

RUBY H. GARDNER AND FRANK GARDNER, JR., PETITIONERS, VS. COURT OF APPEALS, DEOGRACIAS R. NATIVIDAD AND JUANITA A. SANCHEZ, RESPONDENTS.*G.R. No. 59952. August 31, 1984*

Ponente: MELENCIO-HERRERA, J.

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This is a Petition for the review of the Resolutions, dated April 24, 1980 and December 24, 1980, respectively, of the then Court of Appeals in CA-G.R. No. 52729-R entitled "Ruby H. Gardner, et al. versus Deogracias R. Natividad, et al", whereby the original Decision of said Court, promulgated on January 11, 1979, affirming in toto the judgment of the Court of First Instance of Laguna, Branch I, Biñan, in Civil Case No. B-774, was reconsidered and the appealed judgment reversed in so far as private respondents herein are concerned.

A chain of successive transfers of real property, five in all, is involved.

Petitioner Ruby H. GARDNER, married to Frank Gardner, Jr., an American (the GARDNERS, for short), was the registered owner of two adjoining parcels of agricultural land situated at Calamba, Laguna, designated as Lot No. 1426-new and Lot No. 4748-new, with an aggregate area of 93,688 square meters more or less, and covered by TCT Nos. T-20571 and T-20573, respectively, of the Registry of Property of Laguna (Exhibits "A" & "B", Folio of Exhibits).

On November 27, 1961, the GARDNERS and the spouses Ariosto C. SANTOS and Cirila Serrano (the SANTOSES) entered into an agreement for the subdivision of the two parcels, with the SANTOSES binding themselves to advance to the GARDNERS the amount of P93,000.00 in installments. For the protection of both parties they executed the following documents all on the same date and referring to the same parcels of land: (1) Absolute Deed of Sale in favor of the SANTOSES (the First Transfer, considering the nature of the document); (2) Subdivision Joint Venture Agreement; and (3) Supplemental Agreement (Exhibits "C", "D" and "E", *ibid.*). Despite the "sale", the GARDNERS were still denominated in the Subdivision Joint Venture Agreement and in the Supplemental Agreement as "owners" and Ariosto SANTOS merely as "broker". It appears from the evidence that the sale to the SANTOSES was one "in trust" for the protection of the SANTOSES who had obligated themselves to give cash advances to the GARDNERS from time to time (Exhibits "E-2" to "E-88" *incl.*). On December 5, 1961, new titles were issued in favor of the SANTOSES (Exhibits "F" & "G", *ibid.*).

Unknown to the GARDNERS, on June 10, 1964, the SANTOSES transferred Lot No. 1426-New to Jose Cuenca, married to Amanda Relova (the JOSE CUENCAS) (Exhibit "H" *ibid.*), and on June 15, 1964, Lot No. 4748-New to Juan Cuenca, married to Soledad Advincula (the JUAN CUENCAS) (Exhibit "I", *ibid.*) (jointly, the Second Transfer). Titles were thereafter issued in their respective names (Exhibits "L" & "M", *ibid.*).

Upon learning of the transfer of the properties to the CUENCAS, petitioner Ruby GARDNER, caused the inscription of an Adverse Claim on the titles of the CUENCAS with the Register of Deeds of Laguna on December 2, 1965. Her Affidavit stated in part:

"2. My adverse claim arose from the facts that sometime in the middle part of 1961, I and Mr. Ariosto Santos of 2162 Apolinario, Bangkal St., Makati, Rizal had an understanding and have agreed that we would subdivide my aforescribed properties then covered by TCT Nos. T-20571 and T-20573 for Lot No. 1426-New and 4748-New, respectively, under the condition that he would advance to me a total amount of P93,000.00, which I could withdraw little by little and from time to time; that he would improve the aforesaid land by constructing paved roads sewers, water, other facilities that may be required by the authorities concerned and other requirements of the subdivision laws until he shall have invested for these purposes the sum of P234,220.00; that he assured me that the construction of these paved roads, etc. would commence immediately;

