

**MARCIANA DAPIN AND ADRIANO MALMIS, PETITIONERS, VS.
ALBINO, DOMINGO, PATERNO, GENARO, MONTANO, AVELINA
ROSAL ALL SURNAMED DIONALDO AND HONORABLE PRESIDING
JUDGE MELQUIADES SUCAL...**

G.R. No. 55488. May 15, 1992

Ponente: GUTIERREZ, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-55488/>

GUTIERREZ, JR., J.:

Is the petitioners' motion for new trial merely pro forma such the filing thereof did not suspend the running of the period to appeal? The resolution of this question will determine whether or not a writ of mandamus may issue to compel the respondent trial court to approve the petitioners' record on appeal.

On August 2, 1979, the private respondents, heirs of Monica Pocong, filed an action for partition with prayer for damages against the petitioners-spouses Marciana Dapin and Adriano Malmis. The private respondents alleged that Marciana Dapin unlawfully deprived the private respondents' mother, Monica Pocong, of her share of inheritance in the 23 hectare agricultural land which belonged to Felix Dapin, Monica's second husband and Marciana's father.

After pre-trial, the parties entered into a stipulation of facts, the pertinent parts of which are shown below:

xxx xxx xxx

4) That Felix Dapin, before entering into marriage with Monica Pocong, had acquired a parcel of agricultural land, situated at Lunib, Margosatubig, Zamboanga del Sur, with an area of 23.5974 hectares which is covered by Original Certificate of Title No. P-20,316 (1404) issued by the Register of Deeds of the old province of Zamboanga, on September 17, 1934, pursuant to Homestead Patent 28657, and now declared for taxation purposes in the name of Marciana Dapin under tax declaration No. 3506/1 xxx;

5) That the land is fully planted to coconuts which are now all fruit-bearing;

6) That Felix Dapin died sometime in 1960 and Monica Pocong died in the year 1975;

7) That on November 12, 1973, Marciana Dapin, the daughter begotten by Felix Dapin before his marriage with Monica Pocong, executed an affidavit of adjudication, adjudicating the aforesaid parcel of land to herself as the only surviving heir of Felix Dapin, resulting to (sic) the issuance of Transfer Certificate of Title No., T-9,411 dated April 18, 1974 issued by the Office of the Register of Deeds of Zamboanga del Sur;

xxx xxx xxx

10) That the land is presently assessed under Tax Declaration No. 3506/1 in the name of defendant Marciana Dapin.

During the course of the trial, the hearings scheduled on April 17 and November 16, 1978 and May 3 and August 16, 1979 were postponed at the instance of the petitioners or their counsel, Atty. Achilles Peralta.

On August 16, 1979, the trial court issued an order resetting the case to September 7, 1979 with a warning that to the petitioners that "if by that scheduled trial their counsel should not appear, they must be ready with a new counsel, otherwise the court shall consider their case submitted on the strength of the evidence already adduced by them." (Rollo, pp. 38-39)

The petitioners' counsel still did not appear on the scheduled hearing of September 7, 1979, thus the case was considered as submitted for decision by respondent Judge in an order dated September 7, 1979. By that time petitioner Adriano Malmis had already testified for the defense.

On September 26, 1979, the petitioners filed a motion for reconsideration of the September 7, 1979 order. The relevant portions of said motion are quoted below:

3. That on August 20, 1979 the parties as well as the respective counsel have agreed to reset the hearing of the above-entitled case from September 7, to the last week of September upon the request of the undersigned counsel considering that he is a member of the Sangguniang Pampook (Regional Legislative Assembly); and that the session of said assembly is during the first and second week of every month, and since September 7 is within the first week it would be physically impossible for the defendant's counsel to attend said hearing;

4. That this gentleman's agreement which was agreed (sic) by the parties and counsels was witnessed by some court personnels because the same was agreed inside the court;

5. Although the undersigned counsel was partly at fault for not submitting proper motion to the effect, but (sic) he was just honestly relying on the gentlemen's agreement as aforecited;

6. That the defendants so far has only presented one witness and has still another one important witness to testify which is defendant herself, and her testimony is very material because aside from her oral testimony, documentary evidence will be presented.

