

PERLA REYES, PETITIONER, VS. JUSTINA CARRASCO, HON. COURT OF APPEALS, RESPONDENTS.*G.R. No. L-28783. March 31, 1971*

Ponente: CONCEPCION, C.J.

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Although not interrelated - except L-29225 and L-29731 - these eleven (11) cases are jointly decided, the issue therein being basically the same.

1. L-28783 involves an unlawful detainer case initiated in the municipal court of Parañaque, Rizal. Its decision, favorable to the plaintiff Justina Carrasco, was appealed by defendant Perla Reyes to the Court of First Instance of Rizal[1] with the same result. Said defendant having appealed once more, the Court of Appeals, on motion of the plaintiff, dismissed the appeal for failure of the record on appeal to show on its face that the appeal had been perfected within the reglementary period, in that it does not state that defendant had filed the requisite appeal bond and the date when he did so. Thereupon, the aforementioned defendant filed with the Supreme Court a petition to compel the Court of Appeals to entertain her appeal from the decision of the Court of First Instance.

2. L-28818 refers to another unlawful detainer case commenced in the municipal court of Manila.[2] Plaintiff Antonio M. Samia having obtained therein a judgment in his favor, the defendants[3] appealed to the Court of First Instance of Manila[4] which, in due course, rendered judgment for the plaintiff. It would appear that, after filing separate records on appeal, the defendants deemed it best to file a joint record on appeal. Herein petitioners allege that the court of first instance authorized them to do so and gave them a period of time therefor, but the order to this effect was neither set forth nor mentioned in the joint record on appeal, which, moreover, does not state how much time they were given to file the same. On motion of the plaintiff, the appeal taken by the defendants from said decision of the court of first instance was dismissed by the Court of Appeals, owing to the failure of their record on appeal: (1) to state the date when appellants received notice of the decision appealed from; (2) to mention the order authorizing them to file a joint Record on Appeal and granting a period of time therefor; and (3) to show that the original and the joint record on appeal had been filed on time. Appellants filed, therefore, with the Supreme Court a petition for review upon the ground that their joint record on appeal complied substantially with the pertinent rules.

3. L-29225 is a petition for review on certiorari of a resolution of the Court of Appeals dismissing the appeal taken by herein petitioner, Juanita Laperal, as defendant in case CA-G.R. No. 35634-R of said court, entitled "Buenaventura Herrera v. Jose T. Reyes and Juanita Laperal Reyes," upon the ground that the joint record on appeal therein filed does not state the date when Laperal received notice of the appealed decision of the Court of First Instance, thereby failing to show that her appeal was perfected on time, in violation of Sec. 6 of Rule 41 of the Rules of Court.

4. L-29731 refers to the same case CA-G.R. No. 35634-R of the Court of Appeals, which is the object of L-29225. L-29731 deals, however, with the appeal taken by Buenaventura Herrera as plaintiff in said CA-G.R. No.

35634-R. Defendant Laperal moved to dismiss Herrera's appeal, but the Court of Appeals denied the motion, despite the fact that the aforementioned joint record on appeal does not state the date when Herrera received notice of the order of the trial court denying his motion for reconsideration of its decision and granting him an extension of ten (10) days to submit his Record on Appeal. Laperal filed, therefore, the petition in L-29731 for review of the resolutions of the Court of Appeals denying her motion to dismiss Herrera's appeal and her motion for reconsideration of the denial of said motion to dismiss.

5. L-29753 refers to an action commenced in the Court of First Instance of Zamboanga del Sur¹ to recover the possession of a land, as well as damages. After appropriate proceedings, 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 January 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 extension of ten (10) days within which to file their record on appeal. This motion was denied on the same day, March 11, 1968. On March 14, 1968, or within the reglementary 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 aforementioned decision upon the ground that it had become final. This motion 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 re-cord on appeal of the defendants¹ and dismissed their appeal, upon the ground that said record 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 action² 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 proceedings, the Court of Appeals rendered its 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 issued 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 received notice of the order denying their motion for new trial.