"3. We (I and Mr. Ariosto Santos) have agreed that in order to protect his (Mr. Santos) interest to the sum of P93,000.00, to be withdrawn by me little by little and from time to time, I would transfer to his name my aforementioned titles in trust;

"x x x

"5. In the absolute Deed of Sale it was stated that I received from Mr. Santos the sum of P70,266.00 and in consideration of said amount, I have sold, transferred and conveyed my aforescribed parcels of land to Mr. Santos; but these statements were and are not true, that is why we have the other two more documents - the Subdivision Joint Venture Agreement and the Supplemental Agreement. It is stated in the Subdivision Joint Venture Agreement, which contains our true agreement that Mr. Ariosto Santos is only my Broker, so far as the aforescribed parcels of land are concerned, as can be gleaned from Page 2, paragraphs 2 and 3 of the said Subdivision Joint Venture Agreement, x x x"

On October 19, 1966 and November 4, 1966, the JUAN CUENCAS and the JOSE CUENCAS, respectively, transferred the lots to Michael C. VERROYA (Exhibits "P" & "Q", *ibid.*) an office assistant of Ariosto SANTOS (the Third Transfer). Titles were issued in VERROYA's name with the Adverse Claim carried over.

On March 29, 1967, VERROYA constituted a mortgage on both lots in favor of Anita Nolasco and Rosario Dalma, which encumbrance was registered on the existing titles.

On June 29, 1967, VERROYA executed a deed of transfer of the properties to respondent Deogracias Natividad, married to Juanita Sanchez (the NATIVIDADs) (Exhibits "V", "V-4", *ibid.*) (the Fourth Transfer).

On September 30, 1967, the NATIVIDADs transferred the lots to Ignacio Bautista and Encarnacion de los Santos (the BAUTISTAS) (Exhibits "14", "15" [Natividad], "JJ-2", *ibid.*) (the Fifth Transfer). No titles were issued to the BAUTISTAS.

It should be noted that from the titles of the CUENCAS (the Second Transferees) to the titles of the NATIVIDADs (the Fourth Transferee), the Adverse Claim of the GARDNERS continued to be carried, and that throughout the successive transfers, or over a span of approximately six years, the GARDNERS continued to remain in possession, cultivation and occupation of the disputed properties.

Aggrieved by the series of transfers, the GARDNERS filed suit on July 8, 1969 for "Declaration of Nullity, Rescission and Damages" against the Five Transferees, including the mortgagees, Anita Nolasco and Rosario Dalma, before the Court of First Instance of Laguna, Branch I (Civil Case No. B-774), praying for the declaration of nullity of all the Five Transfers and the cancellation of all titles issued pursuant thereto on the ground that they were all simulated, fictitious, and without consideration.

In their Answer, the SANTOSes claimed, in brief, that the sale to them was conditional in the sense that the properties were to be considered as the investment of the GARDNERS in the subdivision venture and that in the event that this did not materialize they were to reconvey the lots to the GARDNERS upon reimbursement by the latter of all sums advanced to them; and that the deed of sale was to be registered for the protection of the

SANTOSES considering the moneys that the latter would be advancing.

For their part, respondents NATIVIDADS contended that they were purchasers in good faith notwithstanding the ad-verse claim as the titles were not shown to them by VERROYA at the time of the sale, and that they had paid good and valuable consideration.

The mortgagees, Anita Nolasco and Rosario Dalma, denied the allegations in the Complaint and counterclaimed for damages, which the GARDNERS answered.

After the lifting of the Order of default against them, the CUENCAS filed their Answer contending that their transfer to VERROYA of the properties in question was not simulated and was supported by valuable consideration.

VERROYA, Juanita Sanchez (wife of Deogracias Natividad), and the BAUTISTAS were declared in default for their failure to seasonably file their responsive pleadings.[1]

The GARDNERS, aside from their documentary evidence, adduced in their favor the testimonies of Ruby GARDNER herself, Jose Infante, an employee of the Register of Deeds of Laguna, and defendant Ariosto SANTOS who was presented as an adverse witness.

