

SILVESTRA DEYMOS VDA. DE OYZON, PETITIONER, VS. HON. DEMETRIO G. VINZON, JUDGE OF THE COURT OF FIRST INSTANCE OF CARIGARA, LEYTE AND CATALINO PANAOS, RESPONDENTS.

G.R. No. L-19360. July 26, 1963

Ponente: PAREDES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/c9d22ff1f1a5/>

PAREDES, J.:

On July 30, 1960, petitioner herein filed with the CFI of Carigara, Leyte, Civil Case No. 635, for Annulment of Contract, Recovery of Property and Damages against respondent Catalino Panao. After trial on the merits, the lower court on September 26, 1961, rendered judgment against petitioner. Copy of the decision was received by petitioner on October 4, 1961 and on October 18, 1961, a Notice of Appeal, Appeal Bond and Record on Appeal were filed with respondent Court.

Approval of the Record on Appeal was set for October 21, 1961, in the hearing of which, the disputed document was ordered to be included in the Record of Appeal. Respondent Court gave petitioner until October 28, 1961, to incorporate said document, at the same time setting the hearing on the same date. On October 23, 1961, petitioner complied with the order of respondent Court and prayed for the approval of the record on appeal. At the hearing held on October 28, 1961, respondent Panao, again objected, claiming that the Motion for Ocular Inspection, the Ocular Inspection Report, Sketch-plan by the Commissioner and the Approval of the Commissioner's Report, should likewise be included in the Record on Appeal. The respondent Court issued the following Order—

"As manifested by the attorney for the plaintiff, the record on appeal does not contain all the proceedings had in the case. The Court deems it very necessary that they be incorporated in the said record on appeal. After compliance thereof, the same will be approved ipso facto."

The above order was complied with on November 11, 1961 (within 14 days) when petitioner filed his Amended Record on Appeal, wherein the pleadings last mentioned were incorporated. On November 28, 1961, petitioner was furnished on Order of respondent court, dated November 18, 1961, stating—

"The Court, after a careful consideration of the petitioner and the opposition thereto, finds and sustains that the record on appeal was not perfected within thirty days and that the Court can not allow, in the use of its discretion, a further time as the said provisions is mandatory.

For all the foregoing, the Court denies the motion to approve the amended record on appeal for not being meritorious."

Petitioner moved to reconsider the above Order, claiming that the appeal had been perfected with the submission of the original record on appeal (Citing *Olvido and Albaniel, vs. Ferrares & Judges*, CFI Negros Occidental, 90 Phil., 555; *Vda. de Jizon vs. Court of Appeals*, 98 Phil., 794. On December 2, 1961, day of the hearing on the motion for reconsideration, counsel for respondent Panao, served upon petitioner on opposition thereto, stating—

"As she did not file a motion to set aside the decision which is equivalent to motion for reconsideration or for

new trial, the running of the period for perfecting on appeal had not been suspended and, being not suspended, the decision became final and executory on November 4, 1951. (Sec. 3, Rule 41, Rules of Court.) The filing of the amended record on appeal on November 11, 1961 was, obviously, out of time and the Court has no more jurisdiction over the same.

It is relevant to point out here the alleged record on appeal plaintiff's filed on October 18, 1961, 14 days from October 4, 1951 when she received notice of the decision, and which she could not perfect within 30 days was not a record on appeal at all for it lacked the following matters.

* * * * *

In the light of the above law, plaintiff's record on appeal filed on October 18, 1961, being not in conformity herewith, is not a record on appeal at all but a mere scrap of paper. Even assuming that the record on appeal (amended), which she filed on November 11, 1961 was a legal record on appeal, the same cannot be given due course for having been filed outside of the reglementary period and the court has no more jurisdiction over the case, except to order a writ of execution, the decision having become final and executory."

On the same day, respondent Judge denied the motion for reconsideration, for "not being meritorious".

Claiming that respondent judge, in not approving the record on appeal as amended, and denying the motion for reconsideration, had gravely abused his discretion and unlawfully neglected to perform a duty enjoined by law and/or has unlawfully excluded the petitioner from the use and enjoyment of a right to which was entitled and from which there was no other plain, speedy, and adequate remedy in the ordinary course of law, said petitioner filed the instant action, to compel the respondent judge to approve her record on appeal and give due course to her appeal.

This Court gave due course to the petition on January 18, 1962 and issued a preliminary writ of injunction.

The singular issue thus presented is—Was the appeal perfected on time? It will be noted that the last order of the respondent Court, directing petitioner to include the pleadings, which respondent Pano wanted incorporated therein, did not contain any period within which to comply. It merely stated that the record on appeal as amended will be approved ipso facto after compliance thereof, which simply means that the incorporation of the pleadings should be made within a reasonable time. We believe that the compliance of the last order of respondent Court within 14 days, was done within a reasonable time. The fact that the amended record on appeal was submitted after the reglementary 30 day period, did not render the perfection thereof untimely, because the amended record on appeal is deemed to have been filed on the presentation of the original, which was done within the reglementary period.

"Amendments in pleadings do not necessarily expunge those previously filed Amendments made, more so when ordered by the court, relate back to the date of the original complaint, if, as in the case at bar the claim asserted in the amended pleading arose out of the same conduct, transaction or occurrence. Amendment presupposes the existence of something to be amended and, therefore, the tolling of the period should relate back to the filing of the pleading sought to be amended. * * *" (Phil., Ind. Church, etc. vs. Juana Mateo and I.G. Ilaño, G. R. No. L-14793, April 28, 1961).

WHEREFORE, the Writ is granted as prayed for, the orders denying the approval of the amended record on appeal and the motion for reconsideration are hereby SET ASIDE, and respondent Judge is ordered to approve the amended record on appeal and give due course to petitioner's appeal. The writ of preliminary injunction heretofore issued, is made permanent. Without costs.

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

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.