6. L-29970 refers to Civil Case No. 68339 of the Court of First Instance of Manila to recover damages and attorney's fees. It appears that in a previous case - Civil Case No. 63362 of the Court of First Instance of Manila - filed by Edward S. Dominguez against Hao Pek Lan, Chua Wa San and Corazon Roxas, judgment was rendered sentencing these defendants to pay Dominguez the sum of P3,000 as moral damages, for malicious prosecution, and P1,000 as attorney's fees, in addition to the costs. A writ for the execution of said judgment having been issued, a Ford truck valued at P3,000 and "bakawan" worth P36 were levied upon by the Sheriff of Manila, who subsequently issued a notice to the effect that said properties would be sold at public auction on November 21, 1966. Two (2) days prior thereto, Chua Hong filed with the office of said Sheriff a third party claim for said properties. This notwithstanding, the Sheriff, through his deputy, proceeded with the sale, without requiring Dominguez to post any indemnity bond. Hence, Chua Hong instituted said Civil Case No. 68339 of the same court of first instance of Manila against Dominguez and the Sheriff for damages and attorney's fees.

Said court having, in due course, rendered judgment for plaintiff Chua Hong, defendants Edward Dominguez and the Sheriff appealed to the Court of Appeals,¹ which, on motion of Chua Hong, dismissed the appeal for failure of the Amended Record on Appeal to show that the appeal had been perfected on time, inasmuch as said Amended Record on Appeal does not state the date when said defendants received copy of the decision appealed from and the date of the filing of the original record on appeal. Hence, Dominguez filed with the Supreme Court a

petition for review on certiorari of the resolutions of the Court of Appeals dismissing the appeal and denying the motion for reconsideration of the resolution of dismissal of the appeal.

7. L-30525 involves another action initiated² in the Court of First Instance of Rizal³ for the recovery of damages.⁴ After appropriate proceedings, said court rendered judgment in favor of the plaintiffs, in view of which the defendants appealed to the Court of Appeals.⁵ On motion of the plaintiffs, the Court of Appeals, by resolution dated February 25, 1969, dismissed the appeal, upon the ground that the record on appeal shows that appellant's motion for reconsideration was filed on February 1, 1969, or 50 days after the rendition of the decision appealed from on December 13, 1968, and does not state the dates when the defendants received copy of said decision and notice of the order of July 14, 1967, denying their motion for reconsideration of said decision, so that "the record on appeal fails to disclose on its face that the appeal was perfected within the period fixed by the Rules." The defendants, accordingly, filed with the Supreme Court a petition for certiorari to review the resolution of the Court of Appeals dismissing their aforementioned appeal and to compel said appellate court to entertain and decide said appeal on the merits.

8. L-31054 is an original action for certiorari and mandamus, with preliminary injunction, filed by the Director, Bureau of Building and Real Property Management - hereinafter referred to as the Government - to annul a resolution of the Court of Appeals dismissing the appeal taken by the Government - in CA-G.R. No. 43336-R of said court, entitled "Consuelo S. Gonzalez, et al. vs. High-Rate Fertilizer of the Philippines, Inc. and the Director, Bureau of Building and Real Property Management, Department of General Services" - from a decision of the Court of First Instance of Rizal in Civil Case No. 7678 thereof - having the same title - upon the ground, inter alia, that the joint record on appeal filed in said case CA-G.R. No. 43336-R states neither the date when appellant corporation¹ received copy of the order of the court of first instance denying the motion of said corporation for a reconsideration of the appealed decision of said court of first instance, favorable to the plaintiffs therein, nor the date when the Government filed a motion for extension of time to perfect its appeal and the duration of said extension. The notice of appeal filed by the Government, which forms part of the joint record on appeal, stated, however, the dates on which it received notice of the appealed decision, filed its motion for reconsideration thereof and received notice of the order denying said motion.

9. L-31510 involves an action for damages for alleged breach of contract, initiated by Napoleon V. Velasco and Pacita L. Velasco in the Court of First Instance of Rizal. The same having rendered judgment for the plaintiffs, the defendant Design Masters, Inc. appealed. The Court of Appeals, however, granted plaintiffs' motion to dismiss the appeal upon the ground that "nowhere in the record on appeal does the date of its filing appear," although said date is stamped on the first page of the original record on appeal, which was forwarded to the aforementioned appellate court. Design Masters, Inc. filed, therefore, with the Supreme Court a petition for certiorari to set aside the resolutions of the Court of Appeals dismissing the appeal of said defendant and denying its motion for reconsideration of the order of dismissal of the appeal.

10. L-31875 refers to an action to annul certain deeds of sale, as well as for specific performance and damages.² The Court of First Instance of Rizal having rendered judgment in favor of the defendants³ and against the plaintiffs,⁴ the latter appealed to the Court of Appeals. For failure to state in the amended record on appeal the dates when the plaintiffs had filed the original record on appeal and received notice of the order to amend the record on appeal, the appeal was, on motion of the defendants, dismissed by the Court of Appeals. Plaintiffs filed, therefore, with the Supreme Court, a petition for mandamus to compel the Court of Appeals to give due course to their appeal.