WHEREFORE, defendants most respectfully pray that the order of the Honorable Court dated September 7, 1979 be reconsidered and lifted, and the defendants be given another chance to present additional evidence in the interest of fair play and justice. (Rollo, pp. 40-41)."

On November 9, 1979, the lower court issued an order denying the motion for reconsideration for lack of merit. (Rollo, pp. 44-45)

On April 22, 1980, the respondent judge rendered a decision granting the prayer for partition and awarding damages in favor of the private respondents.

The lower court declared that:

"Accordingly, Monica Pocong is entitled to one-half of the estate of Felix Dapin when he died intestate on April 7, 1965, as she survived with only one child of the late Felix Dapin, which in this case, is Marciana Dapin, one of the defendants in this case. When Monica Pocong died on August 21, 1975, her children of the first marriage, the plaintiffs herein, therefore, succeeded her as owner of one-half of the property in question.

xxx xxx xxx

The court opines that the affidavit of self-adjudication executed by defendant Marciana Dapin was intended for no other purpose, but to defraud her stepmother Monica Pocong and her heirs. Hence, the same is null and void, without any legal effect. The land in question is a registered property and covered by a Certificate of Title in the name of the late Felix Dapin. xxx" (Rollo, pp. 49-51)

The private respondents filed on April 24, 1980 a motion for execution of said decision "pending any appeal therefrom that may be filed by the defendants." (Rollo, p. 54)

On May 21, 1980, the petitioners filed a manifestation stating that they still have not received a copy of the decision and praying that they be furnished with one before the respondent court acted on the motion for execution pending appeal. The records show that the petitioners received a copy of said decision on May 13, 1980. (Rollo, p. 11)

The petitioners and their counsel did not appear during the May 30, 1980 hearing of the motion for execution pending appeal. Hence the lower court issued on the same day an order granting said motion.

On June 2, 1980, the defendants, through a new counsel, Atty. Pelagio Estopia, filed a motion for new trial which was denied by the respondent judge in an order dated June 6, 1980.

On June 13, 1980, the petitioners filed a notice of appeal with the lower court. The record on appeal, however, was filed only on June 17, 1980.

The private respondents filed a motion to deny appeal contending that since the decision was received by the petitioners on May 13, 1980, then the record on appeal was filed four days late and hence the appeal was not perfected on time. (Rollo, p. 70) They maintained that the motion for new trial filed by the petitioners on June 2, 1980 was merely pro forma and therefore did not suspend the running of the period of appeal. (Rollo, p. 71)

On July 25, 1980, the lower court issued an order granting the private respondents' motion to deny appeal. The respondent judge agreed with the private respondents' assertion that the motion for new trial being pro forma, the filing thereof did not suspend the running of the period of appeal. (Rollo, pp. 178-180)

The petitioners came to this Court praying for the issuance of a writ of mandamus to compel the respondent judge to approve their record on appeal. The case was recently reassigned to the undersigned members of the Third Division.

The petitioners argue that their record on appeal was filed on time because their motion for new trial was not pro forma. Therefore, they claim, the filing thereof did not interrupt the running of the period within which to perfect an appeal.

