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Accordingly, the instant petition is dismissed, without prejudice to petitioner having the proper annotation of *lis pendens* regarding Civil Case No. 1564 made on the title covering Lot 1327.

Costs against petitioners.

Fernando (Chairman), Antonio, Aquino, and *Concepcion Jr., JJ.*, concur.

SECOND DIVISION

[G.R. No. L-37630. June 19, 1975]

CATALINO LACIFICAR, *petitioner, vs.* **THE HONORABLE COURT OF APPEALS (SECOND DIVISION, NOW FIRST DIVISION) PURIFICACION LOZADA and EUGENIANO LOREDO, JR.,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; WHEN PERFECTED; CASE AT BAR.— The respondent Court of Appeals dismissed the petitioner's appeal "it appearing from the face of the notice of appeal, that the appeal was not perfected on time." This resolution is manifestly based upon the fact that the body of the notice of appeal filed by the petitioner does not contain a material date — the date when petitioner received a copy of the decision appealed from — to show that the appeal was filed within the prescribed period, as required by Section 3 of Republic Act No. 5434. An examination of the disputed pleading, however, will show that while the date of receipt of the decision appealed from is not stated in the body of the notice of appeal, a statement of such receipt is included in the verification accompanying the notice of appeal. Inasmuch as the verification is a part of the notice of appeal, petitioner

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therefore did comply with the provisions of Section 3 of R.A. No. 5434.

APPEARANCES OF COUNSEL

Jocon C. Espino for petitioner.
Teofilo G. Leonidas, Jr. for private respondents.

D E C I S I O N

CONCEPCION JR., *J.*:

This is a petition for a writ of *certiorari* seeking to compel the respondent Court of Appeals to reconsider its order dismissing the appeal of the petitioner and to give due course to said appeal.

The petitioner is an agricultural tenant of private respondents Purificacion Lozada and Eugeniano Loredo, Jr. and the plaintiff in CAR Case No. 2153, Iloilo 1969, which he had filed against the said private respondents before the Court of Agrarian Relations, Branch I, Iloilo City. On August 23, 1972, the Court of Agrarian Relations rendered a decision in said case adverse to the petitioner and in favor of the respondent landowners. A copy of the decision was received by petitioner's counsel on September 22, 1972. On September 26, 1972, the petitioner through his counsel, filed a notice of appeal with the Court of Agrarian Relations, making known his intention to appeal the decision to the Court of Appeals.[1] A similar notice of appeal, likewise dated September 25, 1972, was sent to the Court of Appeals by registered mail.[2]

On November 21, 1972, the respondent Court of Appeals dismissed the petitioner's appeal for failure to pay the docket fee within the reglementary period.[3] The petitioner filed a motion dated December 15, 1972 seeking the reconsideration of the

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[1] Annex "A", *Rollo*, p. 10.

[2] CA *Rollo*, p. 1.

[3] *Idem*, p. 3.

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order of dismissal claiming that the trial court had allowed him to litigate as pauper and, consequently, exempt from paying the docket fee.[4] On April 2, 1973, the respondent Court of Appeals issued a resolution which reads, in part as follows:

"Considering the motion, filed by counsel for the plaintiff-appellant, praying that the resolution of this Court dismissing the instant appeal for failure to pay docket fee within the reglementary period, be reconsidered on the ground that appellant was allowed to appeal as pauper litigant by the trial court, however, it appearing from the face of the notice of appeal, that the appeal was not perfected on time; the Court RESOLVED to CONSIDER the appeal in this case DISMISSED."[5]

A motion to reconsider this resolution was filed by the petitioner[6] but was denied by the respondent Court.[7]

The respondent Court of Appeals dismissed the petitioner's appeal "it appearing from the face of the notice of appeal, that the appeal was not perfected on time." This resolution is manifestly based upon the fact that the body of the notice of appeal filed by the petitioner does not contain a material date — the date when petitioner received a copy of the decision appealed from — to show that the appeal was filed within the prescribed period, as required by Section 3 of Republic Act No. 5434. An examination of the disputed pleading, however, will show that while the date of receipt of the decision appealed from is not stated in the body of the notice of appeal, a statement of such receipt is included in the verification[8] accompanying

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[4] *Idem*, pp. 4-12.

[5] Annex "B", *Rollo*, p. 11.

[6] CA *Rollo*, pp. 17-21.

[7] *Idem*, p. 23.

[8] "I, JOCON C. ESPINO, of legal age, Filipino, lawyer, after having been duly sworn to in accordance with law, deposes and says:

1. – That I am the counsel for the plaintiff in the above entitled case; That I received the copy of the decision rendered by this Honorable Court dated August 23, 1972 on September 22, 1972; That from said decision, the herein plaintiff is appealing the same to the Court of Appeals and that this notice of appeal is filed within the period fixed under Republic Act No. 5434."

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the notice of appeal. Inasmuch as the verification is a part of the notice of appeal, petitioner therefore did comply with the provisions of Section 3 of R.A. No. 5434.

Accordingly, the writ prayed for is granted, and the resolutions dismissing the appeal and denying the motion for reconsideration are hereby set aside. The respondent Court of Appeals is ordered to give due course to the petitioner's appeal.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. L-24971. June 20, 1975]

GREGORIO TAN, JR., *petitioner, vs.* **HON. MALCOLM G. SARMIENTO, Judge of the Court of First Instance of Pampanga, FRANCISCO M. GARCIA, FLORA L. GARCIA, FELINO VILLASAN, JR., GEN. RIGOBERTO ATIENZA, Chief of Staff of the Armed Forces of the Philippines and Administrator of Fort Magsaysay Military Reservation in Laur, Nueva Ecija, and COL. GAUDENCIO V. TOBIAS, Officer-in-Charge of Fort Magsaysay at Laur, Nueva Ecija,** *respondents.*

SYLLABUS

REMEDIAL LAW; ACTIONS; JURISDICTION; COURT OF FIRST INSTANCE HAS NO JURISDICTION TO ISSUE WRIT OF PRELIMINARY INJUNCTION OUTSIDE ITS TERRITORIAL JURISDICTION; CASE AT BAR.— In a long line of cases decided by this Court, it has been consistently held that a Court