Of the eight answering defendants, only respondent Deogracias NATIVIDAD testified on his behalf. Defendant Ariosto SANTOS merely adopted as his own evidence the declaration he had given as an adverse witness. The JOSE CUENCAS and the JUAN CUENCAS neither presented any testimonial evidence but just adopted the testimony of Ariosto SANTOS. Defendants Anita Nolasco and Rosario Dalma, the mortgagees, submitted their case after the genuineness of the deed of mortgage executed in their favor by VERROYA was admitted by the parties.[2]

On January 15, 1972, the Trial Court rendered judgment in favor of the GARDNERS declaring as null and void the Five Transfers; rescinding the Subdivision Joint Venture Agreement (Exhibit "D") as well as the Supplemental Agreement (Exhibits "E"); ordering the GARDNERS to reimburse the SANTOSES the total cash advances of P36,712.80 which the GARDNERS had received; authorizing the cancellation of the corresponding titles issued pursuant to the deeds of sale and the issuance of new ones in favor of the GARDNERS; ordering the deletion from the titles of the mortgage executed by VERROYA; and requiring the Five Transferees but not mortgagees, Anita Nolasco and Rosario Dalma, to pay the GARDNERS P90,000.00 actual damages, P5,000.00 exemplary damages, and to pay the costs.

The respondents NATIVIDADS appealed (notwithstanding that the wife was declared in default) to the then Court of Appeals, which, on January 11, 1979 affirmed in toto the judgment of the Trial Court.[3] The NATIVIDADS received the Decision of affirmance on January 16, 1979. On January 29, 1979, the NATIVIDADS asked for a 30-day extension from January 31, 1979 or up to March 2, 1979, within which to file a Motion for Reconsideration, which was granted by respondent Court.[4] On March 2, 1979, the NATIVIDADS filed their Motion for Reconsideration but the same was denied on November 7, 1979.[5]

On December 4, 1979, a "Very Urgent Manifestation and Motion for Leave to File a Second Motion for Reconsideration" was filed by the NATIVIDADS. The pleading was signed by Deogracias NATIVIDAD himself. Respondent Court denied leave on December 28, 1979.[6] However, on the same date of December 28, 1979, the NATIVIDADS filed their Second Motion for Reconsideration.

On April 24, 1980, respondent Court reconsidered its Resolution of "January 7, 1980" denying respondents' "Motion for Leave to File Second Motion for Reconsideration", and admitted said second Motion[7] (The

resolution of January 7, 1980 refers to the resolution of December 28, 1979 which was released on January 7, 1980). On December 24, 1980, respondent Court[8] issued the questioned Resolution reversing its Decision of January 11, 1979 insofar as the NATIVIDADES are concerned, declaring as valid the sale of the land to them as well as the titles issued pursuant there-to. On January 20, 1981, the GARDNERS sought to set aside the questioned Resolution and moved for entry of judgment averring that said Resolution was null and void for having been issued without jurisdiction as the Decision of January 11, 1979 had already become final and executory. The Motion was denied for lack of merit on March 4, 1982.[9]

Petitioners now seek to set aside the Appellate Court's Resolutions of April 24, 1980 (granting leave to file a 2nd Motion for Reconsideration) and December 24, 1980 (reversing the original judgment), and assigning to respondent Court the following errors:

I

"The Court of Appeals erred in promulgating its resolution of April 24, 1980, because it has already lost jurisdiction to act on the case since the decision of January 11, 1979 had already become then final and executory.

II

"The Court of Appeals erred in promulgating its resolution of December 24, 1980, because it had already then lost jurisdiction to act on the case, much more so, to reverse through its resolution of December 24, 1980 its decision of January 11, 1979 that has already become final and executory.