In the petitioners' motion for new trial, they alleged:

"5. That this property was acquired by the late Felix Dapin during his lifetime with his marriage (sic) to Moya Amadya Dapin;

6. That the testimony of Marciana Dapin and Moya Amadya Dapin as well as certain Timoay Bandal Ganding all residents of Margosatubig, Zamboanga del Sur, is indeed very necessary;

7. That as a matter of fact Adriano Malmis was only presented because he is the husband of Marciana Dapin and he included as party defendant in this case;

8. That thru honest mistake however,, the counsel for the defendant believing honestly that the scheduled hearing of September 7, 1979 would be postponed to the next calendar did not appear on the said date of hearing;

xxx xxx xxx

10. That relying on their verbal agreement that the hearing on September 7, 1979 was postponed, the counsel for the defendants practically did not appear on said date;

xxx xxx xxx

12. That while it is true that there was no formal action filed for the postponement on the hearing of September

7, 1979, the fact remains that his intention to postpone the September 7, 1979 hearing was made known to the counsel of the plaintiffs as well as to this Honorable Court but thru inadvertence however, and because of the pressure of the volume of works (sic) in his office at that time counsel for the defendants inadvertently omitted to file a formal motion to postpone the September 7, 1979 hearing;

xxx xxx xxx

14. That the decision of the above-entitled case was based upon the failure of the defendants and his counsel to appear on September 7, 1980 hearing;

xxx xxx xxx

16. That the basis of this motion for new trial is honest mistake or excusable negligence which ordinary prudence could not have guarded against and by reasons of which the defendants has probably being (sic) impaired on their rights;" (Rollo, pp. 60-61; Underlining supplied)

A reading of the petitioners' allegations in the motion for new trial particularly paragraph 16 thereof, shows that the petitioners' basis in seeking a new trial is the honest mistake or excusable negligence of the petitioners' counsel in failing to appear at the trial scheduled on September 7, 1979.

This ground of honest mistake or excusable negligence however, was already raised by the petitioners when they filed a motion for reconsideration dated September 26, 1979 wherein they sought to set aside the lower court's order dated September 7, 1979 which considered the present case submitted for decision.

It has been held that where the motion for new trial was based exactly on the very ground alleged in the motion for reconsideration, the motion belongs to the category of a pro forma motion for new trial which does not suspend the period granted by law for perfecting an appeal. (Samudio v. Municipality of Gainza, 100 Phil. 1013 [1957])

But the petitioners now allege before us that the respondent judge erred in viewing the motion for new trial as merely pro forma since "a new matter is (sic) introduced and that is the presence of Moya Amadya Dapin whose christian name is Manuela Dapin."

In this petition, the petitioners further allege the following:

"23. That in April, 1980 the mother of the petitioner Marciana Dapin whom she referred to as dead in her affidavit of extrajudicial partition appeared and turned out to be alive alleging that the reason why she abandoned the late Felix Dapin was because she was always maltreated during their marriage and that Marciana Dapin was still about 2 years old when she left their house;

24. That the reason why also Marciana Dapin believed that her mother died on June 10, 1940 was simply because since childhood she was made to believe by Felix Dapin her late father that Manuela Dapin her mother, whose Subana name is Moya Amadya Dapin, died on June 10, 1940;" (Rollo, p. 11)

In other words, without the petitioners explicitly saying so, they are in effect invoking the second ground for new trial as provided in Rule 37, Section 1(b) of the Rules of Court, namely: newly discovered evidence, which a party could not, with reasonable diligence, have discovered and produced at the trial and which if presented would probably alter the result.

A motion for new trial upon the ground of newly discovered evidence is properly granted where there is concurrence of the following three requisites: (a) the evidence had been discovered after trial; (b) the evidence could not have been discovered and produced during trial even with the exercise of reasonable diligence; and (c) the evidence is material, and not merely corroborative, cumulative or impeaching and is of such weight that if

admitted, would probably alter the result. (*Pantig v. Baltazar*, 191 SCRA 830 [1990], *Velasco v. Ortiz*, 184 SCRA 303 [1990] and *Tumang v. Court of Appeals*, 172 SCRA 328 [1989]).

In order that the motion for new trial will not be stamped as pro forma, the evidence claimed to be newly discovered must be specifically described in the motion. (See *Loria v. Court of Appeals*, 6 SCRA 1067 [1962]).

