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upheld. Legally speaking, it was not a "stranger's property" that was levied upon by the Sheriff pursuant to the judgment rendered by *Branch XVII.* The vehicle was, in fact, registered in the name of VIDAD, one of the judgment debtors. And what is more, the aspect of public service, with its effects on the riding public, is involved. Whatever legal technicalities may be invoked, we find the judgment of respondent Court of Appeals to be in consonance with justice.

WHEREFORE, as prayed for by private respondent Abraham Sibug, the petition for review on certiorari filed by Adolfo L. Santos is dismissed, with costs against the petitioner.

SO ORDERED.

Makasiar, Guerrero and *De Castro, JJ.,* concur.
Teehankee, J., (Chairman) concurs in the result.

De Castro, J., was designated to sit in the First Division, vice *Fernandez, J.,* who is on leave.

FIRST DIVISION

[No. L-42699 to L-42709. May 26, 1981]

THE HEIRS OF THE LATE FLORENTINA NUGUID VDA. DE HABERER, petitioner, *vs.* COURT OF APPEALS,* FEDERICO MARTINEZ, BALDOMERO MANALO, FAUSTINO BAGALAWIS, FEDERICO STA. TERESA, ANGELITO KING, GREGORIO DEL ROSARIO, LEODOVICO TORRES, LEON SORIANO, SANTIAGO TUMANG, LUIS PASTOR and CRISTINO LIBRAMANTE, respondents.

SYNOPSIS

During her lifetime, Florentina Nuguid vda. de Haberer appealed from a decision of the trial court dismissing her eleven complaints for recovery of possession of a parcel of land which was registered in her name. Upon her death, her counsel filed three motions respectively on June 28, 1975,

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* Fifth Division composed of Andres Reyes, *ponente,* Godofredo P. Ramos and Samuel F. Reyes, *JJ.*

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September 18, 1975, and November 24, 1975 notifying the court of appellant's death and praying either for the suspension of the running of the period for filing appellant's brief pending the appointment of an executor of her estate in the Court of First Instance, or an extension of sixty days. Acting only on the third motion, the appellate court denied the request for extension and dismissed the appeal on the ground that appellant had already been given a total of 195 days within which to file her brief. A motion for reconsideration of the order wherein the appellant's brief was also presented for admission was likewise denied by the court stating that litigants have no right to assume that such extension will be granted as a matter of right. Hence, this petition.

The Supreme Court held, that upon notice of appellant's death, the Rules of Court calls upon the court to require the appearance of the deceased's legal representative instead of dismissing the appeal; and that the court, in exercising its discretion to dismiss an appeal on the ground of failure to file appellant's brief, must do so in accordance with the tenets of justice and fair play, having in mind the circumstances of the case, and without applying the Rules with rigidity and inflexibility.

Petition granted. Appellant's brief ordered admitted and the case remanded to the appellate court for further proceedings.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; DISMISSAL FOR FAILURE TO FILE APPELLANT'S BRIEF DUE TO HER DEATH; NOT PROPER WHERE COURT FAILED TO REQUIRE DECEASED'S SUBSTITUTION; CASE AT BAR.— Section 17, Rule 3 of the Rules of Court sets the rule on substitution of parties in case of death of any of the parties. Under the Rules, it is the court that is called upon, after notice of a party's death and the claim is not extinguished, to order upon proper notice the legal representative of the deceased to appear within a period of 30 days or such time as it may grant. The Rule further provides, that the court should set a period for the substitution of the deceased party with her legal representative or heirs, failing which, the court is called upon to order the opposing party to procure the appointment of a legal representative of the deceased at the cost of the deceased's estate, and such representative shall then "immediately appear for and on behalf of the interest of the deceased." Thus, in the case at bar where deceased's counsel duly notified the court of their client's death, the court gravely erred in not following the Rules and requiring the appearance of the legal representative of the deceased and instead dismissing the appeal

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of the deceased who yet had to be substituted in the pending appeal. Since no administrator of the estate of the deceased appellant had yet been appointed as the same was still pending determination in the Court of First Instance of Quezon City, the motion of the deceased's counsel for the suspension of the running of the period within which to file appellant's brief was well-taken.

