

## JOSEFA LEGASPI-SANTOS, PETITIONER, VS. HON. COURT OF APPEALS, CONSOLACION C. LEGASPI, AND JESUS C. LEGASPI, RESPONDENTS.

*G.R. No. 60577. October 11, 1983*

Ponente: RELOVA, J.

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### RELOVA, J.:

In April 1958, Civil Case No. 1692-M, entitled "Manuel C. Legaspi, et al. vs. Consolation Legaspi, et al.," was filed with the then Court of First Instance of Bulacan, for partition of properties left by their deceased parents, Fidel Legaspi and Gregoria Cristobal; accounting of the fruits thereof; and petition for receivership. During the pendency of the case, Josefa Legaspi-Santos, the petitioner herein filed a complaint in intervention claiming a share in the properties involved, as daughter of Fidel Legaspi before his marriage to Gregoria Cristobal.

In June 1980, after more than twenty (20) years, said Civil Case No. 1692-M, was decided by the trial court, dividing all the properties left by Don Fidel Legaspi involving more than 50 parcels of land among plaintiffs and defendants (as children of the second marriage), and dismissing for lack of merit the intervention of herein petitioner Josefa Legaspi-Santos (only child of his first marriage). The parties were furnished copies of the decision which were served on them on different dates. Upon motion, the court gave each of the parties additional 30 days extension of time within which to appeal the decision.

On August 14, 1980, intervenor Josefa Legaspi-Santos filed a motion for extension of time within which to appeal the aforesaid decision. The trial court gave her 30 days.

On September 15, 1980, Josefa Legaspi-Santos again moved for another extension of 20 days within which to perfect her appeal. The motion was granted by the court.

On October 8, 1980, Josefa Legaspi-Santos filed another motion for extension of 20 days within which to perfect her appeal but, this time, the lower court, in its Order of October 13, 1980, denied it on the ground that the period for perfecting her appeal had expired on October 7, 1980, in which case there was no more period to extend and the court had already lost jurisdiction to act on the motion.

Herein petitioner filed a motion for reconsideration of the Order of October 13, 1980, claiming that her motion for extension was filed one (1) day late only, this being due to the excusable mistake of her lawyer in computing the number of days and considering that courts are liberal in granting requests for extensions. Reconsideration was granted in an Order, dated December 15, 1980, giving intervenor ten (10) days from receipt of copy of the order within which to perfect her appeal.

The trial court's Order of December 15, 1980 was assailed by herein private respondents, Consolacion C. Legaspi and Jesus C. Legaspi, before the then Court of Appeals which ruled that the trial court "gravely abused its discretion or acted without jurisdiction when it reconsidered the Order of October 13, 1980 through the assailed Order dated December 15, 1980 (Annex 'A' of the Petition) giving intervenor 10 days from receipt of the copy of

the order within which to perfect her appeal. This is so because the decision had already become final and respondent judge had no longer jurisdiction to reconsider his previous order." (p. 10, Decision in CA-G.R. No. SP-12299) Thus, the Order dated December 15, 1980 of the lower court was set aside," for having been issued without jurisdiction or in grave abuse of discretion."

Hence, the filing of the instant petition for review by certiorari, wherein petitioner Josefa Legaspi-Santos contends that the then Court of Appeals erred-

(1) in holding that the trial judge had no longer jurisdiction to act on her motion of October 8, 1980 for another extension of 20 days within which to perfect her appeal, as well as when he reconsidered his previous order denying said motion and giving her instead another 10 days from notice within which to perfect her appeal; and

(2) in holding that the trial judge gravely abused his discretion in reconsidering his order of October 13, 1980 and in giving petitioner another 10 days within which to perfect her appeal.

The pivotal issue in this petition is whether or not the appeal interposed by Josefa Legaspi-Santos from the decision of the trial court, dated June 18, 1980, was perfected on time.

It is not denied that the period for appeal expired on October 7, 1980 and that the third motion to extend the time to perfect petitioner's appeal was filed one (1) day late. However, petitioner argues that when the lower court issued its Order of December 15, 1980 granting her motion for reconsideration no substantial rights were affected and there was no intention on her part to delay the case; and that the plaintiffs and defendants did not object or move to dismiss her appeal until after four (4) months when the defendants (now private respondents) filed with the appellate court a petition for certiorari with mandamus attacking the timeliness of her appeal.

In *Galima, et al. vs. Court of Appeals*, 16 SCRA 140, the rule was laid down that the motion for extension of the period for filing the record on appeal must be filed before the expiration of the 30-day period. "The miscomputation by counsel of the appeal period will not arrest the course of the same, nor prevent the finality of the judgment. Otherwise, the definitive and executory character of the judgment would be left to the whim of the losing party, when it is to the interest of everyone that the date when judgments become final should remain fixed and ascertainable." Stated differently, when the law fixes thirty (30) days, We cannot take it to mean also thirty-one (31) days in one case. For, if the deadline would be stretched to 31 days in one case, what would prevent its being further extended to 32 days in another case, and so on, step by step, until the original period is forgotten/overlooked. We cannot fix a period with the solemnity of a statute, only to ignore it.

In the case at bar, our attention is invited by the private respondents that petitioner has not even filed the notice of appeal and her appeal bond within the period of 30 days from receipt of the decision. "The petitioner made a motion for extension of time to perfect her appeal without filing the necessary notice of appeal and appeal bond and it was only as late as January 16, 1981 or one hundred twenty-one (121) days after her deadline to perfect appeal," when she filed them. (p. 100, Rollo)

In the *GALIMA* case (*supra*), penned by Justice J. B. L. Reyes, the Court held that "the perfection of an appeal within the period prescribed by law is jurisdictional."

WHEREFORE, the writ of certiorari applied for is DENIED and the decision of the then Court of Appeals in CA-G.R. No. SP-12299 with respect to the case of petitioner Josefa Legaspi-SANTOS is AFFIRMED.

**SO ORDERED.**

Melencio-Herrera (Acting Chairman), Abad Santos, Plana and Escolin, JJ., concur.

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