

**EUFRACIO FAGTANAC AND DOLORES ADVINCULA, PETITIONERS,
VS. THE COURT OF APPEALS, MATILDE FALCIS AND FEDERICO
MENDOZA, RESPONDENTS.***G.R. Nos. L-26922-23. March 21, 1968*

Ponente: SANCHEZ, J.

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In a single decision of February 20, 1965 rendered by the Court of First Instance of Capiz following joint trial of a civil case for ownership and a land registration proceeding,[1] private respondents lost their bid to establish ownership over Lots 2 and 3, Plan Psu-129122, situate in Dumalag. Said respondents received copy of that decision on March 6. But on the same day, herein petitioners moved to correct the dispositive part of the decision to show that the lots were located not in the municipality of Dao, but in the municipality of Dumalag. This motion was granted in an order of March 17. Copy of that court order was received on March 25 by aforesaid respondents who, on April 14, filed a motion to reconsider the joint decision as thus amended. On May 8, the court below denied the motion for reconsideration. Copy of the order of denial was received by private respondents on May 17.

On May 18, 1965, private respondents filed their notice of appeal and appeal bond. On May 25, they filed two separate records on appeal: one in the civil case for ownership, and the other in the land registration case. The two records on appeal were approved on July 7. Copy of the order of approval was received by petitioners on August 6. On petitioners' motion dated August 7 - but filed on August 9 - the court below, on September 22, ordered private respondents to include in their record on appeal in the land registration case "specification that this appeal is limited in scope to affect only the lots controverted by them; and to incorporate therein the order of general default, the order of the Court of July 7, 1965, the motion of the appellees of August 7, (filed August 9, 1965), and the present order of this Court."

On January 3, 1966, petitioners moved in the Court of First Instance to dismiss the appeal for failure to prosecute. They aver that private respondents received the notice of the order of September 22 on September 29, 1965, and that over three months had elapsed and nothing was done by private respondents to redraft the record on appeal in pursuance of that order. They cite the provisions of Section 7, Rule 41, of the Rules of Court. On February 16, 1966, declaring loss of jurisdiction, the trial court denied the foregoing motion to dismiss and suggested that said motion be filed with the appellate court.

So it is, that in a motion dated July 7, 1966 (received on July 11, 1966) petitioners pressed in the Court of Appeals[2] for the dismissal of the appeals on the grounds that they were perfected out of time; that there was failure to prosecute the appeals; and that the records on appeal did not comply with the rules. Copy of this motion was sent by registered mail to private respondents' counsel on July 7th. On private respondents' opposition, the Court of Appeals resolved, on September 16, 1966, to deny the motion to dismiss the appeal. The reconsideration sought by petitioners was thwarted by said respondent court in its order of November 2, 1966.

It is of interest to note that on July 13, 1966, counsel for private respondents wrote the Clerk of the Court of First Instance of Capiz allegedly reiterating his request that the records on appeal be elevated to the Court of Appeals, and requesting the Clerk for a certification that he has made "repeated personal representations and requests" to the deputy clerk to forward said records on appeal. On that same day July 13, 1966 - the Clerk of the Court of First Instance of Capiz issued a certification, the text of which reads: "This is to certify that the Records on Appeal in the above-entitled cases [the cases herein involved] are still in this office and will be forwarded to the Honorable Court of Appeals as soon as the required supporting papers thereof have been finished."

It was only on July 25, 1966 that the records on appeal were forwarded to the Court of Appeals where they were received on July 27.

Petitioners now come to this Court on certiorari, prohibition and mandamus, with a prayer for a writ of preliminary injunction, to direct the respondent Court of Appeals to dismiss the appeals and, in the interim, to refrain from taking further action or proceeding in respect of private respondents' appeals.

Upon a P1,000.00-bond, this Court issued a cease-and-desist order on February 23, 1967.

The case is now before us for decision on the merits.

1. The order of the Court of First Instance of September 22, 1965 requires amendment of the record on appeal in the land registration case. The court had authority to so direct.[3] The amendment is substantial. For, in that order, private respondents were directed to incorporate in the record on appeal (a) specification that the appeal is limited in scope to affect only the lots therein controverted by them; (b) the order of general default; (c) the order of July 7, 1965 approving the record on appeal; (d) the motion of appellees of August 7, 1965 (filed on August 9, 1965); and (e) the lower court's order of September 22, 1965. Private respondents had notice of this order on September 29, 1965. Since then nothing was done. Not even one of the five requirements was inserted in the record on appeal. Not that private respondents' attention thereto was not called. On January 3, 1966, petitioners moved in the Court of First Instance to dismiss the appeal for failure to prosecute. It is true that, because of loss of jurisdiction, the Court of First Instance denied that motion. But these last two events should have stirred private respondents to promptly act in the premises, to prosecute their appeal. Those incidents were a warning to them. When petitioners filed their motion dated July 7, 1966 before the Court of Appeals, the records on appeal still had not yet been elevated to that court. It was only, as aforesaid, on July 25, 1966 that the two records on appeal were forwarded to the Court of Appeals. Even these records on appeal do not show on their face that they have ever been approved by the Court of First Instance.