2. ID.; ID.; PARTIES TO AN ACTION; DEATH OF PARTY; ORDER OF SUBSTITUTION REQUIRED BY THE RULES; ABSENCE THEREOF RENDERS PROCEEDINGS VOID.— Where a party dies in an action that survives, and no order is issued by the court for the appearance of the legal representative or of the heirs of the deceased in substitution of the deceased, and as a matter of fact no such substitution has ever been effected, the trial held by the court without such legal representatives or heirs and the judgment rendered after such trial are null and void because the court acquired no jurisdiction over the persons of the legal representatives or of the heirs upon whom the trial and the judgment would be binding.

3. ID.; ID.; ID.; ID.; EFFECT THEREOF ON ATTORNEY-CLIENT RELATIONSHIP; CASE AT BAR.— It is error for respondent court to rule that since upon the demise of the party-appellant, the attorney-client relationship between her and counsel "was automatically severed and terminated," whatever pleadings filed by said counsel with it after the death of said appellant "are mere scraps of paper." If at all, due to said death and severance of the attorney-client relationship, further proceedings and specifically the running of the original 45-day period for filing the appellant's brief should be legally deemed as having been automatically suspended, until the proper substitution of the deceased appellant by her executor or administrator or her heirs shall have been effected within the time set by respondent court pursuant to the Rules.

4. ID.; ID.; APPEALS; DISMISSAL; SUPERVENING DEATH OF APPELLANT IN CASE AT BAR DOES NOT RENDER CONTINUANCE OF APPEAL UNNECESSARY.— Respondent court gravely erred in dismissing the appeal on "(its) belief that the supervening death of the appellant Florentina Nuguid Vda. de Haberer rendered the continuance of the appeal unnecessary" on the basis of a totally inapplicable citation of a ruling in Velasco *vs.* Rosenberg, 29 Phil., 212, 214 that "If pending appeal, an event occurs which renders it impossible for the appellate court to grant any relief, the appeal will be dismissed." Manifestly, the appellant's death in no way impedes that the deceased's appeal to recover the parcel of land

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registered in her name be continued and determined for the benefit of her estate and heirs.

5. ID.; ID.; LIBERAL AND RELAXED APPLICATION OF RULES.— What should guide judicial action is the principle that a party litigant is to be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor or property on technicalities. A liberal, rather than a strict and inflexible adherence to the Rules, is justified not only because appellant in this case, her estate and/or heirs should be given every opportunity to be heard but also because no substantial injury or prejudice can well be caused to the adverse parties principally, since they are in actual possession of the disputed land. The better and certainly the more prudent course of action in every judicial proceeding is to hear both sides and decide on the merits rather than dispose of a case on technicalities, especially where no substantial prejudice is caused to the adverse party.

6. ID.; ID.; APPEAL; DISMISSAL ON GROUND OF FAILURE TO FILE APPELLANT'S BRIEF; NOT AUTOMATIC BUT MERELY DISCRETIONARY.— The dismissal of an appeal on the appellant's failure to file brief is based on a power granted to respondent Court of Appeals and not on a specific and mandatory duty imposed upon it by the Rules. Since the power or authority is not mandatory but merely directory, the exercise thereof requires a great deal of circumspection, considering all the attendant circumstances. The failure of an appellant to file his brief within the time prescribed does not have the effect of dismissing the appeal automatically. Rather, the Court of Appeals has the discretion to dismiss or not to dismiss appellant's appeal, which discretion must be a sound one to be exercised in accordance with the tenets of justice and fair play having in mind the circumstances obtaining in each case. Thus, where a reading of the appellant's brief discloses that petitioners-appellants have a *prima facie* meritorious case, the same should be properly determined on the merits and "the element of rigidity should not be affixed to procedural concepts and made to cover the matter," for to dismiss the appeal would not serve the ends of justice.

APPEARANCES OF COUNSEL

Bausa, Ampil and *Suarez* for petitioner.
Felipe C. Navarro for private respondents.

