

**LUIS PARCO AND VIRGINIA BAUTISTA, PETITIONERS, VS.
HONORABLE COURT OF APPEALS, HON. UNION C. KAYANAN, JUDGE,
COURT OF FIRST INSTANCE OF QUEZON (BRANCH IV), CALAUAG,
AND FRANCISC...**

G.R. No. L-33152. January 30, 1982

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

By this petition for review on certiorari, petitioners seek to set aside the Resolution of the Court of Appeals dated January 20, 1971[1] which revived and declared in full force and effect its decision on August 20, 1970[2] dismissing the petition for certiorari with preliminary injunction in CA-G.R. No. 43732, entitled "Luis Parco, et al. vs. Hon. Judge of the Court of First Instance of Quezon, Branch IV, Calauag, et al.," and pray that the decision dated April 15, 1969[3] and all subsequent orders[4] issued by respondent Judge of Branch IV-Calauag, Court of First Instance of Quezon in Special Proceedings No. 2641 be declared as null and void.

This case, G.R. No. L-33152, started from Special Proceedings No. 2641, a guardianship proceedings for the incompetent Soledad Rodriguez of Sariaya, Quezon, which originally pertained to Branch I, Court of First Instance of Quezon, then presided by the late Hon. Judge Vicente Arguelles,[5] later on succeeded by Hon. Judge Ameurфина Melencio-Herrera (now Associate Justice of the Supreme Court). In 1966, respondent Judge of Branch IV-Calauag of the Court of First Instance of Quezon, Hon. Union C. Kayanan, took cognizance of Special Proceedings No. 2641 when the Secretary of Justice authorized respondent Judge to help unclog the docket of Branch I at Lucena City, Quezon.

For clarity, We have hereunder summarized the sequence of events and material dates as it appears in the records from the time respondent Judge of Branch IV of the Court of First Instance of Quezon took cognizance of Special Proceedings No. 2641.

On December 20, 1966, respondent Judge authorized and approved, upon motion of Francisco Rodriguez, Jr. (guardian of Soledad Rodriguez), hereinafter referred to as private respondent, the sale to Luis Parco and Virginia Bautista, hereinafter referred to as the petitioners, of Lot Nos. 3437 (613 sq. meters) and 4389 (4,068 sq. meters) covered by TCT Nos. 16939 and 18035, respectively, for the sum of P4,400.00 for the support, maintenance and medical treatment of the ward Soledad Rodriguez.

On January 6, 1967, respondent Judge again approved and authorized, upon motion of private respondent, the sale to petitioners of Lot No. 1207 covered by TCT No. 16944 containing an area of 63.598 sq. meters, more or less, for the same reason. All the sales of the three (3) lots being absolute, new transfer certificates of title were issued in the name of petitioners.

On May 13, 1968, or almost one year and five months from the approval of the sale of Lot Nos. 3437, 4389, and 1207, private respondent filed an urgent petition in the Court of First Instance of Quezon, Ninth Judicial District,

invoking Section 6 Rule 96 of the Revised Rules of Court, praying that an order be immediately issued requiring petitioners to appear before the court so that they can be examined as regards the three (3) lots in question which are allegedly in danger of being lost, squandered, concealed and embezzled and upon failure to do so or to comply with any order that may be issued in relation therewith, to hold them in contempt of court. The pertinent allegations read as follows:

x x x

"1. That as legal guardian (private respondent) of the above-named incompetent and upon authorization by this Hon. Court he has transferred in good faith to the spouses LUIS PARCO and VIRGINIA (UY) BAUTISTA, both of Atimonan, Quezon, the titles over the following realties belonging to his ward, namely:

"a. A parcel of land (Lot No. 3437 of the Cadastral Survey of Sariaya) with the improvements thereon situated in the Municipality, of Sariaya x x x containing an area of Six Hundred Thirteen (613) sq. meters, more or less;

"b. A parcel of land (Lot No. 4389 of the Cadastral Survey of Sariaya) situated in the Municipality of Sariaya x x x containing an area of Four Thousand And Sixty-Eight (4,068) sq. meters, more or less;

"c. A parcel of land (Lot No. 1207 of the Cadastral Survey of Sariaya) situated in the Municipality of Sariaya x x x containing an area of Sixty-three Thousand Five Hundred and Ninety-eight (63,598) sq. meters, more or less.

