

**ELPIDIO ARELLANO, AGUSTIN ARELLANO, ESTANISLAO DAQUIGAN,
PIO SAAVEDRA, FEDERICO QUIJANO, RICARDO ALVAREZ,
BALDOMERO DAQUIGAN, MACARIO DAQUIGAN, ANDRES
DAQUIGAN, EMMANUEL DAQUIGA...**

G.R. No. L-31856. November 24, 1972

Ponente: ANTONIO, J.

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ANTONIO, J.:

The only issue posed by this petition for review on certiorari is * * * whether or not the Respondent Court of Appeals has jurisdiction to entertain the appeal of private Respondents from the judgment of the Court of Agrarian Relations dated March 31, 1969 in CAR Case No. 1651-P'67.

The subject of the appeal in CA-G. R. No. 43419-R originated from the Court of Agrarian Relations, Lingayen, Pangasinan, where Petitioners sought in CAR Case No. 1651-P'67, the adoption of the leasehold system on their respective landholdings pursuant to the provisions of Rep. Act No. 3844. Private Respondents intervened in said case, opposing the adoption of the leasehold system, but in a decision of the Court of Agrarian Relations rendered on March 31, 1969, the aforesaid Court rendered judgment in favor of the Petitioners. Copy of the judgment was received personally by Atty. Alfonso C. Bince, Jr. counsel for the private respondents on April 29, 1969. On May 15, 1969, respondents filed with the Agrarian court a motion for the reconsideration of said judgment, which motion was however denied by said Court on June 23, 1969. The order of denial was received by respondent on July 3, 1969. On the same date, they filed their notice of appeal manifesting their intention to appeal the decision of the Agrarian Court to the Court of Appeals. Their appeal was subsequently docketed in the Appellate Court as CA-G. R. No. 43419-R. On November 17, 1969, petitioners as plaintiff-appellees, filed with the Appellate Court their motion to dismiss the appeal, on the ground that the Appellate Court had no jurisdiction to entertain the appeal, as on May 15, 1969 when respondents filed their motion for reconsideration with the Agrarian Court, the judgment of said court dated March 31, 1969 had already become final and executory. In a minute resolution dated February 25, 1970 this motion to dismiss the appeal was denied. From such a resolution of denial, petitioners brought the matter to Us for review on certiorari.

We reverse the appealed resolution.

1. We resort to the law. Section 2 of Republic Act No. 5434, is applicable to the case, as this law became effective on September 9, 1968, states:

"SEC. 2. Appeals to Court of Appeals. - Appeals to the Court of Appeals shall be filed within fifteen (15) days from notice of the ruling, award, order, decision or judgment or from the date of its last publication, if publication is required by law for its effectivity; or in case a motion for reconsideration is filed within that period of fifteen (15) days, then within ten (10) days from notice or publication, when required by law, of the resolution denying the motion for reconsideration. No more than one motion for reconsideration shall be allowed any party. If no appeal is filed within the period here fixed, the ruling, award, order, decision or

judgment shall become final and may be executed as provided by existing law."

It appears conclusively shown by the record that private respondents through their counsel received a copy of the decision of the Court of Agrarian Relations in CAR Case No. 1651-P'67, on April 29, 1969. This is shown by the fact that according to the registry return receipt signed by Atty. Bince, Jr., he received copy of the decision on April 29, 1969.

The authenticity of the registry return card and genuineness of the signature of Respondents' counsel thereon, a certified xerox copy of which was attached as Annex "E" to petitioners' "motion to dismiss appeal" in the Court of Appeals, was never disputed by Respondents. Having received copy of the decision of the Agrarian Court through their counsel on April 29, 1969, they had only fifteen days from said date or until May 14, 1969 within which to appeal to the Court of Appeals or file a motion for the reconsideration of said judgment. As the fifteen day period expired on May 14, 1969, it is evident therefore that when respondents filed their motion for reconsideration on May 15, 1969, the judgment of the Agrarian Court was already final and executory.

