

**ENRIQUETA S. TY, CANDELARIA C. LUMAGBAS, FELIPE LUMAGBAS, TIBURCIO LUMAGBAS AND MELECIO LUMAGBAS, PETITIONERS, VS. EUSTAQUIA ELALE, CONSORCIO ELALE, SOTERA ELALE-TULBO, MACARIO ...**

*G.R. No. 58268. July 05, 1982*

Ponente: AQUINO, J.

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**AQUINO, J.:**

The Court of Agrarian Relations at Catarman, Northern Samar in its decision dated December 15, 1980 in CAR Case No. 312, Eustaquia Elale, et al. vs. Enriqueta S. Ty, et al., ordered the reinstatement of Eustaquia Elale, her son Consorcio, her daughter Sotera E. Tulbo, her grandson Macario Tulbo and one Moises Balais as tenants in two parcels of coconut land, with an area of about one and a half hectares, located at Barrio Mayana, Guiuan, Eastern Samar.

The Agrarian Court found that Eustaquia (an octogenarian who claimed to have been a tenant since 1917) and Consorcio were allegedly ejected from the land after they were arrested on a charge of qualified theft and that in order to be released from imprisonment they thumbmarked a memorandum wherein they agreed to vacate the land (Exh. A or 1).

In the said decision, the lower court required Enriqueta S. Ty and the spouses, Felipe Lumagbas and Candelaria Lumagbas, and their two sons Tiburcio and Melecio (the tenants recognized by Enriqueta on the same land) to pay Eustaquia Elale et al. actual damages of P500, moral and exemplary damages of P2 ,000 and attorney's fees in the sum of P1,000 (p. 77, Rollo).

From that decision, Enriqueta S. Ty, the Lumagbas spouses and their two sons seasonably appealed to the Court of Appeals. The record was received in the Appellate Court on February 16, 1981. The case was raffled on March 24, 1981. Without any further ceremony and as may be seen on page 4 of the Rollo, the Court of Appeals decided the appeal on April 22, 1981. It affirmed the lower court's judgment on the ground that it is supported by substantial evidence (CA-G.R. No. SP-12201-CAR).

A copy of that decision was received by appellants' counsel on May 8, 1981. Four days later, or on May 12, he mailed to the Court of Appeals a motion to set aside the decision on the ground that the appellants were not given a chance to file a brief or memorandum.

They alleged that in their memorandum they would have pointed out the evidence showing that Eustaquia Elale and the members of her family were the tools of Jose Abuda in occupying the said coconut land and that Abuda's purpose was to use that circumstance to support his civil action against Alberto S. Ty for the recovery of the land (Civil Case No. 472).

They further alleged that plaintiffs- appellees Eustaquia Elale et al. failed to include Alberto S. Ty, the landowner (Exh. 2), as a defendant and that defendant Enriqueta S. Ty, who is Alberto's stepmother, was only his overseer.

Appellees Eustaquia Elale et al. opposed the motion for reconsideration.

The Court of Appeals in its resolution of July 24, 1981 denied the motion. Appellants' counsel received a copy of that resolution on August 14, 1981. Thirty-two days later, or on September 15, 1981, the counsel for Enriqueta S. Ty, the Lumagbas spouses and their two children mailed to this Court a petition for certiorari wherein they prayed that the decision of the Court of Appeals be set aside and that the Lumagbas spouses be declared the rightful tenants of the land.

We denied the petition for having been filed late. The petitioners filed a motion for reconsideration which we also denied. The petitioners committed a mistake in filing a motion for reconsideration in the Court of Appeals. They should have appealed right away to this Court within the reglementary thirty-day period. In agrarian cases, a motion for reconsideration is not allowed in the Court of Appeals by section 18 of Presidential Decree No. 946.

In this Court the petitioners filed a second motion for reconsideration dated January 21, 1982. That motion has to be denied also because the decision of the Court of Appeals had already become final and executory and can no longer be reviewed by this Court.

The petition filed in this Court cannot be treated as a special civil action of certiorari because the Court of Appeals did not act with grave abuse of discretion or in excess of jurisdiction and did not depart from the accepted and usual course of judicial proceedings in resolving the appeal of petitioners Enriqueta S. Ty et al. without first requiring the parties to file memoranda.

Presidential Decree No. 946 does not make it mandatory upon the Court of Appeals to require the parties to file memoranda as may be seen from the following provisions:

"SEC. 18. Appeals. - x x x x x x x x

"The Court of Appeals shall affirm the decision or order or the portions thereof appealed from if the findings of fact in the said decision or order are supported by substantial evidence as basis thereof, and the conclusions stated therein are not clearly against the law and jurisprudence. x x x

"x x x x x x x x

"Upon receipt of the records of the case from the Court of Agrarian Relations, the Court of Appeals may, if it deems necessary, require the parties to file simultaneous memoranda within a non-extendible period of fifteen (15) days from notice; the appellate court shall decide the case within thirty (30) days from receipt of said records or memoranda.

"No motion for rehearing or reconsideration shall be allowed in the Court of Appeals.

"x x x x x x x x."

It is evident that Presidential Decree No. 946 in the interest of the expeditious administration of justice empowers the Court of Appeals to dispense with memoranda in deciding agrarian cases. In the instant case, the Court of Appeals did not require the filing of memoranda because after a perusal of the record it presumably concluded that the appeal was manifestly without merit or was palpably frivolous and dilatory because the lower court's findings are supported by the evidence.

Notwithstanding the foregoing, we hold that, as a matter of orderly procedure and to dispel the impression that a litigant in an agrarian case has been denied due process or was not accorded a hearing in the Court of Appeals, it is advisable that if the Appellate Court finds that memoranda are not necessary, it should at least issue a notice to the parties that the case is submitted for decision without any memoranda.

It is likewise advisable that an appellant who desires to file a memorandum should manifest to the Court of Appeals, when he remits the amount for the payment of the docket and legal research fees, that he wants to submit a memorandum.

WHEREFORE, petitioners' second motion for reconsideration is denied for lack of merit. No costs.

**SO ORDERED.**

Barredo, (Chairman), Concepcion, Jr., Guerrero, De Castro, and Escolin, JJ., concur.  
Abad Santos, J., in the result.

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