

CALASIAO FARMERS COOPERATIVE MARKETING ASSOCIATION, INC., AND JOSE F. DIZON, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS, HONORABLE CAROLINA C. GRINO--AQUINO OF THE COURT OF...

G.R. No. 50633. August 17, 1981

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

In this appeal by Certiorari, petitioners seek to set aside the Decision of the Court of Appeals in CA-G.R. No. 07895-SP, which upheld the Orders in Civil Case No. 14759 of the Court of First Instance of Rizal, Branch XIX, dated January 10, 1977, order-ing the amendment of petitioners' Record on Appeal; and that of December 19, 1977, which diapproved the same for not having been seasonably filed.

In said Civil Case No. 14759 entitled, "Aurora Lucero Vda. de Sevilla vs. Calasiao Farmers Cooperative Marketing Association, Inc. and Jose F. Dizon", private respondent was allowed by the trial Court to present her evidence ex-parte before the Deputy Clerk of Court for failure of petitioners' counsel to appear for hearing on March 8, 1973. Petitioners subsequently moved for reconsideration on March 27, 1973, praying that they be allowed to cross-examine respondent's witnesses and to present their evidence.[1] On May 21, 1973, the trial Court modified its Order of March 8, 1973 and set the case for hearing to receive petitioners' evidence and further stated that the cross-examination of respondent's witnesses was deemed waived.[2]

The Trial Court rendered judgment against petitioners on August 31, 1976.

For clarity, we outline hereunder the sequence of events and the material dates from the time of the rendition of judgment:

Sept. 10, 1976

- Receipt of judgment by petitioners.

Sept. 24, 1976

(14 days elapsed)

- Petitioners moved for reconsideration.

Oct. 13, 1976

- The court denied the Motion for Reconsideration.

Nov. 2, 1976

- Receipt by petitioners of the Order of denial.

Nov. 17, 1976

(15 days elapsed or a total of 29 days)

- Petitioner filed notice of appeal, appeal bond and motion for extension of 15 days from Nov. 17, 1976 to file Record on Appeal (or until Dec. 2, 1976)

This was granted by the Court.

Dec. 1, 1976

- Petitioners moved for 2nd extension of 5 days from Dec. 1, 1976 to file Record on Appeal (or until Dec. 6, 1976).

This was not acted upon by the trial Court.

Dec. 6, 1976

- Original Record on Appeal was filed. (This was presented on time if the Motion of Dec. 1, 1976 had been approved).

Private respondent opposed the approval of the Record on Appeal on the ground that certain Orders and pleadings had not been included therein. Thereafter, the following incidents transpired:

Jan. 10, 1977

- Trial Court ordered the amendment of the Record on Appeal, within five days from notice. This was tantamount to approval of the Motion of Dec. 1, 1976.

This is the first Order challenged herein.

Jan. 25, 1977

- Petitioners moved for extension of 20 days from January 26 within which to file the Amended Record on Appeal (or up to February 15, 1977).

Jan. 27, 1977

- Trial Court allowed the extension.

Feb. 16, 1977

- Amended Record on Appeal filed.

Dec. 19, 1977

- Trial Court disapproved the Amended Record on Appeal for having been filed one day late.

Petitioners also assailed this Order.

Petitioners' first and second Motion for Reconsideration of this last Order were successively denied.

Petitioners resorted to Certiorari proceedings before the Court of Appeals praying, as heretofore stated, for the nullification of the Orders of January 10, 1977 and December 19, 1977 of the trial Court, as well as the Orders denying their Motions for Reconsideration. The Court of Appeals upheld the challenged Orders and dismissed the Petition on March 30, 1979. The reconsideration sought met with failure.

In this instance, petitioners raise the following issues:

1. Didn't the respondent Judge of the trial court really commit grave abuse of discretion when she ordered the petitioner to amend their original record on appeal by including therein, the pleadings and orders prayed for by respondent Sevilla to be included in said record, and inspite of the position of petitioners that said orders and pleadings are not related to the appealed judgment and not necessary for the proper understanding of the issues involved?
2. Didn't the respondent Judge of the trial court really commit grave abuse of discretion when she disapproved petitioners' amended record on appeal for having been filed one day late (less than one day) and inspite of petitioners' argument that per the existing jurisprudence, their amended record on appeal is deemed to have been filed on the presentation of the original record on appeal filed on time?
3. If as stated in the fore-going, the respondent Judge of the trial court did abuse her discretion, then, was the Honorable Court of Appeals correct in holding that the same respondent Judge didn't commit even a simple abuse of discretion correctible by certiorari?

We gave due course to the Petition and after the submission by the parties of their respective memoranda, the case was deemed submitted for decision on October 15, 1979.