Respondents' argument that their appeal was perfected on time because it was made within ten (10) days from notice of the resolution denying the motion for reconsideration, is a misconception of the applicable rule. The rule allowing a party a period of ten (10) days from notice of denial of a motion for reconsideration to appeal from the judgment, presupposes that the motion for reconsideration was filed within the fifteen day period from notice of the decision.

It is equally pointless for respondents to invoke *Santiago, et al. vs. Valenzuela*[1] wherein it was stated that if the motion to dismiss the appeal on the ground that the appeal was perfected out of time, is filed for the first time with the appellate Court, after appellant had paid the docketing fee, and the cost of printing the record on appeal, and specially after he had filed his brief, the appellate Court should deny the motion, for the appellee may be considered in estoppel by his failure to object on time. In the present case not only was the motion to dismiss appeal filed more than two months prior to the filing of Respondents' brief but what is more the ruling enunciated in *Santiago vs. Valenzuela* was subsequently abandoned in *Miranda vs. Guanzon*[2] where the Court ruled in positive and explicit terms thus:

" x x x Be it as it may, the fact remains that the appeal was perfected out of time and such failure takes the case out of the jurisdiction of the court. This can clearly be inferred from section 13, Rule 41, which provides that when the appeal is not perfected within the reglementary period the appeal shall be dismissed.

"The claim that the motion to dismiss the appeal filed by petitioner in the Court of Appeals comes too late while his failure to file it in the court of origin before the transmittal of the record to the appellate court constitutes a waiver on his part to interpose such objection, is in our opinion untenable. The requirement regarding the perfection of an appeal within the reglementary period is not only mandatory but jurisdictional. Such failure has the effect of rendering final the judgment of the court, and the certification of the record on appeal thereafter cannot restore the jurisdiction which has been lost. This dismissal can be effected even after the case has been elevated to the Court of Appeals (section 1 [a], Rule 52)".

We reaffirmed such rule in *Valdez vs. Ocumen*,[3] *Galima vs. Court of Appeals*,[4] *Antique Sawmills, Inc. vs. Zayco*,[5] and *Roque vs. Vda. del Rosario*. [6] In *Galima*, this Court, thru Mr. Justice J. B. L. Reyes, sustained the Court of Appeals, when it correctly ruled that Petitioner *Galima's* motion for extension of time to file his record on appeal having been filed on March 2, 1962, or one day after the reglementary period of 30 days had elapsed, it was error on the part of Judge Pabalan to have granted said motion, this notwithstanding *Galima's* contention that the delay of one day in the filing of said motion was due to excusable mistake. Citing *Garganta, et al. vs. Court of Appeals, et al.*, [7] We said:

"An allowance by a court of first instance of an appeal which was not taken within the reglementary period; a denial by the same court of a motion to dismiss an appeal taken beyond such period; and a denial by the Court of Appeals to dismiss such appeal, do not render the appeal valid, effective and legal. If an appeal be not taken within the reglementary period, the judgment becomes final, and the legality of the allowance of the appeal and of the denial of the motion to dismiss the appeal by the trial court and the appellate court, to which the appeal has been forwarded, may always be raised because it concerns the jurisdiction of the appellate Court, a point which may be raised at any stage of the proceedings in the appellate court".

2. In resume, as a result of the failure of respondents to appeal from the judgment of the Court of Agrarian Relations dated March 31, 1969, or to file their motion for reconsideration of said judgment, within the period of fifteen days prescribed in Section 2 of Republic Act No. 5434, said judgment has already become final and the only power retained by the Court is to order its execution. Under such circumstances, it was beyond the jurisdiction of the Appellate Court to entertain the appeal.

WHEREFORE , the writ prayed for is granted and the resolution of the Court of Appeals dated February 25, 1970 is set aside. With costs against private respondents.

Concepcion, C.J., Zaldivar, Castro, Fernando, Teehankee, Barredo, Makasiar, and Esguerra, JJ., concur.

Makalintal, J., is on leave.

[1] 78 Phil. 397.

[2] 92 Phil. 168.

[3] 106 Phil. 929.

[4] L-21046, 16 SCRA 140.

[5] L-20051, 17 SCRA 316.

[6] L-24873, 18 SCRA 101.

[7] 105 Phil. 412.

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