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DECISION

TEEHANKEE, *J.*:**

The Court grants the petition for review by way of appeal from the Resolutions of respondent Court of Appeals dated November 24, 1975 and January 15, 1976 dismissing the appeal of the late Florentina Nuguid vda. de Haberer in CA-G.R. No. 53680-90-R and ordering all pleadings filed in said cases after the death of said appellant stricken off the records, for having been issued with grave error of law if not with grave abuse of discretion and remands the case for proper proceedings and determination of the appeal on the merits.

This case originated from the Court of First Instance of Rizal where the late Florentina Nuguid vda. de Haberer as the duly registered owner filed in 1964 and 1965 eleven (11) complaints for recovery of possession of the parcel of land evidenced by Transfer Certificate of Title No. 15043 of the Register of Deeds of Rizal issued in her name, situated at Mandaluyong, Rizal, alleging that private respondents had surreptitiously entered the land and built their houses thereon.

The lower court, after trial on the merits, rendered a consolidated decision, dated May 26, 1971, dismissing all the complaints. On motion of the late Florentina Nuguid vda. de Haberer the cases were reopened and retried on grounds of newly discovered evidence. On September 15, 1972, the lower court issued an order reviving its decision of May 26, 1971. The decision was thus appealed to the Court of Appeals.

In the Court of Appeals, the cases were erroneously dismissed once before, on the ground that the appeal was allegedly filed out of time. The issue was brought to this Court in Cases Nos. L-39366 and L-39620-29, entitled "Florentina Nuguid vda. de Haberer *vs.* Federico Martinez, et al."[1] On January 29, 1975, this Court rendered its judgment setting aside the appellate court's dismissal of the appeal and ordering the reinstatement of the same

** Chairman of the First Division.

[1] 62 SCRA 162.

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for proper disposition on the merits, having found "that contrary to respondent court's erroneous premises and computation, petitioner duly and timely perfected her appeal within the reglementary period and in compliance with the material data rule requiring that the Record on Appeal state such data as will show that the appeal was perfected on time."

The cases were remanded to the Court of Appeals where appellant was required to file printed brief within forty-five days from her receipt of notice. Three days before the period was to expire, or on June 18, 1975, appellant's counsel requested for an extension of time within which to file appellant's brief. Respondent court in a resolution dated June 23, 1975 granted the request and gave appellant a 90-day extension (with warning of no further extension) from receipt on June 27, 1975 or up to September 25, 1975 within which to file the appellant's printed brief. On June 23, 1975, private respondent opposed the extension by filing a "Motion to Set Aside Order Granting Extension of Time to File Brief." Appellant was directed by respondent court to comment on the said opposition and appellant's counsel complied by submitting its comments on July 15, 1975.

In the meantime, appellant Florentina Nuguid vda. de Haberer had died on May 26, 1975. Appellant's counsel Attorneys Bausa, Ampil and Suarez accordingly gave respondent court notice of the death of their client in their motion of June 28, 1975 and asked for the suspension of the running of the period within which to file the appellant's brief pending the appointment of an executor of the estate left by their client in the Court of First Instance of Quezon City (Sp. Proc. No. Q-2026) where a petition for the probate of the alleged will of the deceased had been filed by another lawyer, Atty. Sergio Amante. Respondents in turn contended that the lawyers of the deceased had "no longer any legal standing and her attorneys could no longer act for and in her behalf for the reason that their client-attorney relationship

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had been automatically terminated or severed" and asked that the appeal be dismissed "for failure to prosecute."[2]

Since their motion of June 28, 1975 remained unacted upon and the original extension granted by the respondent court for the deceased appellant to file her printed brief was about to expire, her counsel filed on September 18, 1975 a manifestation and/or motion asking either for an extension of sixty (60) days and/or resolution suspending the running of the period within which to submit appellant's printed brief. Still, respondent court remained silent.

