

**FRANCISCA E. VDA. DE ESPARTERO AND AMPARO ESPARTERO,
PETITIONER, VS. JUAN LADAW, JUDGE OF THE COURT OF FIRST
INSTANCE OF CAGAYAN, SECOND BRANCH, AND URBANO CASILLAN,
RESPONDENTS.**

G. R. No. L-5181. February 24, 1953

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for mandamus which seeks to compel the respondent judge to desist from dismissing the appeal interposed by petitioners from an order of said judge dated May 26, 1951, and to transmit to this court the record on appeal filed by petitioners in pursuance of their appeal.

In Cadastral Case No. 26 (G. L. R. O. Record No. 1390) of the Court of First Instance of Cagayan, Urbano Casillan filed a petition under section 112 of Act No. 496, known as the Land Registration Act, praying that the name written in original certificate of title No. 13080 of the land records of Cagayan covering lot No. 1380 be corrected by writing therein the name of the real owner of said lot, or by ordering that it be reconveyed to petitioner who is the real owner thereof.

Francis E. Vda. de Espartero and Amparo Espartero, heirs of. the registered owner Victorino Espartero, deceased, opposed the petition and prayed that it be dismissed on the ground of res judicata.

The incident was set for hearing, and on May 26, 1951, the court entered an order declaring petitioner the real owner of the lot in dispute and ordering oppositors to execute the necessary deed of reconveyance within thirty days after the order has become final.

Oppositors received copy of the order above adverted to on June 12, 1951; on June 14, they filed their notice of appeal; and on June 25, they filed the necessary appeal bond copy of which was served on the same date upon the counsel of petitioner.

On July 11, 1951, the record on appeal was approved by the respondent Judge Hon. Juan Ladaw, who ordered the clerk of court to transmit the record on appeal to the Supreme Court.

On August 30, 1951, petitioner filed a motion to dismiss the appeal on the ground that the appeal bond has not been approved by the court within the reglementary period in view of the failure of oppositors to secure its approval, and finding the motion well taken, the respondent judge dismissed the appeal.

Oppositors now come to this court contending that the respondent judge erred in dismissing the appeal on the alleged ground that the same was not perfected within the reglementary period.

The rules governing appeals from a judgment of a Court of First Instance to an appellate court are simple and clear. Under section 3, Rule 41, an appeal may be taken by serving upon the adverse party and filing with the trial court within thirty days from notice of judgment, a notice of appeal, the appeal bond, and a record on appeal.

Under section 5, of the same rule, the appeal bond shall be approved by the court. And under section 9, of the same rule, upon the filing of the notice of appeal and the approval of the appeal bond and the record on appeal, the appeal is deemed perfected and the trial court loses its jurisdiction over the case.

The above provisions require that the notice of appeal, appeal bond, and record on appeal should be filed in court and served upon the adverse party within thirty days from notice of judgment. These provisions are compulsory in nature. These three requirements must be complied with within the 30-day period. The failure to comply with any of the requirements within said period would give rise to the dismissal of the appeal (*Salva vs. Judge Palacio*,[*] et al., G. R. No. L-4247, January 30, 1952; *Arcega vs. Dizon*, 42 Off. Gaz., p. 2138; 76 Phil., 174), and so it is expressly provided that "where the notice of appeal, appeal bond, or record on appeal is filed but not within the period of time herein provided, the appeal shall be dismissed" (section 13, Rule 41).

But there is nothing in the rules which imposes upon the party appealing the duty of securing from the court the approval of the appeal bond. This is an act which the court should attend to once said bond is filed by the appealing party. This is a duty imposed upon the court by section 5, Rule 41, of the Rules of Court. The only duty of the appealing party is to file it within the reglementary period. The petitioners, oppositors herein, have complied with this duty.

The case of *Prisco, et al., vs. Oscar Castelo*,[*] et al. (48 Off. Gaz., p. 2193), cannot be invoked as authority for dismissal of the appeal for the alleged failure of oppositors to secure the approval by the respondent, judge of the appeal bond they had filed within the reglementary period. While in said case it was held that the mere filing of the notice of appeal and appeal bond is not sufficient in order to perfect the appeal, because the appeal bond must be approved by the court as expressly required by sections 5 and 9 of Rule 41, and the approval thereof is one of the requisites for the perfection of an appeal, there is nothing said therein to the effect that the failure of the approval of the appeal bond within the reglementary period would give rise to the dismissal of the appeal. That case is merely an authority for the ruling that as long as the appeal bond remains unapproved the trial court is not divested of its jurisdiction over the case. In other words, the mere filing of the notice of appeal, the record on appeal and the appeal bond does not automatically perfect the appeal. The approval of the bond is still necessary in order to divest the court of its jurisdiction.

It appearing that the petitioner-oppositors have filed the notice of appeal, the record on appeal and the appeal bond within the reglementary period and have served copies thereof on the opposing counsel, they have complied with the Rules of Court with regard to the procedure to be followed incident to the perfection of their appeal, and the failure of the respondent judge to approve the appeal bond as required by section 5 of Rule 41, cannot work to their prejudice. As the case now stands, the trial court still retains jurisdiction over the case and can approve the appeal bond as required by said section 5.

Petition is hereby granted, with costs against respondent Urbano Casillan.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo and Labrador, JJ., concur.

[*] 90 Phil., 731; 53 Off. Gaz. (10), 3089.

[*] 87 Phil., 714.

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