III

"Assuming arguendo that it has still jurisdiction to promulgate its resolution of December 24, 1980, the Court of Appeals erred in not holding that the defendant-appellant Deogracias Natividad's second motion for reconsideration, just like the first motion for reconsideration, is unquestionably pro-forma, hence did not suspend the running of the reglementary period of time.

IV

"Assuming arguendo that it has still jurisdiction to promulgate its resolution of December 24, 1980, the Court of Appeals erred in holding that the testimonies of Ariosto Santos under oath on the witness stand cannot prevail over the allegations in Santos' answer (not verified and only signed by Ariosto Santos' counsel) and, re-garding which there is no substantial conflict or variance.

V

"Assuming arguendo, it has still jurisdiction to promulgate its resolution of December 24, 1980, the Court of Appeals erred in reversing absolutely without valid justification, its findings in its decision of January 11, 1979 and resolution of November 7, 1979, both holding that defendant-appellant Deogracias Natividad was not a buyer in good faith and for value.

VI

"Assuming arguendo that it has still jurisdiction to promulgate its resolution of December 24, 1980, the Court of Appeals erred in reversing, absolutely without valid justification, its findings in its decision of January 11, 1979 and resolution of November 7, 1979 both holding that the sales of the questioned properties from Ruby Gardner and spouse Frank Gardner, Jr., to Ariosto Santos and spouse Cirila Serrano, to Jose Cuenca and Juan

Cuenca and their spouses Amanda Relova and Soledad Advincula, respectively, to Michael Verroya, to Deogracias Natividad and spouse Juanita Sanchez, to Ignacio Bautista and spouse Encarnacion delos Santos are null and void ab initio.

VII

"The Court of Appeals erred in holding that it will not hesitate to consider and hear defendant-appellant Deogracias Natividad's second motion for reconsideration (even if it was received when the decision of January 11, 1979 was already final and executory) upon the groundless claim that Deogracias Natividad was abandoned by his counsel, who received the resolution denying Natividad's first motion for reconsideration."

Upon the facts and the evidence, we rule that respondent Court had lost jurisdiction to entertain the second Motion for Reconsideration because its Decision of January 11, 1979 had already become final and executory as the following chronological data before respondent Court will show:

Jan. 16, 1979 - Receipt by respondents of CA Decision dated Jan. 11, 1979.

Jan. 29, 1979 - Private respondents filed motion for extension of 30 days from Jan. 31, 1979 to file motion for reconsideration.

- This was granted.

Due - Mar. 2, 1979.

Mar. 2, 1979 - Motion for Reconsideration filed (on the last day).

Nov. 7, 1979 - Reconsideration was denied.

Nov. 19, 1979 - Receipt by private respondents of above resolution.

Nov. 28, 1979 - "Very Urgent Manifestation and Motion for Leave to file Second Motion for Reconsideration" with a prayer for extension of 30 days from said date, filed by respondent Deogracias Natividad himself.

Dec. 28, 1979 - Motion for Leave to file second Motion for Reconsideration denied.

Dec. 28, 1979 - Second Motion for Reconsideration filed by private respondent.

Jan. 8, 1980 - Motion for Reconsideration of Resolution of Dec. 28, 1979 filed by private respondents.

April 24, 1980 - Resolution reconsidering denial of Motion for Leave, and Second Motion for Reconsideration admitted. This is one of the disputed Resolutions.

Dec. 24, 1980 - Resolution reversing Decision of January 11, 1979. This is the other Resolution assailed.

Section 1, Rule 52 of the Rules of Court, provides:

"Section 1. Motion for re-hearing. A motion for re-hearing or reconsideration shall be made ex-parte and filed within fifteen (15) days from notice of final order or judgment. No more than one motion for re-hearing or reconsideration shall be filed without express leave of court. A second motion for reconsideration may be presented within fifteen (15) days from notice of the order or judgment deducting the time in which the first motion has been pending."