Not certain whether their services would still be retained by the heirs of the deceased, counsel for the late Florentina Nuguid vda. de Haberer reiterated their request in a motion dated November 14, 1975 either for an extension of time to file appellant's brief or for the issuance of a resolution suspending the running of the period for filing the same, pending the appointment of an administrator or executor of the estate of the deceased appellant.

Finally, acting on counsel's motion of November 14, 1975, respondent court denied the request for extension and at the same time dismissed the appeal, ruling in its resolution dated November 24, 1975 as follows:

"Upon consideration of the manifestation and/or for another extension to file appellant's brief dated November 14, 1975, filed by counsel for the appellant on the grounds therein stated, and considering that appellant has already been given a total of one hundred ninety-five (195) days within which to file brief, the Court Resolved to deny the motion for another extension to file brief and to dismiss the appeal."

Counsel for the deceased appellant forthwith filed their urgent motion for reconsideration of December 8, 1975 explaining their predicament that the requests for extension/suspension of period to file brief was due to the uncertainty that their services may no longer be retained by the heirs or legal representatives of their deceased client but they felt obligated to preserve the right of such

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[2] Respondents' comment, Rollo, at page 60.

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heirs/successors to continue the appeal pursuant to Rule 3, Section 17 of the Rules of Court, pending the settlement of the question of who among them should be the executor of the deceased's estate and presented therewith, for admission, the printed "brief for the appellant" the printing of which they had deferred "for professional ethical considerations," pending respondent court's action on their request for suspension of the period. They further submitted therewith copies of 2 separate orders of September 3, 1975 and August 26, 1975 issued by the Court of Agrarian Relations and the Court of First Instance both at Guimba, Nueva Ecija, respectively, wherein the deceased Florentina Nuguid vda. de Haberer was party-defendant, granting the deceased's counsel's prayer to hold in abeyance further proceedings therein pending the appointment of an administrator for the estate of the deceased.

Respondent court, however, denied reconsideration, per its Resolution of January 15, 1976 citing the general principle that "litigants have no right to assume that such extensions will be granted as a matter of course." But respondent court erred in applying this general principle and summarily denying reconsideration and denying admission of the appellant's brief conditioned upon the administrator of the deceased's estate making his appearance upon his appointment and being granted leave to file his supplemental brief/memorandum,[3] in view of the intervening event of appellant's death and the interposition of the equally established principle that the relation of attorney and client is terminated by the death of the client, as acknowledged by respondent court itself as well as respondents. In the absence of a retainer from the heirs or authorized representatives of his deceased client, the attorney would thereafter have no further power or authority to appear or take any further action in the case, save to inform the court of the client's death and take the necessary steps to safeguard the deceased's rights in the case.

This is what the deceased's counsel did in the case at bar. They properly informed respondent court of the death of the appellant

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[3] Appellant's brief at page 2, Rollo, page 46.

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and sought suspension of the proceedings and of the period for filing appellant's brief pending the appointment of the executor of the deceased's estate in the proper probate proceedings filed with the Court of First Instance of Quezon City. Section 17, Rule 3 of the Rules of Court[4] sets the rule on substitution of parties in case of death of any of the parties. Under the Rule, it is the court that is called upon, after notice of a party's death and the claim is not thereby extinguished, to order upon proper notice the legal representative of the deceased to appear within a period of 30 days or such time as it may grant. Since no administrator of the estate of the deceased appellant had yet been appointed as the same was still pending determination in the Court of First Instance of Quezon City, the motion of the deceased's counsel for the suspension of the running of the period within which to file appellant's brief was well-taken. More, under the Rule, it should have set a period for the substitution of the deceased party with her legal representative or heirs, failing which, the court is called upon to order the opposing party to procure the appointment of a legal representative of the deceased at the cost of the deceased's estate, and such representative shall then "immediately appear for and on behalf of the interest of the deceased."

