

MARIA JAVIER CRUZ AND JOSE MA. CRUZ, PETITIONERS, VS. HON. JUAN P. ENRIQUEZ JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL AND EVANGELINO LASERNA, RESPONDENTS.

G.R. No. 10301. February 28, 1958

Ponente: ENDENCIA, J.

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ENDENCIA, J.:

This is a petition for the annulment of the order of the respondent judge dated January 10, 1956, whereby the appeal interposed by Maria Javier Cruz and Jose1 Ma. Cruz, petitioners herein, in Case No. 1397, G.L.R.O. Record Nos. 875, 917 and 699 of the court of first instance of Rizal, was dismissed on the ground that the same was not perfected within the period of time prescribed by law.

The record discloses that on July 15, 1955, respondent Evangelino Laserna filed with the court of first instance of Rizal in G.L.R.O. Record Nos. 875, 917 and 699, a petition wherein he prayed that "the title and ownership over the property described in Transfer Certificate of Title No. 41100 of the land records in that province in the names of Maria Javier Cruz and Jose Maria Cruz, be declared consolidated absolutely in his favor, and that inasmuch as the order of the court of first instance of Rizal dated January 7, 1950, by virtue of which Transfer Certificates of Title Nos. 20593 in the name of respondent Laserna and 20958 in the name of Jose1 M. League were issued, was subsequently vacated and set aside in the decision of the Court of Appeals of April 22, 1955, in CA-G.R. No. 9882-R, that these last two titles be cancelled and a new one issued in the name of Jose M. League who purchased the same from Laserna." Petitioners herein opposed Laserna's petition alleging that, under the provisions of Art. 1606 of the new Civil Code, they, as vendors a retro, are granted the right to repurchase the property within 30 days from the time final judgment was rendered against them by the Court of Appeals; that the decision of the appellate court became final and executory only on July 20, 1955, and, therefore, the petition for consolidation of ownership is premature by reason of the fact that herein petitioners may still exercise their right of redemption.

On August 6, 1955, respondent judge granted Laserna's petition and ordered the Register of Deeds of Rizal to cancel said Transfer Certificate of Title No. 41100 and to issue, in lieu thereof, a new Transfer Certificate in the name of respondent Laserna, and that this new title to be issued to I Laserna be also cancelled and another one be issued in the name of Jose M. League, upon the payment of the corresponding fees. Thereafter, petitioners herein filed a motion for reconsideration of the order, insisting in their theory that Article 1606 of the New Civil Code was applicable to the case; but the respondent judge denied it for lack of merit. Petitioners then filed on time a notice appeal, appeal bond and record on appeal, and served copies thereof to respondent Laserna.

The record on appeal was not immediately approved, for the respondent judge ordered its correction, but on December 12, 1955 the same was allowed and the clerk of court was directed to certify and elevate it to the Court of Appeals within the time prescribed by the Rules of Court. However, five days later, that is to say, on December 17, 1955, respondent judge ordered the disapproval of the appeal bond after discovering, according to him, that "the same consisted merely in the signatures of two lawyers." The bond which has been duly notarized by Floren

V. Abrenica in Manila on October 6, 1955, recites as follows:

"WHEREAS, Maria Javier Cruz and Jose Ma. Cruz, in the above-entitled proceedings, have appealed to the Supreme Court from the ORDER entered against them in the above-entitled action;

"NOW, THEREFORE, in consideration of the premises and of such appeal, we the undersigned ATTY. JESUS J. CRUZ and ATTY. ELEAZARO A. SAMSON, of Rm. 211 E. V. D. Building, Quiapo, Manila, as sureties, do hereby JOINTLY and SEVERALLY bind ourselves in favor of EVANGELINO LASERNA, in the amount of SIXTY PESOS, (P60.00) Philippine currency, conditioned for the payment of costs which the appellate court award against the appellants."

Taking advantage of the disapproval of the appeal bond, respondent Laserna, on January 4, 1956, reiterated his previous petition to dismiss appeal as being frivolous and intended only to delay the proceedings. No immediate action was taken, however, on this motion, and in the meanwhile herein petitioners filed on January 7, 1956, a new appeal bond. On January 10, 1956, this new bond and the motion to dismiss appeal were submitted to the respondent judge who then issued the following order:

"In its order of December 12, 1955, this Court approved oppositors' record on appeal and ordered the transmission thereof to the appellate court after certification by the clerk of court. Before its transmission to the appellate court, this Court has noticed, however, that oppositors' appeal bond which was filed simultaneously with the notice of appeal was notoriously defective and the same was disapproved on December 17, 1955.

"Following the disapproval of oppositors' record on appeal, petitioner filed on January 4, 1956, an ex-parte petition to dismiss the appeal; while oppositors, on the other hand, filed on January 7, 1956, a new appeal bond.

"Oppositors' new appeal bond having been filed well out of time and presented only after petitioner had presented a motion to dismiss the appeal, rendered petitioners ex-parte petition to dismiss the appeal in order.

"WHEREFORE, finding oppositors' appeal not perfected within the period prescribed by law, the same is hereby ordered dismissed."

A motion for reconsideration of this order was filed by herein petitioners, but it was denied on February 8, 1956, for lack of merit; hence the filing of the present petition to annul the aforequoted order and to compel the respondent judge to give due course to the appeal.

There is no dispute that the original appeal bond was filed by the petitioners within the time prescribed by law; that the same was found by the respondent judge to be defective after he had already approved the corrected record on appeal; hence, the question is reduced to the simple proposition of whether or not such bond, duly subscribed by two persons, is really defective.

The law on appeal bond is Sec. 5 of Rule 41 of the Rules of Court which recites:

"The appeal bond shall be in the amount of sixty (P60) pesos unless the court shall fix a different amount, or unless a supersedeas bond is filed. The appeal bond shall be approved by the court and is conditioned for the payment of costs which the appellate court may award against the appellant."

This provision of law does not prescribe special form for appeal bond. It only requires that the same be for the amount of sixty pesos, "conditioned for the payment of costs which the appellate court may award against the appellant." The bond in question complies substantially with the provision of law, and we see no reason why the respondent judge found it defective. When he approved the record on appeal, there has been an implied approval of the original bond, and we find no reason either why after such approval, he had to disapprove said bond and dismiss the appeal on the allegation that the new bond was filed out of time. Furthermore, granting that the first

bond was really defective, justice demands that herein petitioners, as appellants in that case, be given an opportunity to cure its defect by filing, as they did, another bond. In dismissing the appeal the respondent judge has entirely overlooked the fact that the second bond was not a new one but merely a correction of the original supposedly defective bond. We conclude that, under the circumstances, it is very apparent that there has been committed an abuse of discretion, if not an excess of jurisdiction, when respondent judge sweepingly dismissed the appeal and denied petitioners' motion for reconsideration on January 28, 1956.

Respondent Laserna vigorously contends that under the inherent powers of the court to amend and control its process and orders so as to make them conformable to law and justice, the dismissal of the appeal on the ground that the first bond was defective and the second one was filed out of time, should be sustained; but under the facts obtaining in the case, this contention is evidently untenable, for the original bond, in our opinion, is not defective; and even granting that it were, petitioners herein were diligent in curing the supposed defect by filing a new bond in order to protect their right to appeal. Certainly, the respondent judge should not have been strictly technical in the application of the rules, for in so doing he has deprived herein petitioners of their right to appeal, or at least to perfect it within the time allowed by law.

In view of the foregoing, petition granted, and respondent judge ordered to give due course to petitioners' appeal. Without costs.

Paras, C.J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., and Felix, JJ., concur.

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