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SECOND DIVISION

[G.R. No. L-34856. May 24, 1985]

IRENEO MIRALLES, *ET AL.*, *petitioners, vs.* PEDRO ORO & COURT OF APPEALS, *respondents*.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RECORD ON APPEAL; NON-TRANSMITTAL THEREOF, A GROUND FOR DISMISSAL OF APPEAL.**— Petitioners anchored their motion to dismiss the appeal of the private respondent on Rule 46, Section 3 of the Rules of Court. A careful study of the said rule shows that the situation contemplated by this rule is one wherein the record on appeal is not yet transmitted to the Court of Appeals. The rule clearly states that the appellee may move the appellate court to compel the clerk of the lower court to *transmit* the record on appeal or have the appeal dismissed for failure to prosecute. Consequently, the appeal may be dismissed for the reason that the appellate court does not have any record at all to consider and therefore cannot act on such appeal.

2. **ID.; ID.; ID.; DISMISSAL NOT PROPER WHEN MOTION TO DISMISS WAS FILED AFTER RECEIPT OF THE RECORD ON APPEAL.**— Hence, it is clear that the petitioners' motion to dismiss the private respondent's appeal for failure to prosecute was too late since the respondent Court of Appeals had already received the record on appeal when the said motion was filed. In short, the petitioners are now estopped from questioning the delay in the transmittal of the record on appeal.

3. **ID.; ID.; ID.; JURISDICTION OF COURTS TO ENTERTAIN AN APPEAL PROCEEDS FROM PERFECTION THEREOF; CASE AT BAR.**— It is a fundamental ruie that the jurisdiction of the courts to entertain an appeal proceeds from the fact that the appeal was perfected on time as in the case at bar. In the instant case, the private respondent's appeal was duly perfected. Private respondent submitted his record on appeal and appeal bond within the reglementary period and it was approved without objection from the petitioners.

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4. ID.; RULES OF COURT; SHOULD BE LIBERALLY CONSTRUED; RATIONALE.— A strict application of the reglementary periods provided for the transmittal of the record on appeal, will result in the denial of justice due to legal technicalities. WE ruled times without number that the Rules of Court should be liberally construed to promote their object and assist the parties in obtaining a just, speedy, and inexpensive determination of their cause. As eloquently stated in the case of *Alonso vs. Villamor* (16 Phil. 322): "x x x Technicality, when it deserts its proper office as an aid to justice and become its great hindrance and chief enemy, deserves scant consideration from courts. There should be no vested rights in technicalities. x x x"

APPEARANCES OF COUNSEL

Eugene A. Tan for petitioners.
Federico G. Ortencio for private respondent.

D E C I S I O N

MAKASIAR, *J.*:

This is a petition for review on *certiorari* of the resolutions of the then Court of Appeals, Third Division, dated January 26, 1972 and March 6, 1972, which denied the motions of the petitioners herein to dismiss the appeal of private respondent Pedro Oro filed with that Court for failure to prosecute an appeal pursuant to Rule 50, Section 1(c) in relation to Rule 46, Section 3 of the Rules of Court. Petitioners further pray for a writ of preliminary injunction directing the respondent Court of Appeals to refrain from taking further action in respect of private respondent's appeal.

On June 29, 1972, upon a One Thousand Pesos (₱1,000.00) bond posted by the petitioners, this Court issued a writ of preliminary injunction enjoining the respondent Court of Appeals from (a) enforcing its resolutions dated January 26, 1972 and March 6, 1972 issued in C.A. G.R. No. 49420-R entitled "*Pedro Oro vs. Ireneo Miralles, et al.*," and (b) from giving due course

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to the appeal of herein private respondent Pedro Oro filed with that Court (p. 110, rec.).

The records show that on May 23, 1962, Pedro Oro, herein private respondent, filed an application dated March 26, 1962 for registration and confirmation of his title to a parcel of land containing an area of 364,758 square meters, more or less, situated in Barrio Dapdapan, Municipality of Sapian, Province of Capiz, covered by Plan PSU-133606, before the Court of First Instance of Capiz, docketed in that court as Land Registration Case No. N-479, LRC Record No. N-22240 (p. 138, rec.; p. 8, CFI rec.).

Petitioners herein are the oppositors in the aforesaid land registration case.

On March 23, 1970, almost 8 years after the case was filed on May 23, 1962, the Court of First Instance of Capiz rendered a decision declaring the petitioners herein the legitimate owners of the land subject to the registration proceeding (p. 214, CFI rec.).