Evidently, the Second Motion for Reconsideration was filed beyond the reglementary period. The NATIVIDADS erroneously thought that they had another 15-day period from the date of receipt of denial of the first Motion for

Recon-sideration on November 7, 1979 within which to file a second Motion for Reconsideration. That would be the rule for appeals by certiorari to the Supreme Court from an Appellate Court judgment pursuant to Section 1 of Rule 45.[10] However, under the aforequoted provision, which is the applicable rule, the time in which the first Motion has been pending has to be deducted. As it was, all of the fifteen days had been used up when the first Motion for Reconsideration was filed on March 2, 1979. The Decision of January 11, 1979, therefore, had already attained finality on March 3, 1979 so that respondent Court no longer had jurisdiction to act on the "Very Urgent Motion for Leave to File Second Motion for Reconsideration" submitted by the NATIVIDADES on November 28, 1979, much less to grant the same.

It is well settled that once a Decision has become final and executory, it is removed from the power and jurisdiction of the Court which rendered it to further alter or amend it, much less to revoke it. The subsequent filing of a motion for reconsideration cannot disturb the finality of the judgment, nor restore jurisdiction to the court.[11]

Although the granting or denial of a motion for reconsideration involves the exercise of discretion[12], the same should not be exercised whimsically, capriciously or arbitrarily, but prudently in conformity with law, justice, reason and equity.

We likewise find reversible error in the reversal of respondent Court's original Decision of January 11, 1979. In its Resolution of reversal, dated December 24, 1980, respondent Court had stated in part:

"The presence of the adverse claim in appellant's (Deogracias Natividad) title does not make him a buyer in bad faith. The validity of the adverse claim has to be determined by the Court. Until the validity of such claim is determined judicially, the same cannot be considered as a flaw in his vendor's title. The adverse claim first appeared in the titles of the Cuencas, the second buyers. It was carried on to the titles of subsequent transferees. The title of Santos appeared clean. This makes the title of Santos' Vendee clean. The subsequent annotation of the adverse claim therein would not make the Cuencas buyers in bad faith. If the Cuencas were buyers in good faith, we do not see any reason why subsequent buyers could not enjoy the same status. Good faith is presumed while bad faith must be proved. x x x"[13]

However, as set forth in the original Decision of the Appellate Court, upholding the findings of the Trial Court, the evidence preponderantly shows that all Five Transfer were null and void for having been simulated and fictitious.

The First Transfer in favor of the SANTOSES was "indubitably established" to have been without consideration and is, therefore, void and inexistent.[14] That sale was executed merely as a means of protection to the SANTOSES for their promised cash advances to the GARDNERS in one year in the sum of P93,000.00. Added to this is the admission against his own interest by Ariosto SANTOS that the GARDNERS did not receive from him any consideration[15], thereby corroborating the declarations of the GARDNERS. The Subdivision Joint Venture Agreement (Exhibit "D") and the Supplemental Agreement (Exhibit "E") eloquently express that the true and real nature of the agreement between the GARDNERS and the SANTOSES was for a subdivision and not a sale transaction.

The evidence also establishes that the Second Transfer to the CUENCAS was fictitious and simulated for not having been supported with any consideration. By his own admission, Ariosto SANTOS transferred to the CUENCAS, who are his "compadres", the disputed properties, together with others that he owned, merely to conceal his ownership and "to protect them from persons who had filed suits against him and were running after the properties registered in his name". It was SANTOS who had caused the execution of those deeds of sale (Exhibits "H" & "I") and had them notarized by his own counsel.[16] No wonder then that the CUENCAS did not even dispute the validity of the adverse claim pursuant to Section 110 of the Land Registration Act, and during the

trial, they merely adopted SANTOS' testimony. Under the circumstances surrounding their transaction they knew that their title was flawed and they were not, and cannot be considered, buyers in good faith, having paid no consideration for the sale. The subsequent registration of the adverse claim on their titles, therefore, could not but serve as notice and warning to all subsequent buyers that someone was claiming an interest in the properties or a better right than the registered owners.

