

ANTONIO D. LORIA, PETITIONER, VS. COURT OF APPEALS AND HEIRS OF MERCEDES LOPEZ BENDER, RESPONDENTS.*G.R. No. 19198. December 29, 1962*

Ponente: CONCEPCION, J.

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This is an original petition for certiorari, and, in effect, mandamus, to annul a resolution of the Court of Appeals dismissing the appeal taken by petitioner Antonio D. Loria from a decision of the Court of First Instance of Nueva Vizcaya in Civil Case No. 726 thereof, entitled "Mercedes Lopez Bender vs. Antonio D. Loria", upon the ground that said appeal had not been perfected within the reglementary period, and to compel said court to give due course to said appeal.

It appears that on August 1, 1959, the Court of First Instance of Nueva Vizcaya rendered the aforementioned decision against petitioner Loria, as defendant in said case, and in favor of Mercedes Lopez Bender, as plaintiff therein. On August 29, 1959, Loria filed a motion stating that he had engaged the services of a new counsel, who needed time to examine the records of the case and study the same, and praying for an extension of thirty (30) days within which to take the proper action. By an order dated February 13, 1961, the court granted Loria an extension of twenty (20) days from notice, which was received by him on February 21, 1961. On March 6, 1961, Loria filed a motion for new trial and reconsideration, which was denied on March 14, 1961, although notice thereof was not received by counsel for Loria until March 21, 1961. Four (4) days later, or on March 25, 1961, Loria filed his notice of appeal, as well as the corresponding appeal bond, and a motion for extension of time to file his record on appeal. By an order of the same date, the lower court granted Loria an extension of twenty (20) days within which to file said record on appeal, which was submitted on March 28, 1961, and, over the opposition of Mrs. Bender, approved on May 27, 1961. When the record on appeal reached the Court of Appeals, in which it was docketed as CA-G. R. No. 29506-R, Mrs. Bender moved to dismiss the appeal, upon the ground that it had not been seasonably perfected. This motion was granted in a resolution of the Court of Appeals dated October 10, 1961. A reconsideration of said resolution having been denied on November 21, 1961, Loria instituted the present action. Inasmuch as Mrs. Bender died in the meanwhile, her heirs have been made respondents herein.

The only issue in this case is whether or not Loria's appeal in the main case (No. 726) has been duly perfected, Mrs. Bender contended and her heirs maintain the negative view, upon the ground that, being allegedly pro forma, Loria's motion for new trial and reconsideration did not suspend the running of the period to appeal, and that, accordingly, the decision of the court of first instance was already final and executory when his notice of appeal, appeal bond and record on appeal were subsequently filed.

We do not share this view, which was implicitly adopted by the Court of Appeals. Said motion sought a new trial upon the ground of newly discovered evidence, as well as a reconsideration of the decision of August 1, 1959. Said newly discovered evidence were specifically described in the motion, as follows:

"1. A copy of the decision of the Department of Agriculture entitled D.A.N.R., Case No. 1583, dated

November 25, 1957, affirming the decision of the Bureau of Lands in giving due course to the sale application of the defendant Antonio D. Loria for a parcel of Land with an area of 27.4149 hectares, in as much as Mercedes Lopez Bender is barred under the law from acquiring the whole land and may be given only 38.5 hectares thereof so as to complete the maximum area of 144 hectares which she is allowed to acquire under the law;

"2. A copy of the letter of Mercedes Lopez Bender, dated April 28, 1952, addressed to the Director of Lands, Manila, purporting (to be) a request for a refund of the sum of P100.00 as over payment of purchase price the land covered by sales application No. 9762 (E-3693) situated in Santiago, Isabela;

"3. A copy of the joint affidavits of Pedro Fernandez and Cirilo Bagaoisan, illustrating simultaneous purchases made by Bender for another parcel of land located in Barrio Diffun, Santiago, Isabela. The law requires successive purchase of additional agricultural lands, contrary to what Bender had done in the acquisition of her additional lands;

"4. A copy of an order of the Department of Agriculture, Manila for the issuance of sales patent in favor of Mercedes Bender for Lots Nos. 4878, 6103, 6111, and 6113. Cad. No. 811, Santiago, Isabela;

"5. A copy of the affidavit of Mercedes Bender representing the sales application of Francis Bender, husband of the plaintiff, for a parcel of public land containing an area of 105.5 hectares located in Diffun, Santiago, Isabela;

6. Receipts for the purchase and expenses incurred by the herein defendant, Antonio D. Loria in installing an irrigation system in the land in question;

"7. Plan of the irrigation system which was installed in the same land in question;

"8. Testimony of the defendant's overseer and tenants over the land in question regarding the land, area cultivated, are planted with palay and total harvest covering the period from 1952 up to the present or yield of palay per hectare before and after the irrigation was installed;

"9. Testimony of Mr. Marcos de la Cruz, the Provincial Agriculturist at the time, who had an actual and ocular investigation of the land in question regarding actual condition of the land, area cultivated and average harvest or yield of palay before and after the installation of the irrigation system in a particular given premises."

With respect to the reconsideration prayed for in said motion, the same quoted the portion of the decision complained of, and of the decision of the Department of Agriculture and Natural Resources allegedly sustaining Loria's pretense. Moreover, Loria maintained that Mrs. Bender could possibly have no action for the recovery of possession, for "she has no legal rights" to the property in question or "to possess the same * * * there being no showing * * * that she was authorized by the Bureau of Lands" to hold it, whereas his "right * * * to possess, use, cultivate the land in question is duly recognized by the Director of Lands and affirmed by the Secretary of the Department of Agriculture and Natural Resources and further recognizing his sales application on the land in question."

Furthermore, Loria argued:

"* * * that the 27.4149 hectares of public land in question has already been adjudicated in favor of * * * Antonio D. Loria by the Office who has the sole authority and competence in the administration and disposition of public lands and * * * he cannot conceive of any law or jurisprudence awarding damages to a person who has no legal right whatsoever in the land in question, muchless the yield and products of the planted crops of the herein defendant, Antonio Loria on the 27.4149 hectares of land, whose legal rights of possession in the concept of potential owner is recognized by the Bureau of Lands which has the proper and sole authority vested by law with the administration and disposition of public lands.

"Again, * * * this Honorable Court omitted in his decision the fact that the herein defendant, Antonio D. Loria entered the land in question only after the sales application was given due course and simultaneously cancelling other application to the same land in question, instead of confining his observation only on the evidence presented by the plaintiff who alleged that the defendant herein entered the premises in bad faith, when * * * the truth of the matter is that when he entered the land in question, he was already clothed with an authority from the Director of Lands in giving his sales application due course and cancelling all other application on the same land in question."

Regardless of the merits or demerits of Loria's contention, it is clear from the foregoing that his aforesaid motion was not pro forma; that its filing suspended the running of the period within which to appeal from the decision of the lower court; that his appeal was perfected in due time; and that the Court of Appeals had so abused its discretion gravely, in issuing the resolution complained of and in refusing to reconsider the same, as to exceed its jurisdiction.

Wherefore, the aforementioned resolutions of the Court of Appeals of October 10 and November 21, 1961 are hereby annulled, and said Court is directed to give due course to the appeal taken in the main case by petitioner Loria, with costs against respondents herein, the Heirs of Mercedes Lopez Bender. It is so ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Barrera, Paredes, Dizon, and Makalintal, JJ., concur.

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