

ACAY BALBALIO, ET AL., PETITIONERS VS. HEIRS OF THE DECEASED SPOUSES IGNACIO B. GALABAN AND MAGDALENA BAUTISTA, ETC., ET AL., RESPONDENTS.

G.R. No. L-21496. September 17, 1965

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

The Court of First Instance of Pangasinan rendered judgment on November 28, 1962, in its Civil Case No. U-492, "Acay Balbalio, et al. vs. Heirs of the deceased spouses, Ignacio B. Galaban and Magdalena Bautista".

The heirs of the deceased spouses Ignacio B. Galaban and Magdalena Bautista filed on January 3, 1963 a notice of appeal and record on appeal. On January 4, 1963 they filed an appeal bond.

Acay Balbalio et al. thereupon moved to dismiss the appeal on the ground that the appeal bond was filed one day after the lapse of the reglementary period to appeal. An opposition to the motion was interposed.

The Court of First Instance denied the motion, on March 14, 1963, giving due course to the appeal and ordering that the records be forwarded to the "Appellate Court". A motion for reconsideration was submitted but the same was denied on June 21, 1963.

Acay Balbalio and his co-plaintiff Polito Lic-cano subsequently filed, on July 3, 1963, the instant special civil action for certiorari, originally in this Court, to assail the Court of First Instance's aforementioned orders.

Petitioners allege that they have no plain, adequate and speedy remedy in the ordinary course of law. The Rules of Court, however, shows the contrary. They may file a motion to dismiss in the appellate court, in their capacity as appellees, on the ground of failure of the appellants to file the appeal bond within the prescribed time (Section 1[a], Rule 52, now Section 1[b], Rule 50, Rules of Court).

The fact that a motion to dismiss had been filed and denied by the trial court does not preclude the movants from renewing or reiterating said motion in the appellate court (*Garganta v. Court of Appeals*, 56 O.G., 4323, 4326-27).

A motion to dismiss the appeal, filed by the appellee with the appellate court, has the effect of an appeal from the order of the trial court denying his motion, and the appellate court may deny the motion to dismiss ratifying thereby the order of the trial court, or grant said motion, reversing in effect the action taken by the court below on the matter, if it appears that the appeal has not been perfected within the prescribed time (*Santiago v. Valenzuela*, 78 Phil. 397, 401).

Accordingly, there being a plain, adequate and speedy remedy in the ordinary course of law, petitioners cannot avail of certiorari (Sec. 1, Rule 67, now Sec. 1, Rule 65, Rules of the court).

Wherefore, the petition for certiorari is denied, without costs. So ordered.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Dizon, Makalintal, and Zaldivar, JJ., concur.

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