

ADRIANO VALDEZ, PLAINTIFF AND APPELLEE, VS. RODRIGO OCUMEN, ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 13536. January 29, 1960*

Ponente: BARRERA, J.

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This is an appeal taken by defendants from the order of the Court of First Instance of Isabela, dismissing the appeal they brought to said court from the judgment of the Justice of the Peace Court of Roxas, Isabela, in Civil Case No. 224 (Forcible Entry), on the ground that they failed to perfect the same within the reglementary period provided in Section 2, Rule 40 of the Rules of Court.

It appears that on March 9, 1957, the justice of the peace court, after due hearing, rendered a decision in said case No. 224 ordering the defendants to restore to the plaintiff the possession of the questioned Lot No. 3005, to vacate its premises, and to pay the costs. Notice of said decision was sent to the counsel of the parties on April 30, 1957, defendants receiving their copy on May 24, 1957. May 29, 1957, defendants filed with said court a notice of appeal and an appeal bond of P25.00 without, however, paying the appellate court docket fee of P16.00, as required under Section 2, Rule 40 of the Rules of Court. Acting upon said notice of appeal, the court, on the same date, issued an order forwarding the records of the case to the Court of First Instance of Isabela but stating therein "without however the docket fee for appeal". The Clerk of Court of First Instance received the records on July 25, 1957, at 3:30 P.M. Defendants paid the appellate court docket fee of P16.00 only on the following day, July 26, 1957.

Resolving plaintiff's motion filed on July 29, 1957, to dismiss the appeal on the ground that it was not perfected within the reglementary period (15 days from notice of the judgment) provided in the Rules of Court, and defendants' opposition thereto, the Court of First Instance on August 28, 1957, issued an order dismissing the appeal, stating in part, as follows:

"The appellate court docket fee may be deposited either with the municipal treasurer or with the Clerk of Court of First Instance and a certificate of such deposit shall be attached to the record by the justice of the peace. It should be deposited in full within the period of 15 days and this provision of the Rules of Court is mandatory and not directory. Therefore, if only ½ of the amount of the appellate court docket fee is deposited and the other half is rendered after the expiration of such period, no appeal is being perfected. (sic) (Lazaro vs. Endencia, 57 Phil., 552.)

"In the case at bar, the defendants-appellants did not deposit the appellate court docket fee of P16.00 with the Justice of the Peace Court of Roxas. And as the official receipt No. C-7155000, will show, the appellate court docket fee of P16.00 was only paid by Atty. Dominador P. Nuesa on July 26, 1957 or 61 days after the notice of appeal was filed. It is thus clear that the appeal has not been perfected in accordance with the provision of Section 2, Rule 40, of the Rules of Court.

"The contention of appellants' counsel to the effect that there was a substantial compliance with the law in that the docket fee was paid in the office of the Clerk of Court on July 26, 1957, is without merit because the Rules

of Court provides in no uncertain terms that a certificate of payment of the appellate court docket fee must be filed with the justice of the peace court of origin in order that the appeal is deemed perfected as to warrant the justice of the peace court to remand the case to the Court of First Instance.

"For all the foregoing considerations, the Court believes and so holds that the appeal has not been perfected in accordance with law and, therefore, this court has not acquired jurisdiction to try the case on the merits.

"Wherefore, the appeal should be, as it is hereby dismissed."

Defendants' motion for reconsideration of said order on the ground of its alleged illegality having been denied, defendants instituted this present appeal.

Section 2, Rule 40, of the Rules of Court, provides:

"SEC. 2. Appeal, how perfected.—An appeal shall be perfected within fifteen days after notification to the party of the judgment complained of, (a) by filing with the justice of the peace or municipal judge a notice of appeal; (b) by delivering a certificate of the municipal treasurer showing that the appellant has deposited the appellate court docket fee or in chartered cities, a certificate of the clerk of such court showing receipt of the said fee; and (c) by giving a bond."

