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SECOND DIVISION

[G.R. No. 147216. April 15, 2004]

ROSALIE ODERON VDA. DE CARDONA, *petitioner, vs.* **MARCELINO AMANSEC,** *respondent.*

SYNOPSIS

Petitioner filed an ejectment case against respondent with the Municipal Trial Court of Alaminos, Pangasinan. Petitioner claimed that she is the sole heir of her deceased son who was the registered owner of a parcel of land being occupied by the respondent. Respondent, however, claimed that a tenancy relationship existed between him and the original owner of the land who was the petitioner's predecessor-in-interest. Hence, the MTC had no jurisdiction over the complaint. The MTC dismissed the complaint on the ground of the existence of a tenancy relationship between the respondent and the original owner of the land. In a related development, upon petition of the respondent, the deed of absolute sale between petitioner's son and his predecessor-in-interest was declared void *ab initio* by the DAR provincial office. Instead of perfecting an appeal to the DARAB, the petitioner filed an extension of time to file a petition for review with the Court of Appeals. The CA dismissed the appeal for having been filed out of time. In the meantime, the MTC ruling was reversed by the RTC for failure of the respondent to prove the existence of a tenancy relationship. The respondent failed to file a petition for review of the decision with the CA. Hence, petitioner filed a motion for the issuance of a writ of execution. The MTC held in abeyance the resolution of the motion pending the resolution of the present petition.

The petition herein was dismissed. Although the Court agreed that the one-day delay in the filing of an appeal does not justify outright dismissal of the case, however, the instant petition for review was denied due course on the ground that the proper remedy from a decision of the PARAD was an appeal to the DARAB, and not a petition for review in the CA within the requisite period and in the manner provided therefor. The petitioner failed to do so.

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SYLLABUS

1. REMEDIAL LAW; ACTION; APPEAL; PETITION FOR REVIEW IN THE COURT OF APPEALS; NOT THE PROPER REMEDY FOR DECISION MADE BY THE PROVINCIAL AGRARIAN REFORM ADJUDICATION BOARD (PARAD); PRESENT IN CASE AT BAR.— In *Samala vs. Court of Appeals*, we held that a one-day delay does not justify the outright dismissal of an appeal. Nonetheless, we resolve to deny due course to and dismiss the instant petition for review on *certiorari* on the ground that the proper remedy from a decision of the PARAD was an appeal to the DARAB and not a petition for review in the Court of Appeals under Rule 43 of the Rules of Court. Rule XIII, Sections 1, 2 and 3 of the DARAB New Rules of Procedure provides, thus: SECTION 1.*Appeal to the Board.* — a) An appeal may be taken from an order, resolution or decision of the Adjudicator to the Board by either of the parties or both, orally or in writing, within a period of fifteen (15) days from the receipt of the order, resolution or decision appealed from, and serving a copy thereof on the adverse party, if the appeal is in writing. b) An oral appeal shall be reduced into writing by the Adjudicator to be signed by the appellant, and a copy thereof shall be served upon the adverse party within ten (10) days from the taking of the oral appeal. SECTION 2. *Grounds.* — The aggrieved party may appeal to the Board from a final order, resolution or decision of the Adjudicator on any of the following grounds: a) That errors in the findings of facts or conclusions of law were committed which, if not corrected, would cause grave and irreparable damage or injury to the appellant; b) That there is a grave abuse of discretion on the part of the Adjudicator; or c) That the order, resolution or decision is obtained through fraud or coercion. SECTION 3. *Where to File.* — The notice of appeal shall be filed with the Adjudicator concerned in three (3) legibly written copies. SECTION 4. *Caption.* — In all cases appealed to the Board, the party appealing shall be called the "appellant" and the adverse party the "appellee," and the case shall be assigned a docket number. SECTION 5. *Requisites and Perfection of the Appeal.* — a) The Notice of Appeal shall be filed within the reglementary period as provided for in Section 1 of this Rule. It shall state the date when the appellant received the order or judgment appealed from and the proof of service of the notice to the

