

JUANA ALONZO, ET AL., PETITIONERS, VS. VALENTINA ROSARIO ET AL., RESPONDENTS.*G.R. No. 12309. April 30, 1959*

Ponente: BAUTISTA ANGELO, J.

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This is a petition for certiorari seeking to set aside among others, the resolution of the Court of Appeals dated April 12, 1957 dismissing defendants' appeal from the decision of the trial court.

This petition stems from an action for partition instituted by plaintiffs, now respondents, against defendants, now petitioners, before the Court of First Instance of Ilocos Sur. Petitioners interposed as a defense that the property sought to be partitioned is paraphernal of Juana Alonzo and hence respondents have no interest in the same.

When the case was initially called for trial, the parties submitted a partial stipulation of facts, reserving their right to submit additional evidence. On the date set for trial, after several postponements granted at the request of both parties, counsel for petitioners failed to appear due to lingering illness, whereupon respondents were allowed to present their evidence. And on April 11, 1955, the trial court rendered decision declaring the property conjugal in nature and decreeing its partition. On May 26, 1955, 1 month and 15 days from the rendition of the decision, a verified motion to set aside the decision on the grounds of mistake and excusable negligence was filed by petitioners under Section 3, Rule 38, of the Rules of Court. This motion was denied on the ground that it was not accompanied by an affidavit of merits as required. As second motion for reconsideration was filed by petitioners reiterating the same grounds for relief. This was again denied, and forthwith petitioners took the case on appeal to the Court of Appeals.

On February 5, 1957, counsel for petitioners received notice to file their brief within 45 days from receipt as required by the rules. However, on February 10, 1957, the same counsel received a copy of a motion to dismiss the appeal filed by respondents. On February 20, 1957, counsel for petitioners received copy of a resolution of the Court of Appeals directing him to answer the motion to dismiss within 10 days from notice. On March 1, 1957, counsel filed his opposition to the motion to dismiss as ordered praying at the same time that, in view of the time to be spent incident to the motion to dismiss, he be allowed to file the brief of petitioners from the time notice is received of the resolution of the court on said motion if the same is denegatory. On April 2, 1957, the Court of Appeals issued a resolution denying the motion to dismiss, but it also denied the motion of counsel for extension of time to file brief. Upon receipt of this resolution, counsel filed an urgent petition for reconsideration praying that, if the same is denied, he be given at least 15 days, to be computed from said date, within which to file petitioners' brief. The Court of Appeals not only denied this motion but also dismissed the appeal in a resolution entered on April 12, 1957, which is now subject of the present appeal. This resolution notwithstanding, counsel filed petitioners' brief on April 17, 1957.

It should be noted that counsel for petitioners received notice to file their brief within 45 days from receipt on February 5, 1957. On February 10, 1957, counsel for respondents filed a motion to dismiss appeal and on

February 20, 1957, counsel for petitioners was required to answer the same within 10 days from receipt. This counsel complied with by submitting a written opposition and praying that in view of the motion to dismiss, he be allowed to file petitioners' brief within the required period from the time he receives notice of the resolution of the Court of Appeals, if the same is denegatory. And on April 12, 1957, the resolution came denying not only the motion to dismiss but also the motion for extension as prayed for.

It would therefore appear that if the period during which the motion to dismiss is pending consideration is included in the computation of the period granted to petitioners to file their brief, we would have that the 45-day period would have long been covered for the resolution denying said motion came only on April 12, 1957, whereas that period would have expired on March 22, 1957. It was therefore practically impossible for petitioners to file their brief as required, considering the pendency of the motion to dismiss. It is for this reason that counsel for petitioners asked that that period be deemed to run from the date he receives notice of said resolution. But this petition was denied.

We find the denial of this petition to be improper. Under Section 4, Rule 8, of the Rules of Court, insofar as actions in the courts of first instance are concerned, a motion to dismiss "interrupts the time to plead", and in *Torres vs. Ribo*, 83 Phil., 642; 46 Off. Gaz., Supp. 11, 95, In connection with the period within which a protestee should file his answer when protestant files a motion to dismiss, this Court said: "A bona-fide motion to dismiss an election protest suspends the period within which the protestee should file his answer until said motion is finally decided, for the reason that should said motion for dismissal prosper there would be no need for protestee to answer." Although the rules concerning proceedings in the Court of Appeals do not contain a similar provision, the same ruling may be applied by analogy for the reason that if the motion to dismiss the appeal is granted, there will be no need for the appellant to submit his brief. Otherwise, the result would be that appellant would have unnecessarily undergone the work of preparing the brief and incurred the expenses incident thereto. Our ruling, 'therefore, is that the period consumed during the pendency of the motion to dismiss should be excluded from the period given to petitioners to submit their brief, and if this is done, the brief submitted by them on April 17, 1957 may be deemed presented in due time.

Wherefore, the resolution of the Court of Appeals dated April 12, 1957 dismissing the appeal is hereby set aside. The case is remanded to said court for decision on the merits. No costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Labrador, Concepcion, and Endencia, JJ., concur.

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