

FILOMENA ONA, APPLICANT. PATRICIA ISLAS ET AL. (OPPONENTS), PETITIONERS, VS. SERVILIANO PLATON, JUDGE OF FIRST INSTANCE OF TAYABAS, AND FILOMENA ONA, RESPONDENTS.*G.R. No. 23183. December 29, 1924*

Ponente: OSTRAND, J.

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It appears from the record that in December, 1920, the herein petitioners filed a petition in the Court of First Instance under section 38 of the Land Registration Act for the review of a decree in a land registration case. On March 23, 1921, the court denied the petition for review without permitting the petitioners to present their evidence. Upon appeal to this court the order denying the petition was reversed and the record remanded to the court below for the reception of evidence.[1]

The evidence having been received, the Court of First Instance on April 16, 1924, again denied the petition for a review and on May 5, 1924, the petitioners herein filed a motion for a new trial. The motion was heard and denied on the 17th of the same month and two days later due notice of the denial was sent to the attorney for the petitioners at his office address in Manila. The letter containing the notification was returned to the clerk of the Court of First Instance the latter part of June, 1924, marked "unclaimed." On August 26, 1924, the petitioners presented their exception to the order of May 17th denying the petition for a new trial and announced their intention to appeal to this court. A bill of exceptions was filed on August 29, 1924, but the trial court refused to approve and certify it on the ground that the time for presenting it had then expired.

On September 2, 1924, an order was entered declaring the decision in the land registration case final, and on the 24th of the same month a writ of possession was issued directing the sheriff of the province to place the applicant for registration, the herein respondent, Filomena Ona, in possession of the land. The petitioners thereupon brought the present action for a writ of mandamus to compel the respondent judge of the Court of First Instance to approve and certify the bill of exceptions filed on August 29, 1924. Counsel for the petitioners argues that under section 26 of Act No. 2347 an appellant in a land registration case has thirty days from the date upon which he receives a copy of the decision within which to present his bill of exceptions; that the order from which his clients desire to appeal must be considered a "decision" within the meaning of said section; that as he never received a copy of the order, the thirty days period had not begun to run at the time the bill of exceptions here in question was presented.

It may well be doubted whether section 26 of Act No. 2347 is applicable to appeals from orders relating to petitions for review, but assuming that such is the case, the respondent judge was nevertheless, in our opinion, fully justified in declining to certify the bill of exceptions in the present case. The bill was not presented until over three months after the notice of the order from which the petitioners desire to appeal should have reached their counsel in the ordinary course of the mails. The notice was duly sent by registered letter to counsel at his address in the City of Manila and it is not intimated that the address was erroneous. There is nothing in the record to show that the postal authorities did not properly perform their duty and we must presume that the usual notice of the

arrival of the letter at the Manila post office was delivered at the office of said counsel. He failed to claim the letter and it was returned to the Court of First Instance marked "unclaimed." His failure to receive a copy of the order in question was therefore entirely due to Ijis own negligence of which he cannot now be allowed to take advantage. As a practicing lawyer it was his duty to so arrange matters that official communications sent by mail would reach him promptly. Having failed to do so, he and his clients must suffer the consequences of his negligence. That he may have been absent from his office at the time the notification here in question arrived is no excuse.

The petition for a writ of mandamus is denied, with the costs against the petitioners. So ordered.

Johnson, Street, Malcolm, Avanceña, Villamor, Johns, and Romualdez, JJ., concur.

[1] Ona vs. Islis, R. G. No. 19980, promulgated August 22, 1923, not reported.

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