11. L-32395 involves an action, commenced in the Court of First Instance of Baguio City, to recover the possession of a land, as well as rentals and damages.¹ Plaintiffs therein² having obtained a judgment in their

favor, the defendants³ appealed to the Court of Appeals. The plaintiffs moved therein⁴ to dismiss the appeal, upon the ground that the record on appeal failed to state that the corresponding appeal bond had been filed within the reglementary period and that said record on appeal had been approved by the trial court. The motion having been denied, plaintiffs seek in the Supreme Court a review on certiorari of the resolution of the Court of Appeals denying said motion to dismiss.

In these eleven (11) cases, the main question is whether the records on appeal therein filed had violated the provision of Sec. 6, Rule 41 of the Rules of Court, for failure to state "x x such data as will show that the appeal was perfected on time," which is a ground for dismissal of the appeal under Sec. 1(a) of Rule 50 of said Rules. In this connection, it should be noted that, pursuant to Sec. 3 of said Rule 41, an "(a)ppeal may be taken by serving upon the adverse party and filing with the trial court, within thirty (30) days from notice of order or judgment, a notice of appeal, an appeal bond, and a record on appeal," and that, "(i)f the notice of appeal, the appeal bond and the record on appeal have been filed in due time, the appeal is deemed perfected upon the approval of the record on appeal and of the appeal bond other than a cash bond, x x x" - in the language of Sec. 9 of the same Rule. Construing these provisions, We held, as early as October 19, 1965:⁵

"There is no showing, therefore, in any way of the records of appeal that the notices of appeal, appeal bond and record of appeal were filed within 30 days from notice of the appealed order, after deducting the period during which the motions for reconsideration were pending, as required by Rule 41, section 3.

"The deficiencies pointed out are fatal. For the reason that in ordinary appeals the original record is not forwarded to the appellate court, and because the dates when an applicant received the notice of the pertinent orders or judgment under appeal, and of the denial of his motions for reconsideration or new trial, are facts within the exclusive knowledge of said appellant, the Revised Rules of Court place upon the appellant the burden of showing that his appeal is timely, and for that purpose prescribe (Rule 41, sec. 6) that the record of appeal shall include 'such data as will show that the appeal was perfected on time.' 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 (Bello vs. Fernando, L-16970, Jan. 30, 1962; Caisip vs. Cabangon, L-14684, August 26, 1960; Espartero vs. Ladaw, 49 Off. Gaz. 1439). x x x."

Elucidating on the background of Sec. 6 of Rule 41, this Court pointed out, in a subsequent case:¹

"In this connection, it should be noted that, prior to the promulgation of the Rules of Court now in force, the first sentence of Section 6 of Rule 41, was as follows:

"The full names of all the parties to the proceeding shall be stated in the caption of the record on appeal, and it shall include the order or judgment from which the appeal is taken, and, in chronological order, copies of all pleadings, petitions, motions and all interlocutory orders relating to the appealed order or judgment."

"This Court noticed, however, that issues were often raised in appellate courts on whether the appeal had been perfected on time or not, owing to the fact that the data pertinent thereto were not set forth in the record on appeal. Inasmuch as the records of trial courts, in cases appealed by record on appeal, are not forwarded to appellate courts, the latter had no means of checking or verifying the conflicting allegations of fact made, either in the briefs, or in the motion to dismiss the appeal and the opposition thereto, filed by the parties. As a consequence, appellate courts had to examine such evidence as the parties may have submitted thereto, in support of their respective contentions. This entailed additional work and unnecessary waste of time, that contributed to the delay in the final determination of appealed cases. To eliminate such obstacles to the speedy administration of justice, this Court deemed it best, not only to rephrase the first sentence of said Section 6, so as to read:

'The full names of all the parties to the pro-ceedings shall be stated in the caption of the record on appeal and it shall include the or-der or judgment from which the appeal is taken, and, in chronological order, copies of only such pleadings, petitions, motions and all interlocutory orders as are related to the appealed order or judgment and neces-sary for the proper understanding of the issue involved.'

but, also, to add, at the end thereof, the clause:

'together with such data as will show that the appeal was perfected on time.'

