

ASUNCION RAMOS, PETITIONER, VS. THE HON. AGUSTIN C. BAGASAO, ETC., ELENA MENDOZA AND THE HEIRS OF THE LATE ELISEO B. RIGOR, RESPONDENTS.

G.R. No. 51552. February 28, 1980

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Mandamus to compel the respondent judge to give due course to the appeal of the plaintiff, the petitioner herein, in Civil Case No. SD-320 of the Court of First Instance of Nueva Ecija, Branch VI with station at Sto. Domingo, and to approve the record on appeal already submitted.

Asuncion Ramos is the plaintiff in the above-mentioned civil case where she sued Eliseo B. Rigor and Elena Mendoza to annul Transfer Certificate of Title No. NT-54483 of the Register of Deeds of Nueva Ecija. Her attorney of record was Alfonso G. Espinosa. When the respondent judge decided the case against the plaintiff, the decision was served personally on her on March 19, 1979, for the reason that, according to Deputy Clerk of Court Prudencio P. Ciriaco: "xxx Atty. Espinosa died before the promulgation of the decision, and since his death was of public knowledge in Cabanatuan City and Province of Nueva Ecija, specially among legal and Court circles, the decision was served directly upon the plaintiff, Asuncion Ramos, instead of Atty. Espinosa, who was already dead."

In a pleading dated April 14, 1979, but posted only on April 17, 1979, Atty. Raymundo Z. Annang as the new counsel for Asuncion Ramos asked that the decision of March 19, 1979, be reconsidered and that a new trial be granted for the reasons therein stated. This was denied by the respondent judge in an order dated July 24, 1979, which was received by Atty. Annang on July 26, 1979.

On July 31, 1979, the plaintiff filed a notice of appeal together with the cash appeal bond and also a motion for extension of time to file a record on appeal. Both were dated July 30, 1979, and both were denied by the respondent judge on July 31, 1979, for having been filed out of time.

The only question in this case is the starting date for reckoning the 30-day period within which the appeal should have been made.

Petitioner contends that the personal service made upon her on March 19, 1979, was ineffectual because she had an attorney of record and the respondent judge did not order that the decision be served upon the party herself. (Rule 13, Sec. 3, Rules of Court; *Palad vs. Cui*, 28 Phil. 44 [1914]; *Notor vs. Daza, et al.*, 76 Phil. 850 [1946]; *Mata vs. Legarda*, L-18941, Jan. 31, 1963, 7 SCRA 227.) Petitioner claimed during the hearing that the time should be reckoned from April 14, 1979, when she gave a copy of the decision to her new lawyer, Atty. Annang who subsequently filed the pleading aforementioned on April 17, 1979. From this assertion it would logically follow that the notice of appeal as well as the motion for an extension of time to file a record of appeal which were filed on July 31, 1979, were well within the reglemen-tary period.

Upon the other hand the respondents aver that the personal service of the decision on the petitioner on March 19, 1979, was an effective service and therefore that date should be used for reckoning the 30-day period within which to perfect an appeal. *Riego vs. Riego*, L-22531, Sept. 23, 1966, 18 SCRA 91 is invoked to support this contention. However, the *Riego* case is not in point because in that case it was "clear that it was by the order of the trial court that the notice of hearing of the motion to dismiss was served on the plaintiffs." (At p. 94.)

There is merit in petitioner's contention that the 30-day period within which to appeal should be counted, not from March 19, 1979, but from April 14, 1979. However, we do not have to decide the instant case on this point. For even assuming that the 30-day period should be counted from March 19, 1979, the delay of four days in filing a notice of appeal and a motion for an extension of time to file a record on appeal can be excused on the basis of equity and considering that the record on appeal is now with the respondent judge.

WHEREFORE, as prayed for the petition is granted and the respondent judge is hereby ordered to give due course to the appeal. No special pronouncement as to costs.

SO ORDERED.

Barredo, (Chairman), Aquino, and Concepcion, Jr., JJ., concur.

Antonio, J., concurs in the result.

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