

THE GOVERNMENT OF THE PHILIPPINES, (THE DIRECTOR OF LANDS), APPLICANT AND APPELLEE, VS. LUIS ANTONIO, ET AL., CLAIMANTS-PETITIONERS AND APPELLANTS; ESPIRIDION TOLENTINO, ET AL.,...

G.R. No. L-23736. October 19, 1965

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appellee herein has petitioned that the appeals interposed by the three sets of appellants, Luis Antonio, et al., claimants-petitioners-appellants; Esperidion Tolentino, et al., claimants-oppositors-appellants; and Roman Dallo, et al., claimants-interdictos-appellants, be dismissed for the reason that the records of appeal filed by them fail to disclose on their face that their appeals were perfected within the period fixed by the Revised Rules of Court (that took effect on January 1, 1964), in violation of Rule 50, section 1(a), of the Revised Rules, in connection with Rule 56, section 1, and Rule 41, section 6.

Said provisions are to the following effect:

"RULE 41, section 6. Record on appeal; form and contents thereof. - The full names of all the parties to the proceedings shall be stated in the caption of the record on appeal and it shall include the order or judgment from which the appeal is taken, and, in chronological order, copies of only such pleadings, petitions, motions and all interlocutory orders as are related to the appealed order or judgment and necessary for the proper understanding of the issue involved, together with such data as will show that the appeal was perfected on time."

"RULE 50, section 1. Grounds for dismissal of appeal. - An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

(a) Failure of the record on appeal to show on its face that the appeal was perfected within the period fixed by these rules:"

"RULE 56, section 1. Procedure similar to that of Court of Appeals. - Unless otherwise provided by the Constitution or by law, the procedure in the Supreme Court in original as well as in appealed cases, shall be the same as in the Court of Appeals, except as hereafter provided."

That the records of appeal, submitted to this Court violate the provisions of Rule 41, section 6, as contended by the appellee, is obvious from an examination thereof. Nowhere is it stated therein the date when the appellants or their counsel received notice of the appealed order of March 25, 1963 dismissing their petition for cancellation of appellee's Certificates of Title and for a resurvey of Lot-2959-A of the Cuyapo Cadastre.

It is thus impossible to determine from the records of appeal, as submitted, whether or not the appeals were taken within the periods prescribed by the rules. As the records stand, it only appears that the appealed order of dismissal was issued on March 25, 1963, and that appellants herein filed their motions for reconsideration on May

14, 1963 (for appellants Antonio, et al., and Tolentino, et al.) and on May 21, 1963 (for appellants Dallo, Delizo, et al.) i.e., over one and a half months later. Hence, the Court can not determine whether or not, at the time the motions for consideration were filed, the appealed order had become final.

Similarly, the records of appeal do not show the date when said parties received notice of the order of July 5, 1963 denying their motions to reconsider. Further, the record tendered by appellants Antonio, Tolentino, et al., merely state that their notices of appeal were tendered "within the reglementary period" (which is not a fact but a mere conclusion on their part), while the record of appeal of Dallo, Delizo et al., only discloses that their notice of appeal was filed on August 12, 1963.

There is no showing, therefore, in any way of the records of appeal that the notices of appeal, appeal bond, and record of appeal were filed within 30 days from notice of the appealed order, after deducting the period during which the motions for reconsideration were pending, as required by Rule 41, section 3.

The deficiencies pointed out are fatal. For the reason that in ordinary appeals the original record is not forwarded to the appellate court, and because the dates when an applicant received the notice of the pertinent orders or judgment under appeal, and of the denial of his motion for reconsideration or new trial, are facts within the exclusive knowledge of said appellant, the Revised Rules of Court place upon the appellant the burden of showing that his appeal is timely, and for that purpose prescribe (Rule 41, sec. 6) that the record of appeal shall include "such data as will show that the appeal was perfected on time". This requirement is mandatory and jurisdictional, for unless appeal is perfected on time the appellate court acquires no jurisdiction over the appealed case, and has power only to dismiss the appeal (*Bello vs. Fernando*, L-16970, Jan. 30, 1962; *Caisip vs. Cabangon*, L-14684, August 26, 1960; *Espartero vs. Ladaw*, 49 Off. Gaz., 1439). The certification of the record on appeal by the trial court after expiration of the period to appeal can not restore the jurisdiction which has been lost (*Alvero vs. de la Rosa*, 76 Phil. 428, 433, and cases cited). The principle is confirmed by Rule 50, section 1, subpar. (a), heretofore quoted.

A last point. While the majority of the Court, in *Santiago, et al. vs. Valenzuela, et al.* (78 Phil 397), held that, if after the appellant has already filed his brief a motion to dismiss the appeal is made on the ground that it was not perfected in due time, the motion must be denied, this doctrine has been subsequently abandoned and overruled in subsequent cases.

In *Miranda vs. Guanzon, et al.* (92 Phil. 168), promulgated on October 27, 1952, we dismissed the appeal on the ground that it was perfected out of time, and this dismissal was done even after the briefs had already been filed. We held that the perfection of an appeal within the period prescribed by law is jurisdictional. Then in *Valdez vs. Acumen, et al.* (L-13536, promulgated on Jan. 29, 1960) , we dismissed an appeal because it was perfected out of time, and the dismissal again was made after the briefs of both side had been filed. Mr. Justice Barrera, writing the opinion for the Court, stressed again the principle that the period to perfect an appeal is jurisdictional, and relied specially on the cases of *Layda vs. Legaspi* (39 Phil. 83) and *Lim vs. Singian* (37 Phil. 817), which the dissenters in the *Santiago, et al. vs. Valenzuela, et al.* case (78 Phil. 397) had invoked in their dissent.

Again in the *Valdez vs. Acumen, et al.* case, supra, the Court, through Mr. Justice Barrera, rejected the theory of waiver or estoppel allegedly supported by *Luengco & Martinez vs. Herrero, et al.*, 17 Phil. 29, and *Slade Perkins vs. Perkins*, 57 Phil. 223, supra, which the majority in the *Santiago vs. Valenzuela* case, supra, cited in their support. In all these cases, it is true, the Court did not say expressly that *Santiago vs. Valenzuela*, supra, was abandoned, but it is time that we say so, in order that others may not be misled.

Premises considered, the motion for dismissal of the appeal should be, and hereby is granted, and the appeal 13 ordered dismissed for non-compliance with section 6, Rule 41, of the Rules of Court, in connection with Rule 50,

section 1 (a), and Rule 56, section 1. Without costs.

Bengzon, C. J., Bautista Angelo, Concepcion, Dizon, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ.,
concur.

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