

ALICE FOLEY VDA. DE MARCELO, B. PERALTA, WILLIAM, RUTH AND JANET PERALTA, PETITIONERS, VS. HON. JUDGE RAFAEL S. SISON OF THE COURT OF FIRST INSTANCE OF CAM. SUR, BRANCH IV, ET A...

G.R. No. 22626. September 28, 1964

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Petitioners above named pray for a writ of mandamus to compel the Court of First Instance of Camarines Sur (Branch IV) to approve and certify their record of appeal in Case No. 5439 of said court.

As disclosed by the record before us, the court below had, upon petitioners' insistence, rendered judgment on the pleadings, dismissing their complaint and sentencing them to pay P6,500 damages and costs. Petitioners appealed and tendered a record of appeal that was objected to by the private respondents upon various grounds, specially because the record filed by petitioners did not specify in the caption the full names of all the parties, nor the dates when the various pleadings were filed in court. Neither did the proffered record contain any subject index, despite the fact that the same consisted of more than seventy typewritten pages.

The court upheld the objections, and ordered the record of appeals amended accordingly. But although the record was amended and ream ended, and the court granted petitioners three extensions of time for the purpose, still the objections of parties-defendants were not met, and the defects previously mentioned remained. Finally, the trial court rejected the tendered record of appeal and refused to approve or certify the same. Hence this petition.

We see no merit in the application. It is admitted that, at the very least, the caption did not set forth the full names of the parties to the suit; neither was there an index attached to the record as tendered to the Court of First Instance. These deficiencies constitute a clear violation of section 6 of Rule 41 of the Revised Rules of Court, which provides inter alia the following:

'Sec. 6. Record on appeal; form and contents thereof.—The full names of all the parties to the proceedings shall be stated in the caption of the record on appeal and it shall include the order or judgment from which the appeal is taken, * * *. Every record on appeal exceeding twenty (20) pages must contain a subject index.'

It is argued that when the amended record of appeal was filed in the court below, the defendants did not reiterate their objections within the ten (10) days allowed for the purpose by section 7 of Rule 41. But assuming, for the sake of argument, that defendants' delay in objecting was a waiver, the fact remains that the court itself, acting motu proprio, had the right to refuse approval of a record that did not conform to the Rules of Court.

IN VIEW OF THE FOREGOING, the writ of mandamus herein applied for is denied, with costs against petitioners.

Bengzon, C. J., Bautista Angelo, Concepcion, Paredes, Regala, and Makalintal, JJ., concur.

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