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adverse party; and b) An appeal fee of Five Hundred Pesos (₱500.00) shall be paid by the appellant within the reglementary period to the DAR Cashier where the Office of the Adjudicator is situated. A pauper litigant shall, however, be exempt from the payment of the appeal fee. Non-compliance with the above-mentioned requisites shall be a ground for the dismissal of the appeal. Under Rule XIII, Sections 1, 2 and 3 of the DARAB New Rules of Procedure, the petitioner should have appealed the decision of the PARAD to the DARAB orally or in writing, and perfected the said appeal within the requisite period and in the manner provided therefor.

2. ID.; ID.; ID.; NATURE THEREOF.— The well-entrenched rule is that appeal is merely a statutory right and must be availed of within the period and in the manner provided for by law; otherwise, upon the lapse of the period to appeal from a decision or final order and no appeal has been perfected by the aggrieved party, such final order or decision *ipso facto* becomes final and executory. The appellate court does not acquire appellate jurisdiction over a belated appeal from the said order or decision.

APPEARANCES OF COUNSEL

Froilan V. Siobal for petitioner.

R E S O L U T I O N

CALLEJO, SR., *J.*:

This is a petition for review on *certiorari* seeking the reversal of the Resolution[1] of the Court of Appeals, dismissing the petition for review in CA-G.R. SP No. 60684 and its resolution denying the petitioner's motion for reconsideration of its first resolution.

The Antecedents

On July 16, 1999, petitioner Rosalie Oderon *Vda. de* Cardona, filed a Complaint for Ejectment against Marcelino Amansec

[1] Penned by Associate Justice Romeo A. Brawner with Associate Justices (now Presiding Justice) Cancio C. Garcia and Andres B. Reyes, Jr. concurring.

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with the Municipal Trial Court of Alaminos, Pangasinan, with a prayer for a writ of preliminary injunction. The case was docketed as Civil Case No. 1878. The petitioner, the plaintiff therein, alleged, *inter alia*, that her son, Ronald Cardona was the owner of a residential lot with an area of 1,654 square meters, located in Barangay Cabalera, Alaminos, Pangasinan, covered by Transfer Certificate of Title (TCT) No. 12797 and declared for taxation purposes in his name under Tax Declaration No. 227 of the Municipal Assessor of Alaminos. Ronald Cardona died intestate on February 18, 1997 and was survived by the petitioner, as his sole heir. According to the petitioner, respondent Marcelino Amansec entered the property without authority therefor and started erecting residential houses. The petitioner, thereafter, sent a formal demand letter[2] dated May 3, 1999, for the respondent to vacate the property which the latter received on May 5, 1999.[3] However, the respondent failed and refused to vacate the property.

In his answer to the complaint, the respondent averred that he was the tenant of Isabel Raroque on the latter's three (3) parcels of land covered by TCT No. 10163 and by Original Certificates of Title (OCT) Nos. 1559 and 1379. The lots had a land area of 1,654 square meters, 41,176 square meters and 3,799 square meters, respectively. The said parcels of land were classified as riceland, as per the Certification[4] dated August 13, 1999, issued by Jose A. Camero, Municipal Agrarian Reform Office (MARO) and the Department of Agrarian Reform (DAR), District of Alaminos, Pangasinan. Sometime in 1978, he constructed a house on the parcel of land covered by TCT No. 10163 with the permission of Isabel Raroque. Emancipation Patents were thereafter issued to him in 1992 covering the parcels of land covered by OCT Nos. 1559 and 1379. He later discovered that sometime in 1989, Isabel Raroque had sold the parcel of land covered by TCT No. 10163 without his knowledge.

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[2] Records. p. 9.

[3] *Ibid.*

[4] *Id.* at 53.