Under this provision of the Rules of Court, in order to perfect an appeal from the judgment of the Justice of the Peace or Municipal Court, an appellant must, within 15 days from notice of the judgment, (1) file with the justice of the peace or municipal judge a notice of appeal, (2) deliver a certificate of the municipal treasurer or of the clerk of Court of First Instance in chartered cities, showing that he has deposited the appellate court docket fee, and (3) give a bond.

In the case under consideration, while defendants did file with the Justice of Peace of Roxas, Isabela, their notice of appeal and gave an appeal bond of P25.00 on May 29, 1957, they failed to pay the appellate court docket fee of P16.00. It was only on July 26, 1957, that is, 61 days after filing their notice of appeal evidently, beyond the reglementary period of 15 days from notice of judgment as provided under the aforequoted section of the Rules of Court, that they elected the payment of the same. Their appeal, therefore, was never perfected in the Court of First Instance of Isabela, and the trial judge correctly and properly dismissed said appeal, as it acquired no jurisdiction thereon.

Well-settled is the rule that the failure to perfect an appeal from a judgment of a justice of the peace court within the period allowed by law, bars the appeal (*Gajiton vs. Meris*, 54 Phil., 488; *Policarpio vs. Borja*, 16 Phil., 31; *Lazaro vs. Endencia*, supra; *Bermudez vs. Baltazar*, G. R. No. L-10268, prom. April 30, 1957), and that if a party does not perfect his appeal within the time prescribed by law, the appellate court cannot acquire jurisdiction, and for that reason, the compliance with said requirement is jurisdictional (*Layda vs. Legaspi*, 39 Phil., 83; *Lim vs. Singian*, 37 Phil., 817)[1]

Defendants claim that plaintiff waived his right to question the timeliness of their appeal, inasmuch as he filed his motion to dismiss when the case has already been remanded to the Court of First Instance, citing in support of his submission the cases, among others, or *Slade-Perkins vs. Perkins* (57 Phil., 223) and *Luengo vs. Herrero* (17 Phil., 29). In answer, it may be stated that said cases are not applicable to the case at bar, for the reason that the objections which were deemed waived therein refer to questions which do not affect the jurisdiction of the court. They can not, therefore, be invoked as precedents in the determination of this case. (*Miranda vs. Guanzon*, supra.)

Defendants, furthermore, argue that there was substantial compliance with the aforequoted provision of Section 2, Rule 40 of the Rules of Court inasmuch as their failure to pay the appellate court docket fee within the period therein provided, was the result of their agreement with the Justice of the Peace that it shall be paid to the Clerk of

Court of First Instance, who will determine the proper amount to be paid.

The contention is untenable. The provisions of the Rules of Court, especially those prescribing the period within which certain acts must be done, or certain proceedings taken, which are intended to prevent needless delays and promote the speedy discharge of judicial business,[2] can hardly be the subject of agreements or stipulations between a court and counsel.[3] In fine, strict, not substantial, compliance therewith is required.[4]

Wherefore, finding no error in the order appealed from, the same is hereby affirmed, with costs against the defendants-appellants. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Gutierrez David, JJ., concur.

[1] See also Roman Catholic Bishop of Tuguegarao vs. Director of Lands, 34 Phil., 623; Cordoba, et al. vs. Alapado, 34 Phil., 920; Bermudez vs. Director of Lands, 36 Phil. 774. Miranda vs. Guanzon, et al., 92 Phil., 168; Rodrigo vs. Seridon, et al., G. R. No. L-7896, Res. of July 29, 1954.

[2] Shioji vs. Harvey, 43 Phil., 333.

[3] In Policarpio vs. Borja, et al., supra, the fact that the plaintiff was told by the Justice of the Peace to return another day did not justify his failure to perfect his appeal within the reglementary.

[4] Alvero vs. De la Rosa, 76 Phil., 428.

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