"Obviously, this amendment would become use-less and its purpose completely defeated, if we gave thereto the interpretation advocated by the main respondent herein. In other words, we would have the same issues and the same waste of time that were sought to be eliminated by the amendment. Hence, our ruling in *Government vs. Antonio* (supra), which, it should be noted, was made, not in a decision, but, in a resolution, so that the public may know imme-diatly - instead of waiting for the decision on the merits, which might require more time - the effect of said amendment, and the injurious consequences of a failure to grasp its full import could thus be minimized."

We have time and again reiterated this stand, and stressed the mandatory and jurisdictional nature of the requirements con-tained in Sec. 6 of Rule 41 of the Rules of Court.¹ What is more, in a recently decided case,² We added:

"It may not be amiss to point out that, in making the amendment adverted to above, We have not over-looked the fact that oftentimes the record on appeal is approved without any objection on the part of the appel-lee, who, it has, sometimes, been urged, should be deemed to be in estoppel, in consequence of his afore-mentioned failure to question the appeal. This notwith-standing, We have deemed and still deem it best to maintain the aforementioned view, not only because the theory of estoppel cannot apply when all of the par-ties concerned are aware of the relevant facts - and the appellant as well as the trial court are supposed to know whether or not the requisite steps for the per-fection of an appeal have been seasonably taken - but, also, because, otherwise, the decision or final order complained of becomes final and executory, so that the trial court has no jurisdiction to sanction an appeal therefrom and the appellate court is devoid of juris-diction to entertain the appeal. Well-settled is the rule that the jurisdiction over a case or matter may be questioned at any stage of the proceedings. In the language of *Government v. Antonio*, (supra) 'the certi-fication of the record on appeal by the trial court, after expiration of the period to appeal cannot restore the jurisdiction which has been lost.'"

Applying the foregoing views, from which We find no reason to depart, We hold that the Court of Appeals did not err in dismiss-ing the appeal involved in L-28783, for failure of petitioner's re-cord on appeal to state that he had posted an appeal bond and the date on which he had done so, the filing of said bond within the reglementary period being one of the essential conditions for the per-fection of an appeal, pursuant to Secs. 3 and 9, of Rule 41.

Petitioner maintains that the Court of Appeals "erred, in failing to apply the provisions of Section 7 of Rule 41," which al-leggedly "requires both the trial court and the respondent x x x to direct the amendment of the record on appeal by the inclusion of any matter omitted therein which are deemed essential to the de-termination of any issue of fact or law" in the appeal. Said Sec-tion 7 does not, however, "require" the trial court to give the aforementioned directive. The issuance thereof is merely dis-cretionary for the court. Moreover, said provision refers to matters "essential to the determination of the issue of law or fact involved in the appeal" taken by the appellant. The appeal bond was not essential to the issues sought to be raised by petitioner herein, as appellant in the main case.

Similarly, the Court of Appeals was justified in dismissing the appeal involved in L-28818 for failure of the record on appeal, filed by petitioners therein, to state the date of the filing of their original record on appeal,

although such date must have been stamped on said original record on appeal, which remained in the lower court, the one forwarded to the Court of Appeals being the joint record on appeal. In this connection, We had occasion to state, in *Valera v. Court of Appeals*, supra, which is squarely in point:

"The first ground might have a semblance of validity had the record on appeal approved by the lower court and certified to the Court of Appeals been the Original Record on Appeal, for the date on which it was filed would appear stamped thereon. In the case at bar, the Court of Appeals had no more than the Amended Record on Appeal, which was submitted subsequently to the Original Record on Appeal. The date of the filing thereof does not appear in the records of the Court of Appeals. Moreover, said date could have and should have been stated in the Amended Re-cord on Appeal. The certification by the Clerk of the trial court, to the effect that the original record on appeal had been filed on January 7, 1966, is not suf-ficient to cure the defect of the amended record on appeal."

According to petitioners' joint record on appeal, copy of the decision of the Court of First Instance, dated June 27, 1966, was received by them on July 7, 1966; twenty-seven (27) days later, or on August 3, 1966, they filed their notice of appeal; the next day, or August 4, 1966, they filed their appeal bond; and on Sep-tember 14, 1966, or two (2) months and seven (7) days after notice of said decision, the joint record on appeal was filed. Hence, with-out the dates of the filing of the original record on appeal, the order of the trial court authorizing the filing of the joint record and the period therein given, if any, it is not possible to determine whether the appeal had been perfected on time.