Petitioners first contend that the Orders and other pleadings required by respondent Judge to be incorporated in their Record on Appeal are not related to the appealed judgment, and are unnecessary for the proper understanding of the issues involved on appeal. These Orders and pleadings are:

- 1) Petitioners' Manifestation and Motion for Reconsideration of the Order of the trial court, dated March 8, 1973, declaring the defendants (petitioners herein) to have waived the presentation of evidence in their behalf and authorizing the Deputy Clerk of Court to receive the evidence for the plaintiff (respondent herein).[3]
- 2) Motion to set for hearing the Manifestation and Motion for Reconsideration.[4]
- 3) Order of the Court dated April 25, 1973 requiring defendants (petitioners) to submit proof of service on the plaintiff (respondent) of their Manifestation and Motion for Reconsideration.[5]
- 4) Petitioners' Manifestation and Compliance regarding the Order of the Court dated April 25, 1973.[6]
- 5) Respondent's Opposition to Motion for Reconsideration.[7]
- 6) Order of the Court, dated May 21, 1973, modifying its Order of March 8, 1973 and setting the case for the reception of defendants' evidence, but con-sidering as waived the cross-examination of plaintiff's witnesses.[8]

We find no abuse of discretion in the Order of inclusion. As aptly held by the Court of Appeals, under Section 7, Rule 41, of the Rules of Court, a Trial Judge is clothed with authority to determine the matters deemed essential for the determination of the issues involved in the appeal. The Orders and pleadings complained of appear to be necessary for the proper understanding and determination of the issues on appeal. The Order of the trial Court authorizing the reception of evidence by the Deputy Clerk of Court, for example, could possibly be the basis for an assignment of error, having in mind the ruling of this Court in *Lim Tanhu vs. Ramolete*, 66 SCRA 425 (1975) discouraging reception of evidence by Clerks of Court. Similarly, the Order considering the cross-examination of private respondent's witnesses as waived, could well be assailed on appeal. Moreover, enough leeway should be given appellants in respect of incidents that should be included in a Record on Appeal for it is they who are in a position to determine those necessary and indispensable for the successful prosecution of their appeal, subject, of course, to the approval of the trial Court, which should be granted unless the matters sought to be included are obviously immaterial. The converse should also be followed in order to allow appellees full opportunity to refute possible claims or arguments of appellants.

However, the disapproval of the Amended Record on Appeal must be set aside. As early as *Vda. de Oyzon vs.*

Vinzon,[9] this Court has ruled that when the original Record on Appeal was seasonably presented, the fact that the Amended Record on Appeal was filed beyond the prescribed period does not render the perfection thereof untimely because the Amended Record on Appeal is deemed to have been filed on the presentation of the original.[10]

Although there was no formal order expressly granting petitioners' Motion for second extension of five (5) days to file the original Record on Appeal, the Trial Court itself in its Order, dated February 16, 1978, acknowledged that the original Record on Appeal was seasonably filed when it stated categorically that "the contention of the defendants that the original Record on Appeal was filed on time is correct"[11] In ruling thus, the Trial Court must have taken into consideration the fact that the second Motion for Extension was filed within the first period of extension granted, and the original Record on Appeal submitted within the extension requested. This crucial timeliness factor was apparently overlooked by the Appellate Court when it held that petitioners' original Record on Appeal was "filed four days late"[12] It should be concluded then that the Amended Record on Appeal in question, although filed a day late, is deemed to have been presented upon the submission of the original Record on Appeal, which was done within the reglementary period.

"Amendments in pleadings do not necessarily expunge those previously filed. Amendments made, more so when ordered by the court, relate back to the date of the original complaint, if, as in the case at bar, the claim asserted in the amendment pleading arose out of the same conduct, transaction or occurrence. Amendment presupposes the existence of something to be amended and, therefore, the tolling of the period should relate back to the filing of the pleading sought to be amended x x x x."[13]

Moreover, the prevailing trend in the computation of the period of appeal is one of liberality.[14] Thus, this Court ruled that a six (6) day delay in the perfection of appeal does not warrant its dismissal.[15] Even the delay of four (4) days in filing a notice of appeal and a motion for extension of time to file Record on Appeal can be excused on the basis of equity.[16] With more reason, the Amended Record on Appeal in question, although presented a day late, should have been approved, considering that the same was already before respondent Trial Court.

Dismissal of appeals based on purely technical grounds is frowned upon as the policy of the Courts is to encourage hearing of appeals on the merits.[17] Rules of procedure are intended to promote, not to defeat substantial justice, and therefore, they should not be applied in a very rigid and technical sense.

WHEREFORE, the challenged Order of January 10, 1977 ordering the amendment of the Record on Appeal, is affirmed, but the Order of December 19, 1977 disapproving the Amended Record on Appeal for late filing, is set aside. The Court of First Instance of Rizal, Branch XIX, is hereby ordered to give due course to petitioners' appeal.

No costs.

SO ORDERED.

Teehankee, Acting C.J., Makasiar, Fernandez, and Guerrero, JJ., concur.

[1] pp. 24-28, Court of Appeals Rollo.

[2] p. 39, *ibid*.

[3] pp. 24-28, *ibid*.

[4] p. 32, *ibid*.

[5] p. 33, *ibid.*

[6] pp. 34-35, *ibid.*

[7] pp. 36-38, *ibid.*

[8] p. 39, *ibid.*

[9] 8 SCRA 455 (1963).

[10] *Pajarillo vs. Court of Appeals*, 74 SCRA 151 (1976).

[11] p. 61, *Court of Appeals Rollo*.

[12] p. 5, *Decision*.

[13] *Phil. Ind. Church, etc. vs. Juana Mateo and I.G. Ilaño*, G.R. No. L-14793, April 28, 1961; 1 SCRA 1119, 1123 (1961).

[14] *De las Alas vs. Court of Appeals* 83 SCRA 201 (1978).

[15] *Republic vs. Court of Appeals* 83 SCRA 453 (1978).

[16] *Ramos vs. Bagasao* 96 SCRA 395 (1980).

[17] *Gregorio vs. Court of Appeals* 72 SCRA 120 (1976).

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