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According to the respondent, considering the existence of a tenancy relationship between him and Isabel Raroque, the petitioner's predecessor-in-interest, the municipal trial court had no jurisdiction over the complaint.

To prove that the property was agricultural and not residential, the respondent adduced in evidence the Deed of Absolute Sale over the property executed by Isabel Raroque on February 27, 1989, and Tax Declaration No. 6385 for 1990 under her name. He also adduced in evidence the MARO Certification dated August 13, 1999, that the property was classified as riceland and tenanted by the defendant who had been granted Emancipation Patent No. 181144 over Lot 2057-B, Cad-325-D with an area of 11,176 square meters and Emancipation Patent No. 151895 over Lot No. 57-D of the same cadastre. The respondent alleged, thus:

> 10. That as early as 1978 up to the present my possession over the landholding of Isabel Raroque, particularly the subject property was never disturbed until the filing of Civil Case No. 1878 in the guise that Isabel Raroque had transferred to plaintiff's son via Deed of Absolute Sale the said (sic) property is disregard (sic) of my rights as agricultural lessee under R.A. 3844, as amended by R.A. 6389, otherwise known as Agricultural Land Reform Code, and for other purposes;[5]

Meanwhile, on January 20, 2000, the respondent filed a petition with the DARAB, Region I, Lingayen, Pangasinan, against Rosalie de Cardona, praying for the (a) nullification of the Deed of Sale dated February 27, 1989 executed between Isabel Raroque, as seller, and Ronald Cardona, as buyer, with respect to Lot No. 2055 covered by TCT No. 10163, and (b) issuance of an emancipation patent in his favor over the said Lot No. 2055.

On March 30, 2000, the MTC rendered a Decision[6] in Civil Case No. 1878, dismissing the complaint for ejectment filed by the petitioner, on the ground of the existence of a tenancy relationship between the respondent and Isabel Raroque. The

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[5] *Id.* at 58.

[6] Penned by Judge Benjamin N. Abella.

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plaintiff appealed the decision to the regional trial court, docketed as Civil Case No. A-2668.

In a parallel development, Provincial Agrarian Reform Adjudicator Roberto Caoayan, rendered a Decision dated August 7, 2000[7] granting the petition of the respondent. The Deed of Absolute Sale executed by Isabel Raroque in favor of Ronald Cardona was declared void *ab initio* and the DAR Provincial Office was ordered to fast track the granting of the emancipation patent in respondent's favor over the land in question.

Aggrieved by the decision, the petitioner decided to appeal the decision. However, instead of perfecting her appeal to the Department of Agrarian Reform Adjudication Board (DARAB) in Quezon City, she filed on September 6, 2000 a motion for extension of time to file a petition for review with the Court of Appeals. She averred therein that she received a copy of the decision of the PARAD on August 7, 2000 and, thus, had until August 30, 2000 to file the petition. She, likewise, prayed that she be given an extension of fifteen days or until September 15, 2000 within which to file her petition. According to the computation of the petitioners, the last day of the 15-day extension would fall on September 15, 2000. Thus, the petitioner filed the petition for review on the said date.

On September 25, 2000, the Court of Appeals issued a Resolution[8] granting the petitioner's motion for extension of 15 days. It, however, clarified that the last day of the additional 15-day extension would fall on September 15, 2000 as counted by the petitioner. The said resolution was received by the petitioner on October 3, 2000.

On October 5, 2000, the Court of Appeals issued a Resolution[9] dismissing the petition for having been filed out of time, as the same was filed one day late. The petitioner filed a motion for

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[7] *Rollo*, pp. 15-18.

[8] *Id.* at 33-34.

[9] *Id.* at 35-36.

