

[G.R. No. L-22594, April 29, 1996]

CECILIA RAPADAZ VDA. DE RAPISURA, PETITIONER, VS. HON. NICANOR NICOLAS AND FR. JACINTO RAPADAZ, RESPONDENTS.

D E C I S I O N

CONCEPCION, J.:

This is an original action for certiorari to set aside an order of the Court of First Instance of Ilocos Sur, Branch II presided over by respondent, Hon. Nicanor Nicolas, Judge, dated February 4, 1965.

Petitioner, Cecilia Rapadaz Vda. de Rapisura is the defendant in Civil Case No. 2141 of said court, which was instituted by the main respondent herein, Fr. Jacinto Rapadaz. It would appear that, after the introduction of same evidence for the latter, the hearing was postponed to another date, on which Fr. Rapadaz failed to appear, whereof the case was, on motion of Mrs. Rapisura, dismissed by respondent Judge in an order dated November 26, 1963, copy of which was received by Fr. Rapadaz on November 30, 1963. On motion for reconsideration of said order of November 26, 1963, which was objected to by Mrs. Rapisura, said order of November 26, 1963, was, on February 4, 1964, reconsidered by respondent Judge, who refused to reconsider his last order. Thereupon, Mrs. Rapisura commenced the present action for certiorari, against respondent Judge and Fr. Rapadaz, to annul said order of February 4, 1964 upon the ground: (1) that the motion for reconsideration of Fr. Rapadaz was not accompanied by proof of service of copy thereof to Mrs. Rapisura, and consequently — she maintains—"is nothing but a piece of paper" which respondent Judge had "no right to consider"; and (2) that at the time of the filing of said motion for reconsideration, the order of dismissal of November 26, 1963, was already final and executory.

With respect to the first ground, Fr. Rapadaz alleges, and petitioner does not deny, that copy of said motion for reconsideration was *actually received* by the petitioner on January 13, 1964 and that *petitioner was in fact present in Court when said motion was heard* before respondent Judge. Under the circumstances, we are satisfied that the latter did not exceed his jurisdiction or commit a grave abuse of discretion in overlooking respondent's failure to attach to his motion the requisite proof of service of copy thereof to petitioner herein, the demands of substantial justice having been satisfied by the actual receipt of said copy under the conditions adverted to above.

With reference to the second ground, the record shows that copy of the order of dismissal of November 26, 1963 was received by Fr. Rapadaz on November 30, 1963; that his motion for reconsideration, dated December 26, 1963 was filed with the office of the Clerk of Court of the Court of First Instance of Ilocos Sur, at Vigan, Ilocos Sur, on December 27, 1963, and received by the Clerk of Branch II of said court, at Narvacan, Ilocos Sur, to which the case belonged, on January 7, 1964. Mrs. Rapisura maintains that said motion should be deemed filed on the date last mentioned, or