It appears from the record on appeal involved in L-29225 that the decision of the court of first instance was rendered "under date of July 17, 1964"; that appellant Laperal had filed her notice of ap-peal "under date of September 19, 1964" or about 62 days after the rendition of said decision, dated July 17, 1964; and that the appeal bond had, also, been paid to the Clerk of Court on September 19, 1964, which is, likewise, the date of the record on appeal. Since, the record on appeal does not state the dates when appellant received copy of said decision and filed her record on appeal, it is not possible to determine, on the face thereof, whether or not the appeal had been perfected on time. Accordingly, the Court of Appeals was justified in dismissing, in CA-G.R. No. 35634-R, Laperal's appeal. In fact, her counsel impliedly concedes this, except that, he claims, a dif-ferent norm has been applied by the trial court in connection with the appeal therein taken by plaintiff Herrera, which is the subject-matter of L-29731.

As regards said appeal of Herrera, the aforementioned record on appeal shows: that Herrera received copy of the appealed decision on August 21, 1964; that he had, therefore, up to September 20, 1964, to perfect his appeal; that twenty-eight (28) days later, or on Sep-tember 18, 1964, he filed a motion for reconsideration of said decision; that, pending resolution of said motion, or on October 7, 1964, Herrera filed his notice of appeal and cash bond, with a petition for "an additional period of 15 days from the date of expiry of the sus-pended period to appeal, the suspension being due to the non-receipt" of the resolution of his motion for reconsideration; that, on the same date, October 7, 1964, he filed another motion to suspend the period within which to perfect his appeal and for "an additional period of 15 days from the expiration of the reglementary period, as suspended, within which to perfect his appeal"; that on October 24, 1964, the trial court issued an order denying Herrera's motion for reconsidera-tion and granting him "an extension of ten (10) days from receipt" of said order "within which to submit his Record on Appeal"; that on October 26, 1964, said court approved the record on appeal submitted by the defendants; and that Herrera filed a supplemental record on appeal dated November 9, 1964, adopting "as his own" the record on appeal filed by the defendants. Since the date of receipt of the order of October 24, 1964, granting plaintiff ten (10) days from notice thereof, and the date of the filing of plaintiff's supplemental record on appeal, dated November 9, 1964, or 16 days later, are not given in such record on appeal, the data therein contained are insufficient to show that plain-tiff's appeal has been perfected on time.

The main issue in L-29753 differs from that of the other cases disposed of in this decision, in that the sufficiency 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 motion 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 amendment 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 expiration 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 lacking in the original record on appeal.

We have held that the provision in section 6 of Rule 41 - to the effect that the record on appeal should, inter alia, state "such data as will show that the appeal was perfected on time" - is "mandatory and jurisdictional," in the sense that, if the appeal is not so perfected, the decision or final order sought to be reviewed would have become final and executory, so that the appellate court would have no jurisdiction to entertain the appeal, and that, accordingly, compliance with said requirement is "mandatory," in view of which, failure of the appellee to object to the approval of the record on appeal 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 consideration is that, in cases appealed by record on appeal, the original record 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 perfected, 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 meritorious 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' record 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 amendment of said record on appeal so as to state therein the date when petitioners received notice of the order denying their motion for new trial.

It should be noted, moreover, that the appeal by certiorari to the Supreme Court, docketed therein as L-29753, has been taken, not by any of the parties in the main case,¹ but by respondent Judge, who is merely a nominal party in the present action for certiorari and mandamus. He has been included as respondent therein in compliance with section 5 of Rule 65 of the Rules of Court, which provides that -

"When the petition filed relates to the acts or omissions of a court or judge, the petitioner shall join, as parties defendant with such court or judge, the person or persons interested in sustaining the proceedings in the court; and it shall be the duty of such person or persons to appear and defend, both in his or their own behalf and in behalf of the court or judge affected by the proceedings, and costs awarded in such proceedings in favor of the petitioner shall be against the person or persons in interest only, and not against the court or judge."

It is clear from this provision that respondent Judge is not a person "in interest", within the purview thereof, and

that, accordingly, he has no standing or authority to appeal from or seek a review on certiorari of the decision of the Court of Appeals in CA-G.R. No. 41577-R, although, in taking such step, he was motivated by the best of intentions.

