

**MERCEDES T. SONORA, JESUS T. SONORA, TRINIDAD T. SONORA,
AND THE HEIRS OF JUAN T. SONORA, PETITIONERS, VS. FRANCISCO
A. TONGOY, FOR HIMSELF AND AS ADMINISTRATOR OF THE ESTATE
OF...**

G.R. No. L-33095. April 19, 1972

Ponente: BARREDO, J.

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BARREDO, J.:

Originally an appeal from a resolution of the Court of Appeals dismissing the appeal of petitioners from a decision of the Court of First Instance of Negros Occidental, later considered by the Court as an original action for certiorari in order to expedite its disposition, the fault in said resolution being manifest and the other appeal related thereto of the other parties being pending in the appellate court.

This case started in a complaint filed by petitioners Mercedes T. Sonora, Jesus T. Sonora, Trinidad T. Sonora and the heirs of Juan T. Sonora, together firstly with Ricardo P. Tongoy and Cresenciano P. Tongoy and ultimately with Amado P. Tongoy and Norberto P. Tongoy, who were originally named as defendants because they were unwilling to join as plaintiffs, against Fernando Tongoy and the heirs of Luis D. Tongoy, namely, the private respondents Francisco A. Tongoy, in his personal capacity and as Administrator of the Estate of Luis D. Tongoy and his mother Ma. Rosario A. Vda. de Tongoy, with Salvacion Tongoy and Estrella Tongoy as intervenors. Purpose of the complaint is to have private respondents reconvey to plaintiffs in the court below their shares of the lands referred to as Hacienda Pulo and the Cuaycong Property, now registered in the name of the Estate of Luis D. Tongoy, the Sonoras claiming parts of said lands upon the theory that the same were placed in the name of Luis D. Tongoy, predecessor-in-interest of private respondents, by virtue of a trust agreement under which Luis was under obligation to return them to their predecessor-in-interest, their mother Jovita Tongoy Sonora, while the Tongoy claim that they were, in effect, preterited in the distribution of the Estate of Francisco Tongoy, their common predecessor-in-interest with Luis, thru transfers and conveyances effected by said Luis of these lands, without their knowledge and consent, hence they are entitled to their corresponding portions thereof. After proceedings that lasted from June 2, 1966, when the complaint was filed, to January 9, 1969, when the trial judge, the Honorable Jose R. Querubin, issued the order clarificatory of his decision of October 15, 1968, His Honor dismissed the complaint insofar as the Sonoras are concerned, holding that the trust agreement relied upon by them is an implied and not an express trust, but sentenced the defendants, herein private respondents, to reconvey to the plaintiffs Amado P. Tongoy, Ricardo P. Tongoy, Cresenciano P. Tongoy and the heirs of Norberto Tongoy, who had died in the meanwhile, 4/5 of the lands in question, leaving only 1/5 thereof to private respondents. Whereafter, but within their respective reglementary periods, private respondents perfected their appeal from the decision to the Court of Appeals, while the Sonoras, filed, also undisputedly within the reglementary period, their notice of appeal, appeal bond and record on appeal, with the particularity that in the said notice, it was specified that their appeal is to the Supreme Court.

Notwithstanding said specification in the notice of appeal of the Sonoras, the trial court, presided already by the

Honorable Oscar R. Victoriano, issued the following order:

"O R D E R

"There being no opposition, the amended record on appeal of plaintiffs Sonoras as well as the appeal of defendants are hereby approved. The Clerk of Court is hereby directed to forward same to the Court of Appeals, Manila, including the oral and documentary evidence, within the reglementary period provided for in the Rules of Court.

"AS PRAYED FOR, counsel for defendant Maria Rosario A. Vda. de Tongoy, is hereby given until December 6, 1969, within which to submit specific objections to the corrections of the transcript of steno-type notes already effected claimed not to conform with the actual testimony so that reference may be resorted to the tape recording after which the motion of plaintiffs dated November 15, 1969 shall be deemed submitted for consideration of the court.

"SO ORDERED."

It appears from subsequent acts and manifestations of the Sonoras that despite the specification of their notice of appeal that their appeal is to the Supreme Court, they submitted to the appellate jurisdiction of the Court of Appeals, to which their appeal actually went by virtue of the above direction of the trial court. Thereafter, upon motion of private respondents, the Court of Appeals issued the resolution, now under review, dismissing the appeal of the Sonoras, herein petitioners, upon the ground that since the notice specified that their appeal is to the Supreme Court, the appellate court could not entertain the same, and, upon the other hand, since it is obvious that no petition for review on certiorari under Republic Act 5440 appears to have been filed with the Supreme Court, it results that petitioners have not perfected any appeal at all.