The Third Transfer in favor of VERROYA was similarly without consideration and, therefore, void ab initio. The evidence on record shows that Ariosto SANTOS himself caused the execution of the deeds of sale (Exhibits "P" & "Q") in favor of VERROYA, who is SANTOS' office manager in his brokerage business. The only purpose of the transfer was to enable VERROYA to secure for SANTOS a loan with the Vete-rans Bank so much so that when the documents of sale were signed by the CUENCAS in their respective houses in favor of VERROYA, the latter was not even present.[17] Also significant is the fact that VERROYA was declared in default and had not even bothered to resist the suit, which he would have done if the sale transaction were genuine.

On equal footing is the Fourth Transfer from VERROYA to private respondents NATIVIDADES. It was SANTOS who had caused the preparation of the deed of sale in favor of the NATIVIDADES after sensing that VERROYA was not inclined to return the title to the properties. Deogracias NATIVIDAD was SANTOS' close and trusted "compadre", who agreed to put the titles in his (NATIVIDAD's) name because of the pending cases against SANTOS. The amount of P80,000.00 stated in the document of sale was not actually paid by the NATIVI-DADS to VERROYA, according to SANTOS' own testimony. The latter further declared that VERROYA was only coerced to sign the deeds (Exhibits "V" & "V-4") after he was boxed by NATIVIDAD in SANTOS' office at the Escolta. That coercion did exist is shown by VERROYA's telegram to the Register of Deeds of Laguna to dishonor any transaction involving the subject properties.[18]

The Fifth Transfer to the BAUTISTAS partook of the same nature - a simulated and fictitious transaction, for being without consideration, as shown by the evidence. They too, were declared in default and made no attempt to answer or dispute the allegations in the Complaint against them.

The mortgage of the properties by VERROYA in favor of Anita Nolasco and Rosario Dalma was executed after the inscription of the adverse claim on the titles so that they can neither be considered as innocent mortgagees for value.

Added proof of the fictitiousness of the chain of transfers is that fact that, notwithstanding the same, the GARDNERS remained in actual possession, cultivation and occupation of the disputed lots throughout the entire series of transactions.

As concluded in the original Decision of respondent Court, all Five Transfers starting from that of the SANTOSES down to the NATIVIDADES, were absolutely simulated and fictitious and were, therefore, void ab initio and inexistent.[19] Contracts of sale are void and produce no effect whatsoever where the price, which appears therein as paid, has, in fact, never been paid by the purchaser to the vendor.[20] Such sales are inexistent and cannot be considered consummated.[21]

In its Resolution reversing the original Decision, respondent Court discredited the testimony of Ariosto SANTOS for being at variance with the allegations in his Answer. The fact, however, that the allegations made by Ariosto SANTOS in his pleadings and in his declarations in open Court differed will not militate against the findings herein made nor support the reversal by respondent Court. As a general rule, facts alleged in a party's pleading are deemed admissions of that party and binding upon it, but this is not an absolute and inflexible rule.[22] An Answer is a mere statement of fact which the party filing it expects to prove, but it is not evidence.[23] As Ariosto SANTOS himself, in open Court, had repudiated the defenses he had raised in his Answer and against his own

interest, his testimony is deserving of weight and credence. Both the Trial Court and the Appellate Court believed in his credibility and we find no reason to overturn their findings thereon.

Lastly, the statement of respondent Court in its Resolution of reversal that "until the validity of an adverse claim is determined judicially it cannot be considered a flaw in the vendor's title, contradicts the very essence of adverse claims. The annotation of an adverse claim is a measure designed to protect the interest of a person over a piece of real property, and serves as a notice and warning to third parties dealing with said property that someone is claiming an interest on the same or has a better right than the registered owner thereof.[24] A subsequent sale of the property cannot prevail over the adverse claim which was previously annotated in the certificate of title of the property.[25]

While one who buys from the registered owner need not have to look behind the certificate of title[26], he is nevertheless bound by the liens and encumbrances annotated thereon.[27] One who buys without checking the vendor's title takes all the risks and losses consequent to such failure.[28]

WHEREFORE, the assailed Resolutions of respondent Court of Appeals (now the Intermediate Appellate Court), dated April 24, 1980 and December 24, 1980, respectively, are hereby REVERSED and SET ASIDE, and its Decision of January 11, 1979 affirming in toto the judgment of the then Court of First Instance of Laguna, Branch I, in Civil Case No. B-774, is hereby reinstated. Costs against private respondents.

