A, petition, Rollo, page 27; note in parenthesis supplied.

[26] See fn. 4, at page 2 hereof.

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