

**MEGIDA TINTIANGCO, ETC., ET AL., PLAINTIFFS AND APPELLANTS,
VS. HON. BERNABE DE AQUINO, AS JUDGE OF THE COURT OF FIRST
INSTANCE OF TARLAC, ET AL., RESPONDENTS.***G.R. No. L-15822. August 26, 1960*

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

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Petition for certiorari and mandamus to reverse the order of the Court of First Instance of Tarlac dismissing petitioners' appeal from the decision in Civil Case No. 348 and to have said appeal certified to the Court of Appeals.

Petitioner Megida C. Tintiangco, for herself and as administratrix of absentees Buenaventura and Eufemia Tintiangco, is the plaintiff in the aforesaid civil case. The complaint sought the partition of a parcel of land (Lot 3633) held in common by the parties, and the recovery of another parcel (Lot 882) which is in the possession of the defendants Uycocos under claim of ownership. Defendant Antonio Cruz manifested his agreement to the partition, while the other defendants Jose Tintiangco and Oriel Tintiangco were declared in default. Subsequently, however, defendant Antonio Cruz died and his heirs, Faustina Abaya Vda. de Cruz, et al., were substituted in his stead. Defendant Jose Tintiangco likewise died during the pendency of the case, and was substituted by his heirs, plaintiff Megida C. Tintiangco, et al. As for defendant Oriel Tintiangco, he sold all his interests in Lot 3633 to plaintiff Megida C. Tintiangco.

On April 8, 1957, the court below rendered judgment ordering the partition of Lot 3633 among the parties, but declaring defendants Uycocos owners of Lot 882. Plaintiff Tintiangco received copy of the decision, through Attorney Ildefonso de Guzman-Mendiola, on April 17, 1957 (Orig. Recs., p. 301); while defendants Abayas received theirs, through their Attorney Jose P. Sibala, on April 18, 1957 (Orig. Recs., p. 302). On May 17 1957, plaintiff and defendants Abayas mailed to the Court by special delivery post a joint motion for reconsideration and new trial, which was received in court on May 18, 1957 (Orig. Recs., p. 307). This motion was denied by the Court on July 9, 1958, copy of which order of denial, plaintiff Tintiangco and defendants Abayas received, through counsel, on July 11 and July 14, 1958, respectively (Orig. Recs., pp. 346 and 348).

On July 11, 1958, plaintiff Tintiangco and defendants Abayas allegedly mailed by special delivery their joint notice of appeal, an appeal bond signed by the principal appellants Megida C. Tintiangco and Faustina Abaya, and a motion for extension of time up to July 22, 1958 within which to file their joint record on appeal; but this mail was received in Court only on July 14, 1958 (Orig. Recs., p. 354). Appellants' motion to extend the period for the filing of their record on appeal was granted, but unable to file their complete record on July 22, they filed, on this day, another motion for extension until July 24, 1958, which was also granted. On July 23, 1958, appellants' complete record on appeal was finally submitted to the Court by registered mail.

When the record on appeal was submitted for approval, defendants Uycocos opposed the same, on the grounds, first, that appellants' joint motion for reconsideration and new trial was filed out of time; and second, that the joint

record on appeal was likewise filed out of time. Based on the opposition of the defendants Uycocos, the Court disapproved the record. Thereafter, appellants moved to reconsider the order disapproving their appeal, and reconsideration was granted. Again, defendants Uycocos urged for the dismissal of the appeal, citing their former objections to its approval and adding that even appellants' appeal bond was filed out of time. After hearing and reexamination of the records, the court again dismissed the appeal for the reason that "the appeal bond was filed a day too late". Unable to obtain reconsideration of this last order, appellants filed the present petition for certiorari and mandamus before this Court.

Resolution of this petition revolves on two issues, namely: whether or not petitioners' joint motion for reconsideration and new trial was filed on time; and, assuming that said motion was timely filed, whether petitioners' appeal was perfected on time.

On the first question, respondents claim that petitioners' joint motion for reconsideration and new trial was considered filed in court only when it was received therein on May 18, 1957, which was allegedly the 31st day after they were furnished copy of the court's decision; while petitioners on their part contend that said motion should be considered filed with the Court as of the date it was mailed by special delivery on May 17, 1957. Either way, the motion was filed on time, because petitioner Tintiangco received her copy of the decision on April 17, 1957, and the other petitioners Abayas, on the following day, April 18; and even if we consider the date of actual receipt of the motion in court on May 18 as its date of filing, still said date is the 30th day from April 17, and only the 29th day from April 18, the dates when petitioners Tintiangco and Abayas respectively received their copies of the decision of the Court *a quo*.

The more important question, therefore, is whether petitioners' appeal was perfected on time, for if it had not been, as claimed by respondents and found by the court below, then the judgment in the case has already become final and executory and the appeal of petitioners can no longer be allowed.

In denying due course to the appeal, the lower court found that petitioners' bond was filed "a day too late", it appearing that the joint appeal bond found on page 356 of the Records is dated July 12, 1958, and could not have, therefore, been mailed to the Court on July 11th, as asserted by petitioners. In answer, petitioners allege that the bond referred to, subscribed by the principal appellants and a surety company and dated July 12, 1958, was not the bond that they originally filed; but that on July 11, 1958, they mailed to the Court, together with their notice of appeal and first motion to extend the time to file their record on appeal, an appeal bond signed by the principal petitioners Megida G. Tintiangco and Faustina Abaya, which bond was later substituted by the one now appearing on the record.

As to petitioner Tintiangco, we find no error in the finding of the Court below that appeal bond was not filed on time. The ingenious excuse that the surety bond executed on July 12, 1958 was a substitute bond that replaced an earlier bond, signed by the principal appellants, is not supported by evidence, and in fact goes against well-established practice. No trace exists of any such earlier bond, and the substitution, if true, must have been made by authority of the Court. The earlier bond, if duly filed, could not thereafter be removed from the records of the case without court authorization, since such bond had become part of an official record. No authority appears for its removal, and the order of October 20, 1958, denying the appeal because of the belated filing of the appeal bond is, in itself, a denial of the alleged substitution. That such replacement never took place is further confirmed by the record of appeal itself, where no other appeal bond is mentioned except the belated one executed on July 12, 1958, i. e., one day after the expiration of the 30-day appeal period for petitioner Tintiangco (Petition, Annex A, pp. 42-43).

It should be observed, however, that while the thirty-day period for the perfection of the appeal expired for

petitioner Tintiangco, on July 11, 1958, it did not end for petitioners Abayas until July 15, 1958, because, as previously related, their attorney received copy of the denial of the joint motion for reconsideration and new trial only on July 14, 1958. It appearing that the joint notice of appeal and appeal bond were received in court on July 14, 1958, and the complete record on appeal was filed by registered mail on July 23, 1958, which date was within the extended period allowed by the lower court for its filing, the appeal of petitioners Abayas was perfected on time and should be given due course.

Wherefore, the petition is dismissed as to petitioner Megida C. Tintiangco, and granted as to petitioners Faustina Abaya Vda. de Cruz, et al. It is hereby ordered that the appeal of petitioners Abaya, et al., be given due course and certified to the Court of Appeals. Costs against petitioner Megida C. Tintiangco.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, and Gutierrez David, JJ., concur.

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