On May 30, 1970, after his motion for new trial was denied, respondent-appellant Pedro Oro filed a Notice of Appeal and a cash bond in the amount of One Hundred Twenty Pesos (₱120.00) before the trial court; and on June 4, 1970 he filed a record on appeal for approval of the same court (pp. 250, 253, CFI rec.).

Meanwhile, on August 8, 1970, pending resolution for the approval of the record on appeal, petitioners filed before the Court of First Instance of Capiz a petition to place the land in question under receivership (p. 256, CFI rec.). Respondent Pedro Oro filed his opposition thereto on August 21, 1970 (p. 261, CFI rec.).

On September 5, 1970, the Court of First Instance of Capiz issued an order approving the respondent-appellant's Record on Appeal and directing the Clerk of Court to transmit the said record on appeal to the Court of Appeals in accordance with the Rules of Court (p. 273, CFI rec.).

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On January 21, 1971, the Court of First Instance of Capiz issued an order finally resolving the petition for receivership filed by the petitioners herein by denying said petition (p. 306, CFI rec.).

On September 4, 1971, the clerk of court of the Court of First Instance of Capiz transmitted to the respondent Court of Appeals, through the Commissioner, Land Registration Commission, Quezon City, the entire records of the case together with the approved record on appeal (p. 94, rec.).

On October 5, 1971, exactly thirteen [13] months after the record on appeal was approved on September 5, 1970, the clerk of court of the respondent Court of Appeals received the record on appeal together with all the pertinent papers of the case (p. 16, rec.).

Herein petitioners filed a motion dated November 5,1971 to dismiss private respondent's appeal before the respondent Court of Appeals, which appeal was docketed as C.A. G.R. No. 49420-R entitled "*Pedro Oro vs. Ireneo Miralles, et al.*," on the ground that the appellant failed to prosecute his appeal pursuant to the provisions of Rule 46, Section 3 of the Rules of Court (p. 17, rec.).

On November 19, 1971, private respondent filed before the respondent Court of Appeals an opposition to the motion to dismiss appellant's appeal, to which petitioners herein filed their reply (pp. 23, 28, rec.).

On December 31, 1971, private respondent filed a rejoinder or supplemental opposition to the motion to dismiss appellant's appeal, and to this, petitioners also filed their reply (pp. 36, 43, rec.).

On January 26, 1972, the respondent Court of Appeals promulgated a resolution denying the herein petitioners' motion to dismiss appellant's appeal (p. 47, rec.).

On February 3, 1972, herein petitioners filed a motion for reconsideration of the aforesaid resolution of the respondent Court of Appeals, to which private respondent again filed his

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opposition. On February 15, 1972, petitioners filed their reply to the opposition to the motion for reconsideration (p. 65, rec.).

On March 6, 1972, the respondent Court of Appeals promulgated a resolution denying the petitioners' motion for reconsideration (p. 69, rec.).

Hence, on March 20, 1972, petitioners filed the instant petition for review on *certiorari* raising the issue of whether or not the respondent Court of Appeals committed grave abuse of discretion in giving due course to the private respondent's appeal.

Petitioners contend that the failure of private respondent Pedro Oro to take any step to compel the clerk of court of the Court of First Instance of Capiz to expedite the transmittal of the record on appeal and all the pertinent papers of the case to the respondent Court of Appeals in accordance with the provisions of Rule 41, Section 11, of the Rules of Court constitute gross negligence, hence, failure to prosecute an appeal pursuant to Rule 46, Section 3 of the same rules; and that the respondent Court of Appeals committed grave abuse of discretion in not dismissing the appeal of herein private respondent, citing the rulings laid down by this Court in the cases of *Loyola, et al. vs. Court of Appeals* (40 SCRA 562, August 31, 1971) and *Fagtanac, et al. vs. Court of Appeals, et al.* (22 SCRA 1227, March 21, 1968).

On the other hand, herein private respondent, in his answer, contends that in the light of the provisions of the Rules of Court, the Law has been substantially complied with since he was able to perfect his appeal in due time without objection from the petitioners. He alleged that earnest effort was made to have all the pertinent papers of the case and the record on appeal transmitted to the respondent Court of Appeals after the approval of the record on appeal on September 5, 1970; but the petition for receivership filed by the petitioners with the trial court delayed the transmittal thereof since the trial court retained the entire records of the case in order to resolve the question of receivership.