In the case at bar, the petitioners merely alleged in the motion for new trial that "the property was acquired by the late Felix Dapin during his lifetime with his marriage (sic) to Moya Amadya Dapin" and that the testimony of Marciana Dapin and Moya Amadya Dapin as well as a certain Timoay Ganding, all residents of Margosatubig, Zamboanga del Sur, is (sic) indeed very necessary."

In their accompanying affidavit, the petitioners simply alleged that the marriage of Felix Dapin and Moya Amadya Dapin was legally solemnized in accordance with the Subano customs and traditions and that Moya Amadya Dapin is still alive. (Rollo, p. 63)

From the foregoing allegations, it cannot be said that the evidence claimed to be newly discovered was specifically described in the motion. The petitioners' motion for new trial was likewise vague since it did not explain the discrepancy in the appellation of Marciana's mother. She was referred to as Moya Amadya in the motion whereas in Marciana's affidavit of self-adjudication (Rollo, p. 175) she was referred to as Manuela.

Moreover, when the ground for the motion for new trial is newly discovered evidence, the motion becomes pro forma if it does not set forth facts or circumstances which would qualify said evidence as newly discovered.

The petitioners in this case did not even state that the evidence that Moya Amadya Dapin is still alive was discovered only after trial, nor that such evidence could not have been discovered and produced during trial even with the exercise of reasonable diligence, nor that such evidence is material and would probably alter the result of the trial.

We therefore find that the petitioners' motion for new trial on the ground of newly discovered evidence was pro forma, one filed for the sake of form. Being pro forma, the filing of said motion did not interrupt the running of the period of appeal which expired on June 13, 1980. Thus, the record on appeal which was submitted only on June 17, 1980 was properly disapproved by the trial court since said record on appeal was filed out of time.

While this Court may, in exceptional circumstances where the interest of justice may thereby be subserved, nevertheless approve the record on appeal even if filed out of time, we cannot do so in this case where the alleged reappearance of Moya Amadya (or Manuela) appears to be, on its face, rather incredible to be believed.

It is inconceivable, standing by itself, that a mother, on the pretext that she was always maltreated by her husband, would leave her two year old child and "resurrect" herself only after forty years under a different name despite the fact that her husband, who is the alleged source of her flight, had already been dead for twenty years.

The petitioners declared in their motion for new trial that Moya Amadya is also a resident of Margosatubig, Zamboanga del Sur. (Rollo, p. 60) If she really was Marciana's mother, she would have known of Felix's death in 1960 and would have immediately gone back to her daughter then. The fact that she waited for another twenty years before making herself known to her daughter is highly questionable.

Moreover, the petition merely states that Moya Amadya appeared in April 1980 without even specifying the exact date of her alleged comeback. We find it contrary to human experience for the petitioners not to recall with such particularity a very unusual event such as the return of a "long lost mother."

What mainly throws doubt on this "newly discovered evidence" is the timing of the alleged reappearance. It was only after the petitioners received on May 13, 1980 a copy of the adverse decision that they claimed in their

motion for new trial that Moya Amadya was actually alive. If Moya Amadya had really reappeared in April 1980, then the manifestation filed by the petitioners on May 12, 1980 should already have indicated such fact. Since there was no mention at all about Maya Amadya's return, we are convinced that the "newly discovered evidence" was a mere afterthought designed to confuse the issues. Apparently, the petitioners thought that by putting Moya Amadya into the picture and claiming that the disputed property was the conjugal property of Felix and Moya, Monica Pocong and her heirs would only get half of the conjugal share of Felix or only one-fourth of the entire property, as contrasted with the trial court's adjudication of one-half of the entire property.

In fine, we adjudge that while under Section 15 of Rule 41, a writ of mandamus may issue when the trial court erroneously disallows the record on appeal, the circumstances of this case shows that the petitioners are not entitled to the writ prayed for.

WHEREFORE, the petition is hereby DISMISSED. The decision of the respondent court dated April 22, 1980 is declared as long FINAL and EXECUTORY.

SO ORDERED.

Feliciano, Bidin, Davide, Jr., and Romero, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.