"2. That anent the first TWO (2) PARCELS above-described he transferred the titles thereto in favor of the recited spouses under a loan agreement (not an absolute sale thereof) and with the express commitment in writing that he can recover the same within three (3) months from December 19, 1966, x x x

"That prior to the expiration of the cited period of three months, he tried to recover the stated two parcels of land from them, however, the same was not carried out because he was then transacting with them the sale of PARCEL THREE and under the Agreement that they will not sell, cede, or convey the mentioned two (2) lots to anyone (except to petitioner-now private respondent herein) and once the stated PARCEL THREE has been sold at the price of P48,000.00 the borrowed amount of P4,400.00 shall be deducted therefrom and said two parcels shall be returned to him;

"3. That recently, he discovered that the cited couple, in bad faith and in violation of their agreement and of the trust and confidence which he had reposed upon them, have fraudulently ceded and transferred the titles over the stated two parcels of land to another person, allegedly for a price of (over P30,000.00) and in spite of his repeated request upon them to reconvey to him the titles thereto or to turn over to him the total proceeds they have received (minus the sum of P4,400.00), they have maliciously and unjustly refused to do so, and are intending to keep and retain said amount for their own personal use and benefit;

"4. That as already adverted to in the previous paragraph hereof, the mentioned couple induced him to transfer to them the title of parcel three, so that they can sell the same for the agreed price of P48,000.00 and believing in good faith that the cited spouses are honest and trustworthy, he agreed and executed the requisite document transferring the title to them subject to the following conditions:

"a. They shall pay to him the amount of Twelve Thousand (P12,000.00) Pesos after they have secured a buyer of the property, x x x

"b. They shall pay to NIEVES ALCALA and PURA AGCAOILE (who are private respondent's agents and representatives in negotiating the sale of parcel three) the sum of Fifteen Thousand (P15,000.00) Pesos after they have sold the realty, x x x

"5. That recently, he discovered that the cited couple have already sold and ceded the mentioned parcel three to another person, and despite his repeated request upon them to pay and deliver to him or to Nieves Alcala the

sum of money specified in the foregoing paragraph, they have maliciously and unjustly failed and refused to do so, and have fraudulently retained the said amount of money for their own personal use and benefit;

"6. That the enumerated parcels of land together with all the proceeds derived therefrom, undeniably belonged to his ward as trust properties, which are subject to the disposition of this Hon. Court, and due to the mentioned fraudulent, malicious and dishonest acts of the above-named couple, are in danger of being lost, squandered, concealed and embezzled;

x x x

In an answer dated June 5, 1968, petitioners contended mainly, among others, that the three lots have been conveyed to them by deeds of absolute sale which were duly approved by the guardianship court.

Pre-trial hearings were set for possible amicable settlement beginning on September 6, 1968 but was postponed and reset to October 9, 1968 on petitioners' counsel motion. On October 9, 1968, both parties and their counsels appeared but failed to reach any amicable settlement. Again, the pre-trial hearing was reset to November 28 and 29, 1968 but was likewise postponed to January 8, 1969 at petitioners' counsel motion.

On January 8, 1969, for failure of petitioners and their counsel to appear although there was a telegram requesting for postponement, respondent Judge issued an order,[6] authorizing private respondent to present evidence before the Clerk of Court who was instructed to make the corresponding report which shall be made as the basis of the decision.

