

MAGDALENA V. ACOSTA, JULIANA V. ACOSTA AND ROSITA V. ACOSTA, PETITIONERS, VS. HON. JUDGE ANDRES B. PLAN, PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF ISABELA, BRANCH II, HO...

G.R. No. L-44466. January 30, 1989

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

The only issue in this petition for review on certiorari is whether the petitioners' appeal from the decision of the Court of First Instance of Isabela in Civil Case No. 1201, may be dismissed for tardiness in submitting their record on appeal.

On January 8, 1962, the petitioners filed an *accion publiciana* (Civil Case No. 1201) in the Court of First Instance of Isabela against the private respondent Bernardino Magday. After the defendant had filed his answer, the complaint was amended on August 25, 1971, to implead the Department of Agriculture and Natural Resources and the Bureau of Lands as additional defendants. Magday filed an amended answer. The Secretary of Agriculture and Natural Resources and the Director of Lands filed separate answers to the amended complaint.

After the parties had submitted a stipulation of facts, the court, upon plaintiffs' motion for judgment on the pleadings and/or summary judgment, which the defendant did not oppose, rendered judgment on October 3, 1975, dismissing the complaint with costs against the plaintiffs (Annex F, pp. 35-46, Rollo).

The plaintiffs filed a motion for reconsideration (Annex G, p. 47, Rollo) of the decision. It was denied by the respondent Judge on December 12, 1975 (Annex H, p. 50, Rollo).

On December 22, 1975, they filed a motion for leave to appeal as paupers (Annex J, p. 52, Rollo) and on December 23, 1975, they filed a notice of appeal (Annex I, p. 51, Rollo). The trial court granted on January 19, 1976 their motion to appeal as paupers (Annex K, p. 55, Rollo).

Believing that as pauper litigants they did not have to submit a record on appeal, they waited for the trial court to elevate the entire records of the case to the Court of Appeals as provided in Section 16, Rule 41 of the Rules of Court. On June 16, 1976, respondent Judge dismissed the appeal for failure to file a record on appeal (Annex L, p. 56, Rollo). A motion for reconsideration (Annex M, p. 57, Rollo) of the dismissal order was filed by the appellants on July 26, 1976. On August 10, 1976, they mailed their record on appeal to the court. On August 23, 1976, the lower court denied their motion for reconsideration (Annex O, p. 60, Rollo). Hence, this petition for certiorari by the appellants raising the lone legal question of whether for the perfection of an appeal by a pauper litigant, the timely submission of a record on appeal is required.

Under the Rules of Court then in force, a record on appeal was indeed required to be filed by a pauper appellant although it did not have to be printed. As argued by the Solicitor General in his brief:

"Petitioners contend, however, that having been allowed by the lower court to appeal as paupers, they are not required to file a record on appeal since the entire record of the case shall be transmitted to the appellate court and the case shall be heard upon the original record so transmitted without printing the same.

"Sec. 16, Rule 41 of the Rules of Court, provides:

" 'Sec. 16, Appeal by pauper. - Where a party desiring to appeal shall establish to the satisfaction of the trial court that he is a pauper and unable to pay the expenses of prosecuting the appeal, and that the case is of such importance, by reason of the amount involved, or the nature of the questions raised, that it ought to be reviewed by the appellate court, the trial judge may enter an order entitling the party to appeal as pauper. The clerk shall transmit to the appellate court the entire record of the case, including the evidence taken on trial and the record on appeal, and the case shall be heard in the appellate court upon the original record so transmitted without printing the same.' (Italic types supplied.)

"It is clear that even a pauper litigant is required to file a record on appeal. What is not required of him is the filing of a printed record on appeal, and, of course, an appeal bond, since the cited Rule is designed to help the pauper litigant who may not be able to pay the expenses of prosecuting the appeal. In contrast, Sec. 17 of the same Rule 41 which refers to appeals in certiorari, prohibition, mandamus, quo warranto and employee's liability cases categorically provides that 'the original record of the case shall be transmitted to the appellate court in lieu of the record on appeal.' In other words, appeals in special Civil actions do not require record on appeal; they are perfected by the mere filing of the notice of appeal (*Embroidery and Apparel Control and Inspection Board vs. Cloribel*, 20 SCRA 517 [1967]).

"Indeed, records on appeal have been filed by pauper litigants as a matter of course (*Tiozon vs. Court of Appeals*, 70 SCRA 284 [1976])." (pp. 7-9, Brief for the Respondents; p. 109, Rollo.)

However, under B. P. Blg. 129, which has overtaken this case before it could be decided, a record on appeal is no longer required for the perfection of an appeal. This new rule was given retroactive effect in *Alday vs. Camilon*, 120 SCRA 521, where We ruled:

"The reorganization having been declared to have been completed, Batas Pambansa Blg. 129 is now in full force and effect. A record on appeal is no longer necessary for taking an appeal. The same proviso appears in Section 18 of the Interim Rules and Guidelines issued by this Court on January 11, 1983. Being procedural in nature, those provisions may be applied retroactively for the benefit of petitioners, as appellants. 'Statutes regulating the procedure of the courts will be construed as applicable to actions pending and undetermined at the time of their passage. Procedural laws are retrospective in that sense and to that extent.' (*People vs. Sumilang*, 77 Phil. 764)." (Cited in *Palomo Building Tenants Association, Inc. vs. Intermediate Appellate Court*, 133 SCRA 168; *De Guzman vs. Court of Appeals*, 137 SCRA 731; and *Lagunzad vs. Court of Appeals*, 154 SCRA 199.)

WHEREFORE, the decision dated October 3, 1975, of the trial court and its orders of June 16, 1976 and August 23, 1976 are hereby set aside. The trial court is hereby ordered to forward the entire records of Civil Case No. 1201 to the Court of Appeals for the determination and disposition of the petitioners' appeal on the merits.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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