Respondent court gravely erred in not following the Rule and requiring the appearance of the legal representative of the deceased and instead dismissing the appeal of the deceased who yet had to be substituted in the pending appeal. Thus, it has been held

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[4] Section 17, Rule 3 reads, to wit:

"*Death of party.*— After a party dies and the claim is not thereby extinguished, the court shall order, upon proper notice, the legal representative of the deceased to appear and to be substituted for the deceased, within a period of thirty (30) days, or within such time as may be granted. If the legal representative fails to appear within such said time, the court may order the opposing party to procure the appointment of a legal representative of the deceased within a time to be specified by the court, and the representative shall immediately appear for and on behalf of the interest of the deceased. The court charges involved in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint guardian *ad litem* for the minor heirs."

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that when a party dies in an action that survives, and no order is issued by the court for the appearance of the legal representative or of the heirs of the deceased in substitution of the deceased, and as a matter of fact no such substitution has ever been effected, the trial held by the court without such legal representatives or heirs and the judgment rendered after such trial are null and void because the court acquired no jurisdiction over the persons of the legal representatives or of the heirs upon whom the trial and the judgment would be binding.[5]

Respondent court therefore erred in ruling that since upon the demise of the party-appellant, the attorney-client relationship between her and her counsels "was automatically severed and terminated," whatever pleadings filed by said counsel with it after the death of said appellant "are mere scraps of paper."[6] If at all, due to said death on May 25, 1975 and severance of the attorney-client relationship, further proceedings and specifically the running of the original 45-day period for filing the appellant's brief should be legally deemed as having been automatically suspended, until the proper substitution of the deceased appellant by her executor or administrator or her heirs shall have been effected within the time set by respondent court pursuant to the cited Rule.

Respondent court likewise gravely erred in dismissing the appeal on "(its) belief that the supervening death of the appellant Florentina Nuguid vda. de Haberer rendered the continuance of the appeal unnecessary" on the basis of a totally inapplicable citation of a ruling in Velasco *vs.* Rosenberg, 29 Phil. 212, 214 that "If pending appeal, an event occurs which renders it impossible for the appellate court to grant any relief, the appeal will be dismissed." Manifestly, the appellant's death in no way impedes that the deceased's appeal to recover the parcel of land registered in her name be continued and determined for the benefit of her estate and heirs.

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[5] Ordoveza *vs.* Raymundo, 63 Phil. 275 (1936); Obut *vs.* Court of Appeals, et al., 70 SCRA 546.

[6] Court of Appeals Resolution of January 15, 1976, Rollo, at page 51.

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Prescinding from the foregoing, justice and equity dictate under the circumstances of the case at bar that the rules, while necessary for the speedy and orderly administration of justice, should not be applied with the rigidity and inflexibility of respondent court's resolutions.[7] What should guide judicial action is the principle that a party litigant is to be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor or property on technicalities.[8] A liberal, rather than a strict and inflexible adherence to the Rules, is justified not only because appellant (in this case, her estate and/or heirs) should be given every opportunity to be heard but also because no substantial injury or prejudice can well be caused to the adverse parties principally, since they are in actual possession of the disputed land.[9] The better and certainly the more prudent course of action in every judicial proceeding is to hear both sides and decide on the merits rather than dispose of a case on technicalities,[10] especially where no substantial prejudice is caused to the adverse party.[11]

The dismissal of an appeal based on the appellant's failure to file brief is based on a power granted to respondent Court of Appeals and not on a specific and mandatory duty imposed upon it by the Rules.[12] Since the power or authority is not mandatory but merely directory, the exercise thereof requires a great deal of circumspection, considering all the attendant circumstances.[13] The failure of an appellant to file his brief within the time

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[7] Obut *vs.* Court of Appeals, et al., 70 SCRA 546 (1976); Cucio *vs.* Court of Appeals, May 24, 1974, 57 SCRA 64; Limon *vs.* Candido, April 28, 1969, 27 SCRA 1166; Barrido *vs.* Court of Appeals, et al., 59 SCRA 168; Monticines, et al., *vs.* Court of Appeals, et al., 53 SCRA 14.

[8] Pongasi, et al. *vs.* Court of Appeals, et al., 71 SCRA 614 (1976).

[9] *Vide* Sollorano, et al., *vs.* Court of Appeals, et al., 62 SCRA 478.