With respect to L-29970, the record on appeal in CA-G.R. No. 41825-R shows that the decision in Civil Case No. 68339 of the court of first instance of Manila was rendered on January 29, 1968; that, twenty eight (28) days later, or on February 26, 1968, Dominguez filed his notice of appeal from said decision, as well as his appeal bond; that, forty six (46) days later, or on May 14, 1968, said court issued an order directing Dominguez to make in his record on appeal, within five (5) days from receipt of copy of said order, the corrections specified in said order; that on May 18, 1968, Dominguez filed a motion to be allowed to make said corrections, in open court, on the original record on appeal, the corrections specified in the order of May 14, 1968 being due to mere typographical errors; that on May 25, 1968, the court issued an order directing the submission of a corrected record on appeal within five (5) days from said date; and that Dominguez filed an amended record on appeal dated May 29, 1968, which was set for hearing on June 8, 1968, and approved on June 20, 1968. Inasmuch as the amended record on appeal does not state the dates on which Dominguez received copy of the decision dated January 29, 1968 and filed the original record on appeal, it is not possible to ascertain from the amended record on appeal whether or not the appeal had been perfected on time. The Court of Appeals did not err, therefore, in dismissing said appeal, pursuant to section 6 of Rule 41 and Sec. 1(a) of Rule 50 of the Rules of Court.

Then, again, according to the record on appeal in CA-G.R. No. 42266, which is involved in L-30525, the decision in civil case No. 8613 of the Court of First Instance of Rizal was rendered on December 13, 1966. Forty eight (48) days later, or on February 1, 1967, the defendants filed a motion for new trial, which was denied on February 18, 1967. Thirteen (13) days later, or on March 3, 1967, the defendants filed a motion for reconsideration, which was denied on July 14, 1967. The defendants filed a record on appeal dated July 21, 1967, which was approved in an order dated March 21, 1968, stating that the requisite notice of appeal, appeal bond and record on appeal had been filed, without specifying the dates on which each act had been performed. Considering that forty eight (48) days had elapsed from the rendition of the decision to the filing of the motion for new trial; that thirteen (13) days had elapsed from the date of denial of said motion to that of the filing of the motion for reconsideration; and that seven (7) days had elapsed from the denial of said motion for reconsideration to July 21, 1967, the date of the record on appeal, which must have been filed still later, for despite the absence of any opposition thereto, it was not approved until March 21, 1968, it is manifest that the silence of the record on appeal as regards the dates when the defendants: (1) received a) copy of the decision of December 13, 1966, b) notice of the order of February 18, 1967, denying their motion for new trial, and c) notice of the order denying their motion for reconsideration; and (2) filed their record on appeal, renders it impossible to determine, from an examination of the record on appeal, whether or not the appeal had been perfected on time.

As regards L-31054, the Government maintains that the statement made by His Honor, the Trial Judge, in his order approving the record on appeal, to the effect that the joint record on appeal, the notice of appeal and the appeal bond had been filed "within the period" prescribed therefor, suffices to comply with the requirements of Sec. 6 of Rule 41. This pretense is untenable, said statement being a mere conclusion, not a fact indicative of the seasonable perfection of the appeal. It is true that the notice of appeal filed by the Government stated the dates on which it received notice of the decision of the trial court, filed its motion for reconsideration of said decision and received notice of the order denying the same. Such statement constitutes a substantial compliance with the requirements of Sec. 6 of Rule 41, as regards the events to which said dates refer, but the record on appeal is still deficient, insofar as it does not mention the extension of time given for the filing of the joint record on appeal and the duration of said extension.

Indeed, said joint record on appeal shows that on October 2, 1968, the Government received copy of the decision of the court of first instance, dated September 23, 1968; that 26 days later, or on October 28, 1968, the Government filed its motion for reconsideration of said decision; that notice of the order denying said motion for reconsideration was received by the Government on January 13, 1969; that the Government filed its notice of appeal on January 14, 1969; that the Government had been given an extension of time - the length of which is not stated - within which to file a record on appeal; and that the joint record on appeal bears the date, March 4, 1969, or about 49 days after notice of the denial of the motion for reconsideration. In short, without a statement of the date of the filing of the original record on appeal, of the length of the extension of time granted for the filing of the joint record on appeal, and of the date of the filing thereof, it is not possible to establish whether or not the appeal had been perfected on time.

The printed record on appeal in L-31510 does not show the date on which it was filed with the trial court, but such date is stamped on the original record on appeal, which was approved by said court and forwarded to the Court of Appeals. Section 6, Rule 41 of the Rules of Court, obviously refers to the record on appeal filed with the trial court, not to the record on appeal printed in the appellate court. At any rate, the Court of Appeals is in a position to determine the date aforementioned, by examining the original record on appeal thereto forwarded, and, hence, forming part of its own records. Accordingly, petitioner's record on appeal meets the objective of said provision of the Rules of Court, which may be deemed to have been substantially complied with.

