

FILOMENA RAMIREZ, ET AL., PETITIONERS, VS. HON. ABUNDIO Z. ARRIETA, ET AL., RESPONDENTS.

G.R. No. L-19183. November 29, 1962

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Filomena Ramirez, et al. filed an action against Apolinar Seriña, et al. before the Court of First Instance of Misamis Oriental seeking the annulment of a transfer certificate of title over a parcel of land originally registered in the name of the former but was subsequently registered in that of the latter through misrepresentation, but after trial on the merits the court rendered judgment dismissing the complaint and declaring defendants to be the lawful owners of the land in question.

Notice of the decision was served on the plaintiffs on June 16, 1961, and on July 14, 1961, before the expiration of the 30-day period within which to appear, plaintiffs filed a notice informing the court of their intention to appeal. Counting from June 17, 1961 the 30-day reglementary period for appeal, the same should have ended on July 16, 1961, but this date falling on Sunday, the record on appeal and appeal bond were filed on the next day, July 17, 1961. However, since on the last date the appeal bond was only signed by one of the bonds men because the other was out of town, it was suggested by the clerk of court that it be first completed before filing it, which suggestion was followed and the bond was signed and filed the next day, July 18, 1961.

On August 4, 1961, the defendants, thru counsel, filed an opposition to the approval of the appeal bond alleging that it was filed one day beyond the reglementary period, and so they asked that it be disapproved and the judgment rendered be declared final and executory. The trial court, on August 29, 1961, disapproved the bond, and as a result it dismissed the appeal and declared the judgment final and executory.

Their motion for reconsideration having been denied, plaintiffs interposed the present petition for mandamus seeking to compel respondent court to give due course to their appeal on the ground that in disapproving their appeal bond the court committed a grave abuse of discretion.

There is no dispute that on the last day of the reglementary period within which plaintiffs may perfect their appeal they filed with the court their record on appeal and the requisite appeal bond with the only flaw that the latter was signed only by one bondsman for which reason the clerk of court suggested that it be completed and filed afterwards. Accordingly, the bond was signed by the other bondsman on the next day and was filed with the court on that same day. Because of the fact that the bond was completed one day late, the trial court, heeding the opposition of defendants, considered the bond to have been filed out of time and declared that the appeal has not been duly perfected and the judgment had become final and executory.

We consider this action of the trial court to be harsh and improvident considering that the appeal bond has been filed on time even if it was found to be defective. In the first place, Section 5, Rule 41, of our Rules of Court, which governs the filing of an appeal bond in appeals from the court of first instance to an appellate court does not expressly provide that a personal appeal bond should be subscribed by two sureties, it being sufficient that it

be approved by the court. In the second place, under Section 3, Rule 40, the appeal bond required for appeal from a justice of the peace or municipal court to the court of first instance needs only to be subscribed by one surety, which requirement in our opinion should also be deemed sufficient in appeals from a court of first instance as long as the surety is found to be solvent and acceptable to the court. Anyway, the amount of the required appeal bond is only P60.00, and its purpose is only to answer for the costs which the appellate court may award against the appellant.

Even if it be held that two sureties are needed to complete an appeal bond in an appeal from the court of first instance to the appellate court we may say that the defect found in the instant appeal bond is not sufficient to deprive the court of its jurisdiction it appearing that the same has been filed within the reglementary period. Here is where we may fittingly apply the principle that rules of procedure should be liberally construed in order to promote their object and assist the parties in obtaining a just determination of their cases (Section 2, Rule 1). On the other hand, we find pertinent the following ruling cited by former Chief Justice Moran: "A defective appeal bond, which is not a nullity, given in good faith and not for the mere purpose of delay, is sufficient, at least, to confer jurisdiction upon the Court of First Instance to order its amendment, and the appeal should not be dismissed without giving the appellant an opportunity, upon reasonable terms, to perfect the bond wherein it is defective, or to file a new bond, such as is required by the rules." (Moran, Comments on the Rules of Court, Vol. 1, 1957 Ed., pp. 624-625, citing *Tirangbuaya vs. Judge of First Instance of Rizal*, 14 Phil. 613; *Taroc, et al. vs. Judge of Court of First Instance of Pampanga, et al.*, 36 Off. Gaz., 942; *Medina vs. Yatco*, L-2521, resolution of January 25, 1949.)

Wherefore, petition is granted. Respondent court is hereby ordered to give due course to the appeal interposed by petitioners. No costs.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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