[10] Obut *vs.* Court of Appeals, et al., *supra.*

[11] Maqui *vs.* Court of Appeals, 69 SCRA 368.

[12] Section 1, Rule 50, Rules of Court.

[13] Philippine National Bank and Development Bank of the Philippines *vs.* Philippine Milling Co., Inc., et al., 26 SCRA 712; Maqui *vs.* Court of Appeals, *supra*; Reyes *vs.* Court of Appeals, 80 SCRA 144.

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prescribed does not have the effect of dismissing the appeal automatically.[14] Rather, the Court of Appeals has the discretion to dismiss or not to dismiss appellant's appeal, which discretion must be a sound one to be exercised in accordance with the tenets of justice and fair play having in mind the circumstances obtaining in each case.[15]

Paraphrasing what the Court stressed in the leading case of *Berkenkotter vs. Court of Appeals,*[16] a reading of the appellant's brief discloses that petitioners-appellants have a *prima facie* meritorious case which should be properly determined on the merits and "the element of rigidity should not be affixed to procedural concepts and made to cover the matter,"[17] for to dismiss the appeal would not serve the ends of justice.

A final note: On March 19, 1976, counsels submitted with their Manifestation the written authority dated January 20, 1976 individually signed by instituted heirs and/or legal representatives of the testate estate of the deceased Florentina Nuguid vda. de Haberer granting said counsels full authority to file and prosecute the case and any other incidental cases for and in their behalf,[18] which was duly noted in the Court's Resolution of March 26, 1976. Such manifestation and authority may be deemed the formal substitution of the deceased by her heirs, as in fact they appear as petitioners in the title of the case at bar. Hence, the proper determination of the pending appeal may now proceed, as herein directed.

ACCORDINGLY, the petition is granted and respondent court's resolutions of November 24, 1975 and January 15, 1976 are set aside. The appellant's brief filed with respondent court in the pending appeal in CA-G.R. Nos. 53680-90-R is ordered

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[14] Ordoveza *vs.* Raymundo, *supra.*

[15] Philippine National Bank and Development Bank of the Philippines *vs.* Philippine Milling Co., Inc., *supra*; see also Gregorio *vs.* Court of Appeals, 72 SCRA 120.

[16] 53 SCRA 228, 236.

[17] Carillo *vs.* Allied Workers Association, 24 SCRA 566.

[18] Rollo, at pages 95-97.

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admitted and the cases are remanded to respondent Court of Appeals for further proceedings and proper determination of the appeal on the merits. With costs against private respondents.

The Court has noted that upon recommendation of the Solicitor General in Adm. Case No. 2148 entitled "Francisco Ortigas, Jr., et al. *vs.* Atty. Felipe C. Navarro" that counsel for respondents Felipe C. Navarro be disbarred for "gross misconduct and/or malpractice," he has been suspended from the practice of law during the pendency of said proceedings. The Court, however, directs that copy of this decision be served on said counsel for the sole purpose of apprising private respondents through him of the promulgation of this judgment and to require respondents (1) to inform the Court of their new counsel, if any, and to direct him to enter his appearance or (2) if they have no new or other counsel, to inform the Court of their respective addresses for purposes of service of the Court's processes, within ten (10) days from notice thereof.

*Makasiar, Guerrero, De Castro**** and *Melencio-Herrera, JJ.*, concur.

FIRST DIVISION

[Nos. L-49624-25. May 26, 1981]

VIOLETA VELASCO and LEONARDO VELASCO, petitioners, *vs.* HON. JUDGE EUGENIO MA. MOSUELA, HON. MINISTER CONRADO F. ESTRELLA and RIZAL GAOAT, respondents.

SYNOPSIS

Petitioners repurchased certain parcels of agricultural land which they had sold with right to repurchase to respondent Gaoat, and took over their possession and cultivation from him. Claiming that he was already tenanting said properties even before he possessed them as vendee-a-retro in accordance with the custom of the province, Gaoat instituted actions for reinstatement

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*** Designated to sit with the First Division. Fernandez, *J.*, is on official leave.