Furthermore, private respondent maintains that the cases of Loyola and Fagtanac, *supra*, cited by the petitioners are not in

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point because the facts of these cited cases are entirely different from the facts and incidents of the instant case. The facts as disclosed in the records of these cited cases show that the appeals therein were perfected out of time. Whereas in the present case, the applicant-appellant has perfected his appeal in due time and his record on appeal was approved without objection from the oppositors-appellees (p. 78, rec.).

The resolutions of the respondent Court of Appeals dismissing the petitioners' motion to dismiss the private respondent's appeal, and denying petitioners' motion for reconsideration are well taken.

Petitioners anchored their motion to dismiss the appeal of the private respondent on Rule 46, Section 3 of the Rules of Court which states:

"Order of transmittal of record. — If the record on appeal is *not received* by the Court of Appeals within thirty (30) days after the approval thereof, the appellee may, upon notice to the appellant, move the court to grant an order directing the clerk of the lower court forthwith to *transmit* such record on appeal or to declare the same abandoned for failure to prosecute" (italics supplied).

A careful study of the above-cited rule shows that the situation contemplated by this rule is one wherein the record on appeal is not yet transmitted to the Court of Appeals. The rule clearly states that the appellee may move the appellate court to compel the clerk of the lower court to *transmit* the record on appeal or have the appeal dismissed for failure to prosecute. Consequently, the appeal may be dismissed for the reason that the appellate court does not have any record at all to consider and therefore cannot act on such appeal.

Hence, it is clear that the petitioners' motion to dismiss the private respondent's appeal for failure to prosecute was too late since the respondent Court of Appeals had already received the record on appeal when the said motion was filed. In short, the petitioners are now stopped from questioning the delay in the transmittal of the record on appeal.

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Petitioners should have filed their motion to dismiss the appeal of private respondent on January 21, 1971 after the lower court had finally decided the petition for receivership of the land subject matter of the litigation.

The record shows that Judge Jose A. Aligaen, who rendered the decision in the lower court, died, and Judge Silvestre Bello took over the case to resolve the petition for receivership. It is reasonable to conclude that Judge Bello retained the entire records of the case for study in order to resolve the question of receivership. In the process, the approved record on appeal was retained in the lower court for four and a half (4 ½) months.

However, after the petition for receivership was finally resolved by the lower court, the petitioners waited for almost nine (9) months more and after the record on appeal was received by the Court of Appeals, before moving the appellate court to dismiss the appeal for failure to prosecute. Petitioners' long inaction on the matter demonstrates their acquiescence to the delay in the transmittal of the record on appeal.

The error made by the clerk of court of the Court of First Instance of Capiz in transmitting the record on appeal through the Land Registration Commission and not directly to the Court of Appeals, as it should be, also contributed to the delay in the transmittal of the record on appeal.

It is a fundamental rule that the jurisdiction of the courts to entertain an appeal proceeds from the fact that the appeal was perfected on time as in the case at bar.

In the instant case, the private respondent's appeal was duly perfected. Private respondent submitted his record on appeal and appeal bond within the reglementary period and it was approved without objection from the petitioners.

A strict application of the reglementary periods provided for the transmittal of the record on appeal, will result in the denial of justice due to legal technicalities.

WE ruled times without number that the Rules of Court should be liberally construed to promote their object and assist the

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parties in obtaining a just, speedy, and inexpensive determination of their cause (Rule 1, Section 2, Rules of Court). As eloquently stated in the case of *Alonso vs. Villamor* (16 Phil. 322): "xxx Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts. There should be no vested rights in technicalities. xxx"

WHEREFORE, THE PETITION FOR *CERTIORARI*, PROHIBITION AND *MANDAMUS* IS DENIED, AND THE PRELIMINARY INJUNCTION HERETOFORE ISSUED BY THIS COURT IS HEREBY LIFTED. COSTS AGAINST PETITIONERS.

SO ORDERED.

Aquino, *Abad Santos,* and *Cuevas*, *JJ.*, concur.

Escolin, *J.*, took no part.

Concepcion Jr., *J.*, on leave.

SECOND DIVISION

[G.R. No. 62465. May 24, 1985]

SPOUSES ERNESTO S. NIETO and MATILDE NILO NIETO, *petitioners, vs.* **HON. ROMEO D. MAGAT, JUDGE-DESIGNATE OF THE COURT OF FIRST INSTANCE OF PANGASINAN, THIRD JUDICIAL DISTRICT, BRANCH XIII,** *respondent.*

SYLLABUS

1. CIVIL LAW; ADOPTION; CHILD AND YOUTH WELFARE CODE; NON-RESIDENCY OF ADOPTING PARENTS, NOT