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reconsideration from the said resolution, but the same was denied in a Resolution dated November 13, 2000.[10]

On November 27, 2000, the regional trial court rendered a Decision[11] in Civil Case No. 2668 reversing and setting aside the decision of the MTC. The RTC ruled that the defendant failed to prove the existence of any tenancy relationship between him and Isabel Raroque, the only basis used by the MTC being the defendant's claim that such relationship existed. The defendant (respondent) filed a motion for reconsideration but the same was denied on June 25, 2001. He did not file a petition for review of the decision of the CA. The petitioner forthwith filed on August 28, 2001 a motion for the issuance of a writ of execution with the Municipal Trial Court of Alaminos, Pangasinan.

On April 17, 2001, the petitioner filed a petition for review on *certiorari* with this Court for the nullification of the resolutions of the CA dismissing her petition.

In the meantime, the Municipal Trial Court of Alaminos, Pangasinan, held in abeyance the resolution of the motion for the issuance of a writ of execution filed by the petitioner (plaintiff therein) pending the resolution of the present petition.[12]

The Court's Ruling

The petition is denied due course and is dismissed.

We agree with the petitioner that she was guilty of excusable negligence when she overlooked that the month of August consists not of thirty (30) days, but of thirty-one (31) days.[13] In *Samala vs. Court of Appeals*,[14] we held that a one-day delay does not justify the outright dismissal of an appeal.

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[10] *Id.* at 37-38.

[11] Penned by Judge Lilia C. Español.

[12] Records. p. 181.

[13] *Mata vs. Flores*. 25 SCRA 876 (1968).

[14] 363 SCRA 535 (2001).

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Nonetheless, we resolve to deny due course to and dismiss the instant petition for review on *certiorari* on the ground that the proper remedy from a decision of the PARAD was an appeal to the DARAB and not a petition for review in the Court of Appeals under Rule 43 of the Rules of Court. Rule XIII, Sections 1, 2 and 3 of the DARAB New Rules of Procedure provides, thus:

SECTION 1. *Appeal to the Board.* — a) An appeal may be taken from an order, resolution or decision of the Adjudicator to the Board by either of the parties or both, orally or in writing, within a period of fifteen (15) days from the receipt of the order, resolution or decision appealed from, and serving a copy thereof on the adverse party, if the appeal is in writing.

b) An oral appeal shall be reduced into writing by the Adjudicator to be signed by the appellant, and a copy thereof shall be served upon the adverse party within ten (10) days from the taking of the oral appeal.

SECTION 2. *Grounds.* — The aggrieved party may appeal to the Board from a final order, resolution or decision of the Adjudicator on any of the following grounds:

a) That errors in the findings of facts or conclusions of law were committed which, if not corrected, would cause grave and irreparable damage or injury to the appellant;

b) That there is a grave abuse of discretion on the part of the Adjudicator; or

c) That the order, resolution or decision is obtained through fraud or coercion.

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b) An appeal fee of Five Hundred Pesos (₱500.00) shall be paid by the appellant within the reglementary period to the DAR Cashier where the Office of the Adjudicator is situated. A pauper litigant shall, however, be exempt from the payment of the appeal fee.

Non-compliance with the above-mentioned requisites shall be a ground for the dismissal of the appeal.

Under the said rules, the petitioner should have appealed the decision of the PARAD to the DARAB orally or in writing, and perfected the said appeal within the requisite period and in the manner provided therefor. The petitioner failed to do so.

The well-entrenched rule is that appeal is merely a statutory right and must be availed of within the period and in the manner provided for by law; otherwise, upon the lapse of the period to appeal from a decision or final order and no appeal has been perfected by the aggrieved party, such final order or decision *ipso facto* becomes final and executory. The appellate court does not acquire appellate jurisdiction over a belated appeal from the said order or decision.[15]

IN LIGHT OF ALL THE FOREGOING, the petition is *DENIED* due course and is hereby *DISMISSED*.

SO ORDERED.

Puno (Chairman), Quisumbing, Austria-Martinez, and *Tinga, JJ.*, concur.

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[15] *Philippine Commercial International Bank vs. Court of Appeals*, 229 SCRA 560 (1994).