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FIRST DIVISION

[G.R. No. L-44823. June 27, 1985]

VICENTE OUANO (Deceased) Substituted by Querina Arraz Ouano and Vicente Arraz Ouano, Jr., Anna Loraine Ouano, *petitioner, vs.* **THE HONORABLE COURT OF APPEALS, and HON. RAFAEL T. MENDOZA, Judge of the Court of First Instance of Cebu, FE JUSTINIANA ESPINA-CABRERA, CRISTOBAL, CESAR, ISIDRO, FULGENCIO, ROLANDO, EDIPOLO, LILIAN, EDILBERTO, RAYMUNDO and LUCIA, all surnamed ESPINA and ARSENIO OUANO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE;APPEAL; RECORD ON APPEAL; A PAUPER LITIGANT IS EXEMPT FROM FILING A PRINTED RECORD ON APPEAL.**— Under Section 16 of Rule 41, taken together with Section 22, Rule 3 of the Rules of Court, a pauper litigant is only exempt from filing a printed record on appeal.

2. **ID.; ID.; ID.; ID.; CASE AT BAR.**— Considering that a record on appeal is no longer required for an appeal under Section 39 of Batas Pambansa Blg. 129 and Section 18 of the Interim Rules and Guidelines issued by this Court on January 11, 1983, which being procedural in nature, have a retroactive effect, petitioners may be allowed to appeal specially in order that, as pauper litigants, they may be granted their fullest day in Court.

APPEARANCES OF COUNSEL

Manuel M. Crudo for petitioners.

Jesus P. Garcia for private respondents.

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RESOLUTION

MELENCIO-HERRERA, *J*:

Petitioner Vicente Ouano, now deceased, filed during his lifetime, with the then Court of First Instance of Cebu, Branch VI, an action against his father Arsenio Ouano, and his uncles and aunts, all private respondents herein, for the recovery of the paraphernal property of his late mother (Civil Case No. R-14254). After trial, the lower Court dismissed the complaint. He then filed a petition for leave to appeal as pauper, which was granted. He did not file a record on appeal.

Private respondents moved to dismiss the appeal for failure of petitioner to file his record on appeal within the reglementary period. The lower Court granted the motion and disallowed the appeal.

Petitioner then filed with respondent Appellate Court a petition for *Certiorari* and *Mandamus* contending that as a pauper litigant he was not required to submit a separate record on appeal under Section 16, Rule 41 of the Rules of Court, and prayed that the trial Court be ordered to elevate the entire original records of Civil Case No. R-14254 for purposes of his appeal. Respondent Appellate Court dismissed the petition and denied reconsideration as well.

Petitioner elevated the case to this Court in a petition for review on *certiorari* filed in *forma pauperis*. This First Division treated the petition as a special civil action, required the parties to submit simultaneous memoranda, and referred the case to the Court *en banc*.[1] The court *en banc* referred the case back to this Division.

On May 17, 1980, petitioner died and was substituted by his surviving spouse Querina Arraz Ouano, and their two (2) minor children, Vicente Ouano, Jr. and Anna Loraine Ouano. The widow was subsequently appointed guardian-*ad-litem* of the minors by this Court.[2]

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[1] Resolution of December 10, 1976, p. 31, *Rollo*.

[2] Resolutions of September 25, 1980 and March 17, 1983, pp. 70 & 80, *Rollo*.

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The sole issue for consideration is whether or not a party litigant allowed by the lower Court to appeal as a pauper is exempt from filing a record on appeal.

Under Section 16 of Rule 41,[3] taken together with Section 22, Rule 3 of the Rules of Court,[4] a pauper litigant is only exempt from filing a printed record on appeal. That was the ruling of this Court in *Toribio vs. Bidin*, 96 SCRA 361 [1980].

"As will be seen, a pauper litigant is exempted from submitting a *printed* record on appeal. Both in appeals by paupers and non-paupers, a record on appeal should be submitted. The only difference is that in the case of the pauper, the latter need not print it. Typewritten or mimeographed copies of the record on appeal will suffice."

Be that as it may, considering that a record on appeal is no longer required for an appeal under Section 39 of Batas Pambansa Blg. 129[5] and Section 18 of the Interim Rules and Guidelines

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[3] "SEC. 16. *Appeal by pauper.* — Where a party desiring to appeal shall establish to the satisfaction of the trial court that he is a pauper and unable to pay the expenses of prosecuting the appeal, and that the case is of such importance, by reason of the amount involved, or the nature of the questions raised, that it ought to be reviewed by the appellate court, the trial judge may enter an order entitling the party to appeal as pauper. The clerk shall transmit to the appellate court the entire record of the case, including the evidence taken on trial *and the record on appeal*, and the case shall be heard in the appellate court upon the original record so transmitted *without printing the same*.

A petition to be allowed to appeal as pauper shall not be entertained by the appellate court." (Italics supplied)

[4] "SEC. 22. *Pauper litigant.* — Any court may authorize a litigant to prosecute his action or defense as a pauper upon a proper showing that he has no means to that effect by affidavits, certificate of the corresponding provincial, city or municipal treasurer, or otherwise. Such authority once given shall include an exemption from payment of legal fees and from filing appeal bond, *printed record* and printed brief. The legal fees shall be a lien to any judgment rendered in the case favorably to the pauper, unless the court otherwise provides." (Italics ours)

[5] "SEC. 39. Appeals. — xxx

"No record on appeal shall be required to take an appeal. In lieu thereof, the entire original record shall be transmitted with all the pages prominently numbered consecutively, together with an index of the contents thereof.

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issued by this Court on January 11, 1983,[6] which being procedural in nature, have a retroactive effect,[7] petitioners may be allowed to appeal specially in order that, as pauper litigants, they may be granted their fullest day in Court.

ACCORDINGLY, the assailed Decision of the respondent Appellate Court of September 1, 1976 and its Resolution of September 27, 1976 denying petitioner's motion for reconsideration of said decisions are hereby set aside, and the Branch of the Regional Trial Court of Cebu to which this case will be assigned is directed to elevate the entire record of Civil Case No. R-14254 to the Intermediate Appellate Court for purposes of petitioners' appeal.

SO ORDERED.

Teehankee (Chairman), *Plana*, *Relova*, *Gutierrez, Jr.*, *De la Fuente*, and *Alampay*, *JJ.*, concur.

"This section shall not apply in appeals in special proceedings and in other cases wherein multiple appeals are allowed under applicable provisions of the Rules of Court." (B.P. Blg. 129).

[6] "E. APPELLATE PROCEDURE

xxx xxx xxx

"18. *Elimination of record on appeal and appeal bond.* — The filing of a record on appeal shall be dispensed with, except in the cases referred to in subparagraph (b) of paragraph 19 hereof.

"No appeal bond shall be required for an appeal."

[7] *Alday vs. Camilon*, 120 SCRA 522 (1980).