In a petition dated January 30, 1969, petitioners prayed for the reconsideration of the order of January 8, 1969 pointing out, among others, that there was a First Order dated July 29, 1968,[7] issued by then Judge Ameurfina M. Herrera, Presiding Judge of Branch I, Court of First Instance of Quezon that said branch "will henceforth take cognizance of this case" and thus, asked for the transfer of the incident sought before Branch IV to Branch I for proper action.

On February 20, 1969, respondent Judge, finding the petition for reconsideration well-grounded, issued an order directing the Clerk of Court to transmit the records of the case to the Court of First Instance, Branch I, Lucena City, quoted below:

"ORDER

"Acting on the Petition for Reconsideration filed by counsel for the respondent on February 4, 1969, considering that Hon. A. Melencio-Herrera, Presiding Judge of Branch I, CFI, Lucena City, issued an order on July 29, 1968, the dispositive portion of which is quoted as follows: 'WHEREFORE, it is hereby confirmed that this court will henceforth take cognizance of this case,' and considering that this special proceedings actually belongs to Branch I, although incidents therein were taken cognizance of by the Presiding Judge of CFI, Branch IV when he was holding court session in Lucena City and notwithstanding Administrative Order No. 261 dated October 7, 1968 which states that 'This administrative order shall not apply to cases pending in the different salas which have been partially tried and shall remain therein for final disposition,' because this case was originally filed during the incumbency of the late Judge Vicente Arguelles, finding therefore the said petition to be well-grounded, the Clerk of Court is hereby authorized to transmit these records to the Deputy Clerk of Court, CFI, Branch I, Lucena City.

"SO ORDERED.

"Given at Calauag, Quezon this 20th day of February, 1969.

(SGD.) UNION C. KAYANAN

Judge"

On March 24, 1969, private respondent, without the assistance of a counsel, filed before Branch IV, Court of First Instance of Quezon an amended petition praying that the three (3) lots subject matter of the original urgent petition be ordered reconveyed to the ward in said Special Proceedings No. 2641 for he was informed that petitioners will transfer said properties to third person.

On March 26, 1969, the Clerk of Court of Branch IV, Court of First Instance of Quezon, issued the notice of hearing of the amended petition filed by private respondent dated March 24, 1969 notifying counsel for both parties that the case will be heard before Branch IV on April 10, 1969 at 2:30 p.m. at Calauag, Quezon. On the date set for hearing, counsels for both parties appeared but for failure of the petitioners to appear respondent Judge issued an order^[8] reiterating its previous order dated January 8, 1969 allowing private respondent to present his evidence ex-parte and considered the case submitted for resolution.

On April 15, 1969, respondent Judge rendered a decision^[9] on the basis of the report of the Clerk of Court dated February 19, 1969 ordering petitioners to reconvey the three (3) parcels of land to private respondent.

On June 14, 1969, petitioners moved to reconsider the decision stating, among others, that respondent Judge has no authority to take cognizance of the case which, according to petitioners, is an issue raised in the petition for reconsideration of the court order of January 8, 1969, and that the decision was without legal basis. Petitioners prayed that the case or incident be transferred to the proper court which had taken cognizance of this case.

On June 23, 1969, respondent Judge denied the petition for reconsideration for lack of merit. Petitioners' counsel received the said order of denial on June 26, 1969.

Meanwhile, on June 21, 1969, private respondent filed an urgent motion in Branch IV praying that petitioners be required to appear before the court to be examined as regards the properties of the ward and to explain why they should not be cited for contempt for not complying with a final order of the court directing the reconveyance of the three (3) parcels of land to private respondent.

On June 23, 1969, respondent Judge, acting on the urgent motion, issued an order^[10] directing petitioners to explain why they should not be cited for contempt of court pursuant to par. (b) Section 3 Rule 71 of the Revised Rules of Court.