The flaw in the dismissal resolution of the Court of Appeals is readily apparent. As already noted in this Court's resolution of March 19, 1971, since the Court of Appeals assumed that the appeal of petitioners was exclusively intended to be to this Court, it is evident that it had no power or jurisdiction to act on private respondents' motion to dismiss the same. The law has not overlooked the possibility that appeals belonging to the appellate jurisdiction of this Court may be actually taken to the Court of Appeals and vice-versa and has accordingly specifically provided therefor, to the end that the interests of justice may not suffer merely because of a mistake of an appellant or of the trial court in transmitting the appeal to the wrong court. Besides, it is quite absurd for the Court of Appeals or this Court to dismiss an appeal that is not properly within its respective appellate jurisdiction. Thus, under Section 31 of the Judiciary Act, "all cases which may be erroneously brought to the Supreme Court or to the Court of Appeals shall be sent to the proper court, which shall hear the same, as if it had originally been brought before it." Indeed, in dismissing outright petitioners' appeal, the Court of Appeals acted in complete disregard of the unequivocal injunction of Section 3 of Rule 50 of the Rules of Court that "(w)here the appealed case has been erroneously brought before the Court of Appeals, it shall not dismiss the case, but shall certify the case to the proper court, with a specific and clear statement of the grounds therefor."

Annet the observation of the appellate court that instead of filing their notice of appeal, appeal bond and record on appeal, petitioners should have filed a petition for review as required by Republic Act 5440, as already stated, this is a matter that is for this Court to rule upon, since it is an incident in a case that is within Our exclusive appellate jurisdiction. Besides, it is a matter of judicial notice that the Court has been liberal in the implementation of Republic Act 5440 and instead of dismissing appeals coming to Us by record on appeal, We have allowed the appellants to file the corresponding petition, provided the appeal by record on appeal has been duly perfected within the reglementary period. Of course, it is about time that practising lawyers and trial judges saw to it that the correct procedure is followed, since the law has been in force for almost four years already, but in the interest of uniformity of procedure, considering that. We have been liberal in the cases that have come to Us so far, all

concerned, particularly the trial judges, are informed that in the near future the Court is going to set a deadline after which all appeals not made in conformity with the statute must have to be dismissed. As We see it, all these mistakes in the procedure of appeals from the Court of First Instance to this Court, since Republic Act 5440 went into effect, could have been avoided if trial judges had only seen to it that petitions for review instead of records on appeal were filed and submitted for approval by them.

It is, of course, contended that such certification or sending of petitioners' appeal to the Supreme Court was made impossible by the petitioners' acquiescence and submission to the appellate jurisdiction of the Court of Appeals. In this connection, it is, to be sure, of no consequence that the petitioners had submitted to the appellate jurisdiction of the Court of Appeals, since as a rule it is the law and not the choice of the parties that determines jurisdiction, whether original or appellate. More decisive, however, is the fact that in the premises of this case, petitioners had no alternative than to take their appeal to the Court of Appeals, even if they are raising only questions of law. Under similar circumstances, in *Roman Santos vs. Francisco Baylon*, G.R. No. L-11572, March 30, 1967, 4 SCRA 656, wherein from the same decision of the trial court, Baylon perfected his appeal to the Supreme Court to raise only questions of law and Santos perfected his to the Court of Appeals on questions of fact, We ordered the remand of Baylon's appeal to the Court of Appeals in order that it may be considered jointly with the appeal of Santos to avoid the absurdity of any possible inconsistency between the decisions of the two appellate courts. We perceive no reason why such ruling in Baylon should not apply to the case at bar. The petitioners Sonoras have no quarrel with the findings of fact of the trial court, whereas private respondents are questioning them and would like that they be reversed. Upon the other hand, if the Court of Appeals should alter or modify the findings of fact of the trial court, there is no telling what will be the legal consequence thereof upon the claim of petitioners. In other words, the two appeals are from their very natures inextricably connected with each other. Consequently, it is only right and proper that they both be resolved together by the same court, the Court of Appeals which is the only one having authority to review factual findings.

It is argued, however, that inasmuch as the petitioners' notice of appeal expressly referred to the Supreme Court, it follows that the appeal to the Court of Appeals has not been perfected, since it results that there is no notice of appeal thereto. We do not see it that way. *Valerio vs. Tan, et al.*, (97 Phil. 558) is authority for the holding that in the light of Section 31 of the Judiciary Act of 1948, "the rule requiring appellant to specify in his notice of appeal the court to which the appeal is being made, is merely directory, and failure to comply therewith or an error as to the Court indicated is not fatal to the appeal." Withal, in this particular case at bar, petitioners were not entirely without justification in proposing originally to come to this Court directly, unaware perhaps, of Our ruling in Baylon, and it is less than fair for respondents to attempt to cut off their right to appeal by invoking the literal meaning of the language of the rules, disregarding their wise and practical construction already laid down by the Supreme Court.

WHEREFORE, the petition is granted, and the Court of Appeals is directed to give due course to petitioners' appeal, for consideration and resolution together with the appeal of private respondents. Costs against private respondents.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Makasiar, and Antonio, JJ., concur.

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