

**GREGORIA BARTOLO, PETITIONER, VS. PRIMO G. MALIWANAG AND
HONORABLE NICASIO YATCO, AS JUDGE OF THE COURT OF THE
FIRST INSTANCE OF RIZAL, BRANCH V, QUEZON CITY,
RESPONDENTS.**

G.R. No. L-17237. December 28, 1961

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an original action of mandamus to compel respondent judge Nicasio Yatco of the Court of First Instance of Rizal,- Branch V, to order the exclusion of a "Manifestation of Defendant," dated March 18, 1959, and the inclusion of the order of the court denying the motion to dismiss, both in the record on appeal, and thereafter to approve and certify the said record on appeal, all of which proceedings refer to Civil Case No. Q-3927 of the Court of First Instance of Rizal entitled "Gregoria Bartolo vs. Primo G. Maliwanag."

In the civil case above mentioned, No. Q-3927, after Judge Yatco rendered a decision favorable to the defendant, petitioner Gregoria Bartolo, plaintiff in said case, presented a record on appeal, which included the complaint, the answer and the decision of the court dismissing the action. Upon its submission the defendant interposed an objection to its approval on the ground that it fails to include (1) a motion to dismiss, (2) opposition to motion to dismiss, (3) reply to opposition, (4) rejoinder to reply, and (5) manifestation of defendant dated March 18, 1959, submitting the motion to dismiss for decision. Other objections are (6) non-inclusion of order dated April 3, 1959, (7) memorandum for plaintiff, (8) memorandum for defendant. The judge, upon hearing the motion, resolved to require the inclusion of the papers numbered (1) to (5), but denied the inclusion of the papers numbered (6) to (8). This order was dated November 21, 1959. On December 16, 1959, attorney for plaintiff asked for a reconsideration of the order, alleging that the manifestation of defendant on his motion to dismiss should not be included. This motion was denied on December 19, 1959. On January 7, 1960, the plaintiff again filed a motion for reconsideration of the order dated November 21, arguing that document No. (6) (court order dated April 3, 1959, denying defendant's motion to dismiss) should be included. The court denied this motion for reconsideration on January 23, 1959. A motion for leave of court to file a third motion for reconsideration of the order dated November 21, 1959, was also presented on February 8, 1960. This motion was denied by the court on February 22, 1960. Upon the denial of the said motion, petitioner herein filed this petition for mandamus on August 9, 1960.

The petition for mandamus is absolutely without any legal basis to stand on. In the first place, no amended record on appeal was presented in accordance with section 7 of Rule 41 including the papers that were required by the court to be included in the record on appeal. In the second place, the petitioner had wasted six months before filing the action of mandamus to compel certification of his record on appeal. The argument of counsel for respondent that the present action is merely for the purpose of delay finds support in this belated action of mandamus.

Regarding the matters to be included in a record on appeal, the same should be addressed to the sound discretion of the judge who heard the case and is aware of the questions and issues that have been raised and which might again be raised on appeal. Lastly, the second and third motions for reconsideration are superfluous, as the question-raised therein had already been raised when the first motion for reconsideration was denied.

For all the foregoing the petition for mandamus is hereby dismissed, with costs against petitioner.

Bengzon, C.J., Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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