

ALEJANDRO RAFANAN, ET AL., PLAINTIFFS AND APPELLANTS, VS. SIXTO RAFANAN, DEFENDANT AND APPELLEE.

G.R. No. L-7795. December 24, 1955

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal from an order of the Court of First Instance of La Union in its Civil Case No. 657 denying plaintiffs' petition for relief from another order of the same court dismissing their appeal from the main judgment for having been filed out of time.

It appears that on August 21, 1952, plaintiffs Alejandro Rafanan, Josefina Rafanan, and Ernesto Rafanan filed a complaint against defendants Sixto Rafanan and Maria G. de Rafanan for the recovery of a parcel of land located in barrio Biday, San Fernando, La Union. On July 27, 1953, the Court below rendered judgment declaring the defendants to be the owners of the land in question. Notice of the decision was sent by registered mail and was received by counsel for plaintiffs on July 30, 1953; and on August 18, 1953, plaintiffs filed a notice of appeal. It was, however, only on August 20, 1953 that plaintiffs deposited their cash appeal bond, and their record on appeal was filed still later, on September 9, 1953.

On October 3, 1953, the Court a quo issued an order dismissing plaintiffs' appeal for having been filed out of time, and granting the writ of execution prayed for by defendants. Plaintiffs received copy of this order on October 8, 1953, and the next day, October 9, they filed a motion to reconsider the same on the ground that the period was erroneously computed by the Court. On November 7, 1953, the Court below denied their motion for reconsideration; copy of the order of denial was received by plaintiffs on November 13, 1953. Plaintiffs then filed with this Court on December 9, 1953, a petition for certiorari and mandamus, seeking to annul the order of the lower Court dismissing their appeal and denying their motion for reconsideration, but we dismissed said petition for lack of merit on December 11, 1953. Finally, plaintiffs filed with the lower court on January 7, 1954 a petition for relief, praying that the order dismissing their appeal be set aside, because the delay in perfecting the appeal was due to mistake or excusable neglect. This petition was again denied by the Court on February 15, 1954 for having been filed beyond the time provided for in section 3 of Rule 38. From this last order of denial, plaintiffs have prosecuted this appeal.

We agree with the Court below that the petition in question was filed out of time.

Under section 3 of Rule 88, a petition for relief must be filed within sixty days after the petitioner learns of the judgment or order complained of, and not beyond six months after such judgment or order was entered.

The order of dismissal of the appeal, now sought to be set aside, was received by plaintiffs-appellants on October 8, 1953. They, then, had sixty days from such receipt, or up to December 8, 1953, within which to present a petition for relief. Their petition was, however, filed only on January 7, 1954, or thirty days too late.

Appellants contend that the running of the sixty-day period within which they could present a petition for relief

against the order complained of was suspended by their motion for reconsideration filed on October 9 and denied by the Court only on November 13, 1953. The question of whether or not the period prescribed by section 3 of Rule 38 for the filing of a petition for relief may be suspended or interrupted, has already been decided by this Court in the case of Palomarea, et al. vs. Jimenez, 90 Phil. 773. There we held:

"* * * Considering the purpose behind it, the period fixed by Rule 38 is non-extendible and is never interrupted. It is not subject to any condition or contingency, because it is itself devised to meet a condition or contingency. The remedy allowed by Rule 38 is an act of grace, as it were, designed to give the aggrieved party another and last chance. Being in the position of one who begs, such party's, privilege is not to impose conditions, haggle or dilly-dailly, but to grab what is offered him."

The applicability of this rule to the appellants is the more imperative because, no reason is shown why the excusable negligence now alleged was not invoked in the motion to reconsider filed by them on October 9, 1953. The spirit of the Rules of Court is that all available grounds for relief should be invoked at one time (cf. Sawit vs. Rodas, 73 Phil., 310).

Considering, therefore, that the period prescribed by Rule 38 is non-extendible and never interrupted, the period within which appellants could have filed a petition for relief from the lower Court's order of October 3, 1953 dismissing their appeal, was not interrupted or suspended by their motion to reconsider of October 9, 1953, and so their petition was filed out of time. Wherefore, the lower Court did not err in denying the same.

The order appealed from is affirmed, with costs against plaintiffs-appellants. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angel, Labrador, and Concepcion, JJ., concur.

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