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SECOND DIVISION

[G.R. No. L-38375. May 30, 1978]

ALFONSA TIMBAS *VDA. DE* PALOPO; CIPRIANA PALOPO, ALBERTO, CECILIA, CAROLINA, MILAGROS, SEGUNDINA, all surnamed PALOPO; FORTUNATO LAMBAYAN, SATURNINA LAMBAYAN, JESUS GADIANA, INESA GADIANA, AQUILINO GADIANA, VICENTE PAJUNAR and MAGNO ORTIZ, *petitioners, vs.* **HON. COURT OF APPEALS (FORMER FIFTH DIVISION), MANILA; CONCEPCION PAITEM, GREGORIA PAITEM, RAFAEL PAITEM and CRISANTA PAITEM,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; DECLARATION OF TRIAL COURT IN ORDER APPROVING RECORD ON APPEAL THAT APPEAL WAS FILED ON TIME IF NOT CORRECTED AND QUESTIONED, AMOUNTS TO PERFECTION. — Where the trial court finds and declares in its order approving the Record on Appeal that it was filed on time or within the reglementary period and the correctness and veracity of such finding are not questioned, impugned or disputed by the adverse party, then even though the Record on Appeal may have omitted such data that the appeal was perfected on time, the dismissal of the appeal is not warranted and constitutes a grave abuse of discretion, for there has been a substantial compliance with the material data requirement of Rule 41, Section 6, and the appellate court may properly rely on the trial court's order of approval and could determine therefrom without sending for or examining any other records that the appeal was perfected on time as expressly found by the trial court.

APPEARANCES OF COUNSEL

Enrique Medina for petitioners.
Geminiano M. Eleccion for private respondents.

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DECISION

CONCEPCION JR., *J.*:

Petition to review and set aside the resolution of the respondent Court of Appeals, dismissing the appeal of petitioners, and its subsequent resolution denying the motion for reconsideration.

It appears that in an action for recovery of a parcel of land filed by the respondents against herein petitioners, the Court of First Instance of Negros Oriental rendered a decision on October 27, 1963[1] in favor of the private respondents.

On November 3, 1964, the petitioners filed a notice of appeal[2] and on November 4, 1964, the appeal bond and the record on appeal[3] were likewise filed in the lower court.

Under date of January 7, 1965, the trial court approved the record on appeal after finding opposition of the private respondents to be without sufficient merits.[4] The case was elevated to the Court of Appeals and upon order of the said Court, the petitioners filed their printed record on appeal and printed brief on August 11, 1965 and April 3, 1966, respectively. Respondents, upon the other hand, instead of filing their printed brief within the extended period granted filed a "Motion To Dismiss Appeal"[5] on the ground that the petitioners' brief "did not contain the necessary digest of arguments in its subject *index or elsewhere.*" On April 19, 1967, the respondent appellate court denied the motion to dismiss and at the same time reiterated the giving of due course to the appeal without the benefit of respondents' brief.[6] More than six (6) years thereafter, or on

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[1] p. 77, Record on Appeal.

[2] p. 83, Record on Appeal.

[3] p. 85, Record on Appeal.

[4] p. 87, Record on Appeal.

[5] p. 23, *rollo*.

[6] p. 26, *rollo*.

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November 6, 1973 to be exact, the respondent Court of Appeals, upon motion dated June 27, 1972 of herein private respondents, dismissed the appeal in this case on the ground that the record on appeal does not show on its face such data that the appeal was perfected on time.[7] Motion for reconsideration[8] was filed and the petitioners insisted among others that the timeliness of their appeal had already been placed in issue in the lower court and that the court *a quo* convinced of their seasonable appeal approved their record on appeal; and that the long silence of the respondents for six (6) years means their conformity to the regularity of their appeal. The respondent court, however, turned a deaf ear to the plea of the petitioners by denying the said motion for reconsideration.[9] Hence, the present petition which was given due course by this Court.[10]

The petition is well-taken.

The order of the trial court dated January 7, 1965,[11] expressly approving the record on appeal, not having been questioned or assailed at any instance by the respondents, carries with it the assurance and guarantee that the appeal has been perfected

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[7] p. 36. *rollo*.

[8] p. 42. *rollo*.

[9] p. 53. *rollo*.

[10] p. 90. *rollo*.

[11] which order reads:

"Finding the "OPPOSITION," by the party plaintiffs to the record on Appeal filed by the party defendants in this case, to be without sufficient merits, said opposition is hereby overruled.

"WHEREFORE, the Record on Appeal, submitted by the party-defendants on November 4, 1964 with its amendment contained in their "ADDITIONAL GROUNDS FOR REPLY WITH MOTION" is hereby APPROVED for purposes of the appeal interposed by the defendants from the decision of this Court, the Clerk of this Court is directed to transmit with the reglementary period the record on appeal in this case, as approved by this Court, together with all evidence, oral and documentary, to the Honorable Court of Appeals."

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within the reglementary period of time. Thus, in *Pimentel vs. Court of Appeals*,[12] We ruled:

"x x x where the trial court finds and declares in its Order approving the Record on Appeal that it was filed on time or within the reglementary period and the correctness and veracity of such finding are not questioned, impugned or disputed by the adverse party, then even though the record on Appeal may not have included the motion for extension of time to file the same in the trial court's order granting the extension, the dismissal of the appeal is not warranted and constitutes a grave abuse of discretion, for there has been a *substantial compliance with the material data requirement of Rule 41, Section 6, and the appellate court may properly rely on the trial court's order of approval and could determine* therefrom without sending for or examining any other records that the appeal was perfected on time as expressly found by the trial court." (Italics Supplied)

WHEREFORE, the resolutions of November 6, 1973 and February 6, 1974, are hereby set aside and the appeal reinstated with costs against the respondents. Let the record of this case be remanded to the respondent Court of Appeals for further proceedings.

SO ORDERED.

Fernando (Chairman), Barredo, Aquino, and *Santos, JJ.*, concur.

Antonio, J., took no part.

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[12] L-39423, & L-39684, June 27, 1975; reiterated in the cases of *Morales vs. Court of Appeals*, L-37229, Oct. 21, 1975; *Luna vs. Court of Appeals*, L-37123, Oct. 30, 1975; *Republic vs. Court of Appeals*, L-40495-96, Oct. 21, 1975; and *Rodriguez vs. Court of Appeals*, L-37522, November 28, 1975.