Besides, the record on appeal in the land registration case should have been redrafted. Because, the order of September 22 is a directive to private respondents to amend their record on appeal to include therein all the matters set forth in the said order. This, we repeat, was not done. It is true that the order of September 22 did not mention any fixed time within which the amended record on appeal should be filed in court. But, by Section 7 of Rule 41, Rules of Court, "if no time is fixed by the order" directing the amendment, the redrafted record on appeal must be submitted "within ten (10) days from receipt" of the order - for the court's approval - "upon notice to the appellee, in like manner as the original draft." No redrafted record on appeal was ever presented. In consequence, no amended record on appeal was ever approved by the court. In effect, there is no record on appeal to speak of in the land registration case. On this score alone, the appeals should be dismissed.[4]

2. A rule long familiar to practitioners in this jurisdiction is that it is the duty of the appellant to prosecute his appeal with reasonable diligence. He cannot simply fold his arms and say that it is the duty of the Clerk of the Court of First Instance under the provisions of Section 11, Rule 41 of the Rules of Court, to transmit the record on appeal to the appellate court. It is appellant's duty to make the Clerk act and, if necessary, procure a court order to

compel him to act. He cannot idly sit by and wait till this is done. He cannot afterwards wash his hands and say that delay in the transmittal of the record on appeal was not his fault. For, indeed, this duty imposed upon him was precisely to spur on the slothful.

As we review the facts of this case, we find that, in reality, delay in the transmittal of the records on appeal should not be laid at the door of the Clerk of Court. The record on appeal in the land registration case is incomplete. The lower court's order of September 22, 1965 addressed to private respondents requires of them the duty to complete the incomplete record on appeal. Court approval of the completed record on appeal cannot be had anyway. Because, the record on appeal as originally tendered has not been amended as directed.

And then, too, the records on appeal in both cases did not comply with the provisions of Section 10, Rule 41 of the Rules of Court, which states that "upon the approval of the record on appeal by the trial judge, it shall be the duty of the clerk of the trial court to verify the correctness of the copies of all petitions, motions, pleadings, orders and decisions included therein, as well as the dates of filing and receipt thereof by the parties, and to make a certificate of their correctness." Such certificate does not appear in the records on appeal.

Oddly enough, we find a certificate of the Clerk of the Court of First Instance of Capiz dated "25th day of July 1966." But this certificate only attests to the fact that "the attached document," to wit: the records on appeal in both cases submitted to the Court of Appeals by said Clerk had been examined by him merely "by comparing said document with the copy on file in my office", and concluded with a statement that "I have found the former to be a true copy of the latter." This does not satisfy the requirements of Section 10 of Rule 41. The verification contemplated in this section is a verification of the correctness of (1) the copies of all the documents - petitions, motions, pleadings, orders and decisions - included in the record on appeal, upon the basis of the original petitions, motions, pleadings, orders and decisions as they appear in the record of the case; and (2) the dates of filing and receipt thereof by the parties.

Worse. That certification was not made while the records on appeal were still with the lower court, and contrary to practice does not appear at the end of the record on appeal itself as submitted to the appellate court. It was in a separate document. Why? Because, the Clerk of the Court of Appeals noted its absence, and on August 1, 1966 wrote the Clerk of the Court of First Instance of Capiz informing him that the lower court's approval and the clerk's certification of correctness of the records on appeal were not with the documents forwarded to the appellate court. This certification, although dated 25th of July, 1966 - date of transmittal of the record on appeal to the Court of Appeals - was nonetheless received in the Court of Appeals only on August 12, 1966. And the lack of certification - at the time the records were elevated - could be explained by the fact that, as heretofore adverted to, appellants had not complied with the order of September 22, 1965.

The circumstances here present show a clear case of failure to prosecute. Because: First. Appellants (private respondents) failed, before transmittal of the records on appeal to the Court of Appeals, to require inclusion in the records on appeal approval thereof by the trial court and the certification of correctness exacted by Section 10 of Rule 41. Second. Private respondents were remiss in their duty to comply with the trial court's order of September 22, 1965 in the land registration case requiring them to include in their record on appeal the matters therein set forth. This order has not been obeyed up to now. The result is that there is no record on appeal as far as that case is concerned. Third. The records on appeal were not elevated to the Court of Appeals until the lapse of a considerable length of time. It is well to remember that between September 29, 1965 (when private respondents had notice of the order of September 22) and July 25, 1966 when the records on appeal - defective as they are - were finally elevated to the Court of Appeals, almost ten months had elapsed.