SO ORDERED.

Teehankee, Acting C.J., Plana, Gutierrez, Jr., and De la Fuente, JJ., concur.

Relova, J., took no part.

[1] Rollo, pp. 109-110.

[2] Ibid., p. 110.

[3] Penned by Samuel F. Reyes, J. and concurred in by Pacifico P. de Castro and Carlos S. Sundiam, JJ.

[4] Composed of Andres Reyes, P.J., Samuel F. Reyes and Guillermo Villazor, JJ., p. 147, Rollo.

[5] By Samuel F. Reyes, Jose B. Jimenez and Carlos S. Sundiam, JJ., p. 162, *ibid.*

[6] By Samuel F. Reyes, Jose B. Jimenez and Carlos S. Sundiam, JJ., p. 166, *ibid.*

[7] Division of Five, composed of Crisolito Pascual, Mama D. Busran, Simeon M. Gopengco, Carlos S. Sundiam, ponente, JJs., with Samuel F. Reyes, J. dissenting, pp. 187-197, *ibid.*

[8] The same Division of Five, pp. 199-213, *ibid.*

[9] Division of Five composed of Mama D. Busran, ponente, Crisolito Pascual, Simeon M. Gopengco, Carolina Grino-Aquino & Lino Patajo, JJ., pp. 219-233, *ibid.*

[10] "Appeal From Court of Appeals to Supreme Court

"Section 1, Rule 45

"Filing of petition with Supreme Court. - A party may appeal by certiorari, from a judgment of the Court of Appeals, by filing with the Supreme Court a petition for certiorari, within fifteen (15) days from notice of judgment or of the denial of his motion for reconsideration filed in due time, and paying at the same time, to the clerk of said court the corresponding docketing fee. The petition shall not be acted upon without proof of

service of a copy thereof to the Court of Appeals."

[11] Heirs of Patriaca vs. CA, 124 SCRA 410 (1983).

[12] Lucero vs. Dacayo, 22 SCRA 1004 (1963).

[13] Rollo, p. 210.

[14] Article 1409(3), Civil Code.

[15] T.s.n., May 18, 1971, pp. 5-6.

[16] Original Decision, p. 27.

[17] T.s.n., May 16, 1971, pp. 19-23; September 15, 1971, pp. 10-11, Ariosto Santos' testimony, p. 29, Original Decision.

[18] T.s.n., May 18, 1971, pp. 25-29; pp. 3-9, September 15, 1971, pp. 5-7 and 15, Ariosto Santos' testimony, pp. 31-32, Original Decision.

[19] Article 1409(2), Civil Code.

[20] Meneses Vda. de Catindig vs. Heirs of Catalina Roque, 74 SCRA 83 (1976); Mapalo vs. Mapalo, 123 Phil. 979 (1966).

[21] Garanciang vs. Garanciang, 28 SCRA 229 (1969).

[22] Granada vs. PNB, 18 SCRA 1 (1966).

[23] Tumalad vs. Vicencio, 41 SCRA 143 (1971).

[24] L. P. Leviste & Co., Inc. vs. Noblejas, 89 SCRA 520 (1979).

[25] PNB vs. CA, 94 SCRA 357 (1979).

[26] Barrios vs. CA, 78 SCRA 427 (1977).

[27] Philippine Savings Bank vs. Lantin, 124 SCRA 476 (1983).

[28] Caram, Jr. vs. Laureta, 103 SCRA 7 (1981).

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