On June 27, 1969, petitioners filed an urgent motion claiming that the urgent motion for contempt of court was premature considering that the decision ordering the reconveyance of the properties in question has not yet become final and executory and is still subject to appeal. In their prayer for the setting aside of the order of June 23, 1969, petitioners informed the court that they will appeal the decision to the Court of Appeals and that the corresponding notice of appeal, appeal bond and the record on appeal will be filed in due time.

The following day, June 28, 1969, petitioners filed the notice of appeal and appeal bond with a manifestation that the record on appeal will be filed in due time.

On July 3, 1969, respondent Judge issued an order^[11] denying for lack of merit petitioners' urgent motion of June 27, 1969, thus declaring that the order dated June 23, 1969 stands considering that petitioners' right to appeal has already lapsed. In the same order, petitioners were given ten (10) days upon receipt to explain why they should not be cited for contempt pursuant to Section 4, Rule 71 in relation to Section 6, Rule 96 of the Revised Rules of Court.

On July 7, 1969, petitioners filed a petition for extension of ten (10) days to expire on July 20, 1969 within which to file the record on appeal. In an order^[12] dated July 9, 1969, respondent Judge denied the said petition for having been filed beyond the reglementary period.

On July 10, 1969, petitioners filed an unverified second petition for reconsideration of the decision dated April 15, 1969 and the order of July 3, 1969 contending that Branch IV lost its jurisdiction over the case from the time the order dated February 20, 1969 was issued by Judge A. Melencio-Herrera; that the proceedings under Section 6 Rule 96 do not authorize the Hon. Court (Branch IV) to determine the question of right over the property or to order delivery thereof; that the purpose is merely to elicit information or secure evidence from the person suspected of having embezzled, concealed or conveyed away any personal property of the ward; that if the court finds sufficient evidence showing ownership on the part of the ward, it is the duty of the guardian to bring the proper action.

On the other hand, on July 17, 1969, a motion for reconsideration of the order dated July 9, 1969 was filed by petitioners claiming that all the pleadings related to the intended appeal were filed within the period allowed by the Revised Rules of Court. After an opposition was filed, respondent Judge issued an order^[13] on July 18, 1969 denying the second petition for reconsideration for lack of basis and on the ground that the period to appeal either the decision or any of the previous orders had already expired.

On August 20, 1969, petitioners went to the Court of Appeals on a petition for certiorari with preliminary injunction pleading nullity of the decision of the Court of First Instance, Branch IV, Quezon dated April 15, 1969 on grounds of lack of jurisdiction and grave abuse of discretion in denying their right of appeal.

On September 27, 1969, the Court of Appeals dismissed the petition for lack of merit.^[14] On motion by petitioners, the dismissal was reconsidered in a split resolution dated December 15, 1969 thereby giving due course to the petition, and private respondent was required to answer.

After private respondent filed their answer and the parties submitted their respective memoranda, the Court of Appeals, in a three-to-two vote decision^[15] dated August 21, 1970 dismissed the petition.

On motion for reconsideration filed by petitioners, the Court of Appeals, in a split resolution^[16] dated October 10, 1970 granted the motion for reconsideration and set aside the decision dated August 20, 1970.

However, upon motion for reconsideration filed by private respondent, the Court of Appeals, in a three-to-two vote resolution^[17] dated January 20, 1971, reverted to its decision of August 21, 1970 dismissing the petition.

Hence, the instant petition for review on the following assignment of errors, to wit:

I

"THE MAJORITY OF THE DIVISION OF FIVE JUSTICES OF THE COURT OF APPEALS ERRED IN SUSTAINING THE RETENTION BY THE RESPONDENT JUDGE OF BRANCH IV-CALAUAG OF THE CASE OF BRANCH I-LUCENA CITY AFTER HE ORDERED THE RETURN OF THE CASE TO BRANCH I-LUCENA CITY TO WHICH THE CASE BELONGS AND AFTER THE PRESIDING JUDGE OF BRANCH I-LUCENA CITY HAD RESUMED AND EXERCISED HER JURISDICTION OVER SAID CASE.

