IV

Aurora Paner, Petitioner, vs. Nicasio Yatco et al., Respondents, G. R. No. L-2042, August 31, 1950.

MANDAMUS: APPROVAL OF RECORD ON APPEAL; WRIT DOES NOT ISSUE WHEN APPEAL IS NOT MERITORIOUS. — An order denying petition for relief to set aside a judgment may be appealable for which writ of mandamus may be granted to compel the trial court to approve the record on appeal, but when it is very evident as shown by the facts of the case that the granting of the writ would not profit the petitioner to obtain said remedy, for like a mirage it would merely raise false hopes and in the end avail the petitioner nothing, said petition for mandamus must be dismissed.

Marcelino Lontok for petitioner.
Claro T. Almeda for respondent *Batibot*.

DECISION

MONTEMAYOR, *J*:

This is a petition for mandamus to compel the respondent Judge to approve the record on appeal filed in Civil Case No. 7685 of the Court of First Instance of Laguna. The facts necessary for an understanding and determination of this case are as follows:

On April 11, 1921, Emiteria Miranda, widow of Maximo Paner allegedly executed a deed of sale of 1/2 of lot No. 751 of the Calamba Estate Subdivision covered by Transfer Certificate of Title No. 91 in the name of Maximo Paner in favor of Severo Batibot for the sum of ₱200.00. In September, 1947, the heirs of Severo Batibot filed in the Court of First Instance of Laguna Civil Case No. 86 which after reconstitution, was given number 7685 of the same Court, against Emiteria Miranda and her granddaughter Aurora Paner alleging that in March, 1943, the defendants, particularly Emiteria Miranda, deprived the plaintiffs of the possession and ownership of the lot in question causing damage in the sum of ₱50, and asking that plaintiffs be declared the owners of 1/2 of lot No. 751, and that they be paid the damage caused. Atty. Juan A. Baes, acting as counsel for the two defendants, filed an amended answer on September 3, 1947, alleging that the deed of sale above-mentioned was a forgery, and that defendant Emiteria Miranda had no knowledge of the execution thereof and that the mark therein affixed was not hers; that the original owner of the land in question was Maximo Paner, the deceased husband of Emiteria; that after his death he was succeeded by his son Maximino Paner, father of defendant Aurora Paner; and that in February, 1945, Maximino Paner was massacred by the Japanese and he was succeeded by only child Aurora Paner. The answer prayed for the dismissal of the complaint and for payment by the plaintiffs of the sum of ₱300.00 as damages.

On the same date that the answer was filed, Atty. Baes filed a motion in court alleging that defendant Aurora was only three years old, and at the same time asking the court to appoint her co-defendant grandmother Emiteria as her *guardian ad litem*. The case was heard on September 3 and 9, during which evidence was adduced by both parties — plaintiffs and defendants. On September 10th Emiteria took her oath as *guardian ad litem* of Aurora. On September 12th the trial court rendered its decision wherein it found that the deed of sale was genuine and had been duly executed by Emiteria Miranda. The court equally found that the land covered by the deed belonged to Maximo Paner who had bought it from the Bureau of Lands since July 1 1910, before he married Emiteria Miranda, and that consequently, she had no right to sell the same as her property. The trial court declared the deed of sale null and void, but considering the good faith of the buyer Severo Batibot, the court sentenced the defendants to reimburse the purchase price of ₱200.00 to the plaintiffs with interest at 6% per annum from the date of the deed, and further sentenced the defendants to compensate the plaintiffs for the value of the improvements introduced by them or their predecessor in interest.

On behalf of the defendants, Atty. Baes filed a motion for reconsideration and new trial, dated October 17, 1947, but his mo-

tion was denied for lack of merit. He did not appeal.

About two months later or rather on December 24, 1947, Atty. Marcelino Lontok, representing defendant Aurora Paner, filed a petition in the trial court asking that its decision of September 12, 1947, be set aside, as against his client Aurora Paner, or at least to permit her to file her appeal from said decision. The plaintiffs opposed said petition and the trial court by order of January 8, 1948, denied the same on the ground that it was "not well-founded, and that the decision in this case has become final."

On January 21, 1948, Atty. Lontok filed his notice of appeal from the order denying his petition for reconsideration and prepared and submitted his record on appeal and the corresponding appeal bond. The trial court by order of Feb. 9, 1948, refused to approve the record on appeal on the ground that it was filed beyond the reglementary period.

As already stated, to compel the respondent Judge to approve said record on appeal, the present petition for mandamus was filed in this Court.

