

JOSE CABUANG, ET AL., PETITIONERS, VS. HON. ELOY BELLO, ETC., ET AL., RESPONDENTS.

G.R. No. 14781. July 15, 1959

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for mandamus to compel respondent Judge to approve and certify the record on appeal filed by petitioners for the purpose of having the decision rendered by said Judge reviewed by the Court of Appeals.

In Land Registration Case No. 209, LRC Record No. 715, jointly heard with Cadastral Case No. 68, L.R.C. Cadastral Record No. 1455, pending before the Court of First Instance of Pangasinan, a decision was rendered by respondent Judge on March 28, 1958, in favor of the oppositors. Copy of the decision was sent by registered mail to applicants' counsel, Attorney Rufino E. Gonzalez.

On March 31, 1958, the first registry notice addressed to Attorney Gonzalez was received by his son on April 1, 1958, but he actually received the letter from the post office on April 8, 1958. On May 7, 1958, the applicants, through their counsel, filed their notice of appeal and appeal bond and prayed that the same be approve. Counsel for the oppositors filed their opposition contending that the appeal was filed one day late, which opposition was upheld by the Court. Thereupon, respondent Judge issued on June 13, 1958, an order disapproving the record on appeal. Their motion for reconsideration having been denied, they interposed the present petition for mandamus.

The order of respondent Judge containing the reasons for disapproval of the record is quoted hereunder for ready reference:

"The applicants- claimants ask for the approval of the record on appeal filed on May 7, 1958. The appeal bond was deposited with the office of the clerk of Court on May 8, 1958. It appears, however, that a copy of the decision was sent to this counsel for the applicants- claimants on March 31, 1958, and that the first notice of said registered letter was sent to Atty. Rufino Gonzalez for the applicants on April 1, 1958. While it is true that in the registry return receipt, Atty. Rufino Gonzalez appears to have received the decision sent by registered letter on April 15, 1958, yet, the said date is not the determining factor in deciding, whether or not, the record on appeal was filed on time. Under sec. 8, Rule 27, Rules of Court, it is provided, therefore, that in case the addressee fails to claim his mail from the post office within five (5) days from the first notice of the postmaster, the service shall take effect at the expiration of such time. This being the the case, counsel for the applicants-claimants is supposed to have received the decision on April 5, 1958. He only filed his record on appeal on May 7, 1958, and deposited the appeal bond on May 8, 1958, It is clear, therefore, that the record on appeal was filed out of time, and that when the same was filed, the decision has already become final.

WHEREFORE, this Court refuses to act on, and denied the approval of the record on appeal.

SO ORDERED. Done at Lingayen, Pangasinan, this 13th day of June, 1958.

(Sgd.) Eloy B. Bello

Judge

It would appear, according to respondent Judge, that copy of the decision was sent by registered mail to counsel for the applicants on March 31, 1958, and the first notice thereof was sent to their counsel on April 1, 1958, but that actually applicants' counsel withdrew the letter from the post office on April 15, 1958. And considering that under Section 8, Rule 27, of the Rules of Court, in case the addressee of the mail fails to claim the mail from the post office within 5 days from the first notice sent to him, the service is deemed to take effect at the expiration of such time, respondent Judge concluded that counsel is deemed to have received copy of the decision on April 5, 1958. And since he submitted the record on appeal only on May 8, 1958, in his opinion the same was filed out of time.

The foregoing is disputed by the applicants. They contend that the same is contrary to the true facts as shown by the affidavits attached to their motion for reconsideration which clearly indicate that the record on appeal was filed within the reglementary period. We have gone over the record and we find this claim to be well taken. Thus, it appears that the first notice sent by the post office to counsel for applicants advising him of the registered mail sent by the Clerk of Court, was actually received on April 1, 1958, by counsel's daughter, Aurora, who was only 11 years old, who in turn delivered same to her brother Manuel, also a minor, for which reason the notice never reached him. It likewise appears that when on April 8, 1958, counsel's other son, Lito, who was his helper in the office, went to the post office for an errand, the postmaster delivered to him the registered mail in question and on the same date Lito gave it to his father. But when counsel for applicants filed the record on appeal on May 7, 1958, the same was disapproved on the ground that it was filed out of time.

We disagree with this finding. Section 8, Rule 27, provides that "service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within 5 days from the date of first notice of the postmaster, the service shall take effect at the expiration of such time." Note that the rule speaks of "from the date of first notice of the postmaster," which presupposes that the addressee has actually received the mail on said date, and when he fails to do so because of some justifiable excuse, the presumption of the law cannot apply, for to interpret this rule rigidly or to the letter may work injustice rather than promote justice. Such is the situation that obtains here. The first notice did not reach actually the counsel for the applicants because it was given to his minor children, but when he got the mail eight days thereafter, he saw to it that the record on appeal be filed within the reglementary period. In the circumstances, equity demands that the relief prayed for be granted in keeping with the principle that the rules should be liberally construed to promote the interest of justice.

Wherefore, petition is granted. Respondent Judge is ordered to give due course to the appeal interposed by applicants. No costs.

Bengzon, Padilla, Montemayor, Labrador, Concepcion, Endencia, and Barrera, JJ., concur.

Paras C. J. concurs in the result.

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