The amended record on appeal in L-31875 does not state either the date when the original record on appeal was filed or the date when appellant received notice of the order directing that said record on appeal be amended. Consequently, it does not show that the appeal has been perfected on time. Petitioners argue that this deficiency has been offset by the order approving the record on appeal, which states "that the plaintiffs have filed an amended record on appeal in compliance with the order of June 3, 1969," and that said record on appeal is "in order," in view of which it was approved. This statement in said order does not suffice to cure the defect of the record on appeal. Indeed - apart from being a mere conclusion, not a fact serving as a premise therefor - the statement about compliance with the order of June 3, 1969 - the contents of which are neither reproduced in the record on appeal nor described therein - simply means that petitioners herein had made in the record on appeal the amendments directed in said order. Accordingly, the aforementioned statement does not supply sufficient data to enable the appellate court to determine whether or not the appeal had been perfected on time. In other words, said statement did not forestall the issues that were sought to be avoided by Sec. 6 of Rule 41.

The record on appeal involved in L-32395 does not state the date on which the requisite appeal bond had been filed, not even whether or not petitioners therein had filed said appeal bond. Thus, it is not possible to determine, upon examination of the record on appeal, whether or not they had seasonably perfected their appeal, which was properly dismissed by the trial court.

WHEREFORE, judgment should be, as it is hereby rendered:

1. Dismissing the petition in L-28783 and denying the writ therein prayed for, with costs against petitioner Perla Reyes;
2. Affirming in L-28818 the contested resolution of the Court of Appeals, with costs against petitioners Fernando Atengco and Olimpio Atengco;
3. Affirming in L-29225 the resolution of the Court of Appeals, dated April 19, 1968, in CA-G.R. No. 35364-R, dismissing the appeal therein taken by Juanita Laperal, the petitioner herein, with costs against her;
4. Reversing in L-29731 the resolution of the Court of Appeals, dated October 14, 1968, in CA-G.R. No.

- 35364-R, reinstating the appeal therein taken by Buenaventura Herrera, with costs against the latter;
5. Affirming in L-29753 the decision of the Court of Appeals in CA-G.R. No. 41577-R, without special pronouncement as to costs;
6. Affirming in L-29970 the appealed resolutions of the Court of Appeals in CA-G.R. No. 41825-R, with costs against petitioner herein, Edward Dominguez;
7. Affirming in L-30525 the resolution of the Court of Appeals in CA-G.R. No. 42266-R dismissing the appeal taken by the defendants therein, with the costs of this instance against said defendants and petitioners herein;
8. Dismissing the petition in L-31054 and denying the writs therein prayed for, without costs;
9. Setting aside in L-31510 the appealed resolutions of the Court of Appeals and directing the same to give due course to the appeal taken by herein petitioner Design Masters, Inc., as defendant-appellant in case CA-G.R. No. 40463-R of said court, with the costs of this instance against herein respondents, Napoleon V. Velasco and Pacita L. Velasco;
10. Dismissing the petition in L-31875 and denying the writs therein prayed for, with costs against petitioners Abelardo Bragais and Erlinda Bragais; and
11. Setting aside the appealed resolution in L-32395 and dismissing the appeal taken by respondents herein, as appellants in case CA-G.R. No. 43073-R of the Court of Appeals, with costs against them.

IT IS SO ORDERED.

Reyes J. B. L., Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Barredo, and Villamor, JJ., concur.
Teehankee, J., dissents in a separate opinion.
Makasiar, J., did not take part.

[1] Civil Case No. 625-R thereof.

[2] Civil Case No. 65271 of said court.

[3] Tiburcia Alvarez, Fernando Atengco, Olimpio Atengco, Paciencia Atengco, Juana Caingat, Fernando de la Cruz, Juana de la Cruz, Pedro David, Macaria Dizon, Ambrocio Mangsal and Venancio Mendoza.

[4] Civil Case No. 59282.