In refusing to approve the record on appeal, the respondent Judge seems to have labored under the impression that the appellant and herein petitioner was appealing from the court's decision of September 12, 1947, this, judging from the ground or reason given for the refusal, namely, that the record on appeal was filed beyond the reglementary period. But in reality the appeal was being taken from the order of January 8, 1948, denying the petition to set aside the decision of September 12, 1947, a petition presumably based on Section 2, Rule 38 of the Rules of Court. That order of denial was, of course, appealable and if the record on appeal was otherwise proper and complete, the respondent Judge was bound to approve it and he may be compelled to do so by a writ of mandamus. So, strictly and legally speaking, the present petition for mandamus may be granted. However, before acting upon the petition, we may inquire into the facts involved in order to determine whether once the writ of mandamus is granted and the case is brought up here on appeal, the appellant has any chance, even possibility of having the basic decision of the trial court of September 12, 1947, set aside or modified; for if the appellant has not that prospect or likelihood, then the granting of this writ of mandamus and the consequent appeal would be futile and would mean only a waste of time to the parties and to this Court. This inquiry can easily be made from a copy of the record on appeal now before us as well as the pleadings filed by both parties.

The whole theory of counsel for the petitioner in insisting in setting aside the judgment of September 12, 1947, against his client, the minor Aurora Paner, is that the court acquired no jurisdiction over her person at least during the trial. He contends that inasmuch as the child's grandmother and *guardian ad litem* did not take her oath as such guardian until September 10, 1947, that is, after the hearing of the case which was held on September 3 and 9, during said hearings, the minor was not duly represented and the court acquired no jurisdiction over her. Furthermore, said counsel contends that her *guardian ad litem* had interests in the case adverse to that of her ward which accounts for said guardian failing or refusing to appeal from the decision.

The contention of counsel as regards jurisdiction is based on a mere technicality. The record fails to show the day when the court appointed the grandmother Emiteria Miranda as *guardian ad litem* of her granddaughter, but in the absence of evidence on this point, it is reasonable to presume that the appointment must have been made on the very day that the court was asked to do so, namely, on September 3, 1947, the first day of the hearing. It is reasonable to presume that the respondent realized the importance and necessity of having a minor party to a case duly represented in court during its judicial proceedings, and that he must have made the appointment perhaps verbally before commencing the hearing.

During the hearings held on September 3 and 9, 1947, the attorney for the defendants Emiteria and her ward Aurora presented evidence calculated to prove that the lot claimed by the plaintiffs was never sold to them, evidence which can in no manner be regarded as contrary to the interests of Aurora Paner. On the contrary, it was designed to keep whole and preserve Aurora's title to the property in litigation.

Counsel for petitioner claims that Emiteria did not take her oath as *guardian ad litem* until September 10, 1947, that is, one day after the last day of the hearing. In the absence of any denial by respondents of this claim, we shall assume it to be true. But even then, as long as during the court proceedings, Emiteria had acted as such guardian to represent her ward and protect her interests, her belated taking of oath did not in any way adversely affect or prejudice the intrests of the minor. After all, the oath-taking was a mere formality.

It should be remembered that when the decision was rendered on September 12, 1947, the grandmother Emiteria Miranda, had already taken her oath as *guardian ad litem* and she was fully authorized to appeal from the decision. In fact, through counsel said guardian and her ward filed a motion for reconsideration and new trial but when that motion was denied they did not appeal. The reason for said failure to appeal is found in a letter written at the time by the defendants' counsel to the lawyer of the plaintiffs which quoted in part reads as follows:

> "I did not appeal the case because I believe that in doing so, the parties will incur more expenses than the actual price of the land in litigation."

And, we are inclined to agree with the said counsel that considering the amount involved in the decision, it was really wiser to abide by said decision instead of taking an appeal, and paying the necessary court and attorney's fees, with no definite guaranty or assurance of winning the case in the end.

As to the alleged conflict in interests between the guardian and her ward, we fail to see said divergence. We should bear in mind that the guardian was no stranger to but a grandmother of the ward. In her answer to the complaint in the trial court, said guardian far from claiming the lot in question as her own, said that it belonged to her ward as an inheritance from her grandfather, deceased husband of the guardian. In fact, in order to protect and conserve the property so that it may go to her granddaughter and ward, whole and unburdened, the grandmother and guardian went to the extent of disclaiming and denying any previous alienation or conveyance of said property to the plaintiffs. All this fails to show any conflict of interests between guardian and ward.

Now, coming to the petition filed in the trial court on December 24, 1947, to set aside the decision of September 12, 1947, although it was presumably filed under the provisions of Rule 38 of the Rules of Court, said petition made no mention whatsoever of said Rule and what is more important, it failed to allege any of the grounds on which a petition for relief is usually based, namely, fraud, accident, mistake, or excusable negligence. As a matter of fact, after examining the record we are unable to find that any of these grounds existed or could be successfully invoke by the minor, and may be that was the reason why they were not alleged in the petition. And, if the case were taken to this Court on appeal and we were to examine the facts of the case from the record on appeal as we have done now, we do not see how the decision of the trial court of September 12, 1947, even assuming it to be erroneous as not altogether in conformity with the law and evidence, can be set aside. From all this it is not difficult to imagine and believe that the trial court was not without reason in refusing to set aside its decision of September 12, 1947, and that it would not profit the petitioner to obtain the remedy of mandamus now sought, for like a mirage it would merely raise false hopes and in the end avail her nothing.

In view of the foregoing the petition for mandamus is hereby dismissed without pronouncement as to costs.

Moran, Ozaeta, Paras, Pablo, Bengzon; Tuazon and Reyes. JJ. concur.