3. But the decisive question is whether this Court should, in the discharge of its supervisory functions, compel

dismissal of the appeals.

By Section 3, Rule 46 of the Rules of Court, if the record on appeal "is not received by the Court of Appeals within thirty (30) days after the approval thereof, the appellee may, upon notice to the appellant, move the court to grant an order x x x to declare the same abandoned for failure to prosecute." Section 1, Rule 50, Rules of Court, provides that an appeal may be dismissed by the Court of Appeals on its motion or of that of the appellee, upon the ground of "(c) Failure of the appellant to prosecute his appeal under Section 3 of Rule 46." Reason for this rule is not wanting. A lack of proper regard on the part of a defeated litigant to have his case promptly sub-mitted to an appellate court for disposal of his appeal could result in a situation where "litigation might become more intolerable than the wrongs it is intended to redress." [5]

It is indeed correct to say that the Rules do not impose upon the Court of Appeals the mandatory duty to declare an appeal abandoned for failure to prosecute. [6] This brings us to the question of whether the Court of Appeals, in giving due course to the appeals here, com-mitted such a grave abuse of discretion as amounting to failure to perform a duty enjoined by law and calling for the exercise of the corrective powers of this Court. And we think it did.

The negligence of private respondents in prosecuting their appeals in these cases is palpably clear. Their failure to assist the courts of justice to dispose of these cases with reasonable dispatch is a sufficient reason to take away from them their right to have the alleged errors in the appealed judgment corrected. They delayed the administration of justice by their delay in prosecuting their appeals. And this, in spite of the fact that the civil suit was commenced on June 5, 1951, and the land registration case, on September 14, 1951. In this situation, the spirit of the Rules of Court forbids that efficacy of the administration of justice be shackled by appellants' failure to prosecute the appeals. The rule in this respect is to be held rigid. Failure of an appellant to so prosecute must be reckoned against him. It would be a travesty in the administration of justice if we are to order now the return of the records to the lower court just to complete the records on appeal; to procure approval of the amended record still to be presented by private respondents in the land registration case; and thereafter to elevate the cases once again to the appellate court for resolution of the appeals.

Delays in litigation have always been a bane in our judicial system. And we have observed a growing tendency of defeated suitors and their lawyers to disregard their duties under the Rules of Court, in the hope that they may stall the final day of reckoning. These are the considerations that now impel this Court to make a policy state-ment that failure to prosecute will not be countenanced.

As we conclude, we say that the attention of the Court of Appeals was drawn by petitioners to the fact that the records on appeal are incomplete; that the record on appeal in the land registration case has not been redrafted; and that private respondents failed to prosecute their appeals. Refusal to dismiss the appeals herein, upon the environ-mental facts, amounts to a denial of justice to appellees.

Upon the view we take of this case, we accordingly grant the petition for certiorari, prohibition and mandamus herein; declare the preliminary injunction heretofore issued by this Court final; and direct the Court of Appeals to dismiss the appeals in Civil Case No. V-661 and Land Registration Case No. N-50 (L.R.C. Record No. N-4778), both of the Court of First Instance of Capiz.

Costs against private respondents.

SO ORDERED.

Reyes, Acting Chief Justice, Makalintal, Bengson, Zaldivar, Castro, Angeles, and Fernando, JJ., concur.

Concepcion, C.J., on leave.

Dizon, J., no part.

[1] Civil Case No. V-661, Eufracio Fagtanac and Dolores Advincula, Plaintiffs, vs. Federico Mendoza and Matilde Falcis, Defendants; Land Registration Case No. N-50 (L.R.C. Record No. N-4778), Eufracio Fagtanac and Dolores Advincula, Applicants, vs. Federico Mendoza and Matilde Falcis, Oppositors.

[2] CA-G, R. Nos. 37860-61-R, Eufracio Fagtanac, et al. vs. Matilde Falcis, et al.

[3] Cabungcal vs. Fernandez, G.R. No. L-16520, April 30, 1964; Cabilao vs. Judge, G.R. No. L-18454, August 29, 1966.

[4] Section 14 in connection with Sections 13 and 7, Rule 41 of the Rules of Court.

[5] Arnedo vs. Llorente, 18 Phil. 257, 263; emphasis supplied.

[6] Guevara vs. Guevara, 98 Phil. 249, 261-262.

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