1 Civil Case No. 336 thereof.

1 Zacarias de la Torre and Nemesio de la Torre.

2 CA-G.R. No. 41577-R.

1 CA-G.R. No. 41825-R.

2 By the minor Maria Christina Santiago, represented by her parents Salvador and Milagros Santiago.

3 Civil Case No. 8613 thereof.

4 From Juana M. Halili, Ermilinda Garcia and their respective spouses John Doe Halili and John Doe Garcia.

5 C.A.-G.R. No. 42266-R.

1 High-Rate Fertilizer of the Philippines, Inc.

2 Civil Case No. 10447 of the Court of First Instance of Rizal.

3 Fermina del Valle-Delima, Justiniano Delima and Ortigas & Co., Limited Partnership.

4 Abelardo Bragais and Erlinda Bragais.

1 Civil Case No. 968 of said Court.

2 Rafael, Demec, David, Tolina, Simo, Abdon, Elias and Bosong, all surnamed Tello.

3 Zacarias Toquing - alias Toking Zacarias (now deceased) - substituted by his widow, Rosalina Toquing, and children - Neneng Toquing, Kideng Toking Pascua, Moning Toking Sanchez, Lourdes T. Balictan and Peril Toking.

4 CA-G.R. No. 42073-R.

5 Government of the Philippines v. Luis Antonio, et al., L-23736, October 19, 1965.

1 Araneta v. Madrigal, L-26227-28, October 25, 1966.

1 DBP v. Santos, L-26387, Sept. 27, 1966; Atlas Consolidated Mining & Development Corp. v. Progressive Labor Asso., L-27125, Sept. 15, 1967; Jocson v. Robles, L-23433, Feb. 10, 1968; Cadiz v. Sec. of National Defense, et al., L-25150, Sept. 30, 1968.

2 Valera v. Court of Appeals, L-29416, January 28, 1971.

1 Plaintiff Zoilo de los Reyes and defendants Zacarias and Nemesio de la Torre.

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DISSENTING OPINION

TEEHANKEE, J.:

I respectfully submit that the respondent court of appeals' resolutions dismissing the appeal of the Government should be set aside for the following considerations:

1. There was concededly substantial compliance on the Govern-ment's part with the requirements of Rule 41, section 6 that the re-cord on appeal must show "such data as will show that the appeal was perfected on time." Thus, its notice of appeal, duly incorporated in the record on appeal (at pp. 292-293), duly state the dates on which it received notice of the trial court's decision, filed its motion for reconsideration and received notice of the order of denial thereof.

2. The only deficiency which the appellate court noted at its own instance and made the basis for its order of dismissal was that the record on appeal does not indicate "when the defendants filed a motion for extension within which to file the record on appeal nor does it indicate how long an extension was granted." The trial court's own

order of March 15, 1969 approving the record on appeal (at p. 297) expressly makes of record "that the defendants had filed a joint record on appeal, notice of appeal and appeal bond within the period, defendant Director of Building and Real Property Management having been granted an extension within which to file a record on appeal."

3. Plaintiffs-appellees (herein private respondents) themselves did not raise in their motion for dismissal with the appellate court any such alleged deficiency of the record on appeal concerning the ex-tension of time and the length thereof. The only ground for dismissal alleged by them as against the Government's appeal was that "the said appeal is frivolous, dilatory and malicious." (Annex F, Petition; Rollo, p. 50). They may therefore be held now in estoppel as to the alleged deficiency, which they never questioned in the first instance - after the Government had with the private defendant-appellant defrayed the cost of printing the voluminous 298-page record on appeal and filed in due course, as required, the necessary number of printed copies thereof with the appellate court. (See *Dequito vs. Lopez*, L-27757, March 20, 1968).

4. Substantial and important legal issues and factual questions appear to be involved in the subject case, which merit the granting of due opportunity to the Government to pursue its appeal and secure a decision on the merits thereof from the appellate court, rather than the summary dismissal of its appeal for a ground not even advanced or raised by respondents-appellees in their dismissal motion. The Solicitor-General summarizes in his petition (at p. 18) the issues raised in the Government's appeal, as follows:

"The legal issue centers around the status of lands reclaimed from the sea as a result of certain works done by the government. It is herein petitioner's thesis that lands having disappeared on account of gradual erosion due to the ebb and flow of tide and subsequently reclaimed by the government are public lands.

"Questions of facts also abound in the case. Petitioner herein had adduced evidence showing that the subject lots even before World War II began to erode due to the action of the sea (Manila Bay); that when the lots were completely submerged, private respondents herein never took steps to protect the lots; they likewise did not register any objection to the reclamation project of the government.

"These are some facts supported by the evidence but which the lower court failed to appreciate fully--hence the appeal.

"Certainly, with this important legal issue and questions of facts no amount of reasoning can support the charge that the appeal is 'frivolous, malicious and dilatory.'"

I therefore vote for the granting of the petition at bar and the issuance of the writ of certiorari and mandamus, as prayed for.

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