II

"ASSUMING THAT THE RESPONDENT JUDGE COULD LEGALLY AND VALIDLY RETAIN JURISDICTION OVER THE CASE OF BRANCH I-LUCENA CITY DESPITE THE CIRCUMSTANCES ADVERTED TO IN THE FIRST ASSIGNED ERROR, THE MAJORITY OF THE DIVISION OF FIVE JUSTICES OF THE COURT OF APPEALS ERRED IN SANCTIONING THE RESPONDENT JUDGE'S ASSUMPTION OF JURISDICTION TO ADJUDICATE THE ISSUE OF OWNERSHIP AND/OR ORDER RECONVEYANCE OF PETITIONERS' PROPERTY SOLD TO THEM AND TITLED IN THEIR NAMES, NOTWITHSTANDING THE LIMITED JURISDICTION OF A GUARDIANSHIP COURT.

III

"THE MAJORITY OF THE DIVISION OF FIVE JUSTICES OF THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE JUDICIAL AUTHORITY AND APPROVAL OF THE SALES ARE CONCLUSIVE UPON THE VALIDITY AND REGULARITY OF SAID SALES BETWEEN THE PARTIES AND THEIR SUCCESSORS IN INTEREST.

IV

"THE MAJORITY OF THE DIVISION OF FIVE JUSTICES OF THE COURT OF APPEALS ERRED IN SANCTIONING BY SILENCE THE QUESTIONED ORDER OF THE RESPONDENT JUDGE ENFORCING HIS DECISION BY CONTEMPT PROCEEDINGS.

"THE MAJORITY OF THE DIVISION OF FIVE JUSTICES OF THE COURT OF APPEALS ERRED IN SANCTIONING DENIAL OF PETITIONERS' RIGHT TO APPEAL."

This petition was given due course in view of the peculiar incidents during its trial stage where, as borne out by the records, two (2) branches of the Court of First Instance of Quezon Province, 9th Judicial District assert jurisdiction over Special Proceedings No. 2641, which, when the decision rendered by one branch was brought in the Court of Appeals on certiorari with preliminary injunction, the Special Division of Five Justices, in a three-to-two vote resolution in four (4) occasions after its dismissal for lack of merit on September 27, 1968, reconsidered the same and was given due course on December 15, 1968, again dismissed on August 21, 1970, but again reconsidered on October 10, 1970, until finally dismissed on January 20, 1971 when the Special Division of Five reverted to its August 21, 1970 resolution. The Special Division was equally split on the issue whether or not the Court of First Instance, Branch IV, Calauag, Quezon, acting with limited jurisdiction as a guardianship court under Section 6 Rule 96 of the Rules of Court, has the authority to adjudicate the question of ownership and order the reconveyance of the three (3) parcels of land in question to private respondent, guardian of the ward Soledad Rodriguez. On these two (2) principal issues, We are called upon to finally resolve the legal controversy peculiar on this case.

After the parties submitted their respective briefs, the case was deemed submitted for decision on October 28, 1971.

In a Resolution[18] of this Court dated November 29, 1978, the urgent manifestation and motion of Leonisa S. Rodriguez, the surviving spouse of Mario Rodriguez (brother of the ward) that the ward Soledad Rodriguez died on September 15, 1970 and private respondent Francisco Rodriguez, Jr. died on October 24, 1973; and that the heirs of the ward be substituted as the private respondents in this case was noted.

To begin with, the principal issue at hand is whether or not respondent Judge of the Court of First Instance of Quezon, Branch IV-Calauag has the authority or power to take further action in Special Proceedings No. 2641 after the Presiding Judge of the Court of First Instance of Quezon, Branch I-Lucena City asserted its jurisdiction by issuing two (2) orders dated July 29, 1968 and respondent Judge correspondingly ordered the return of the case to Branch I in an order dated February 20, 1969.

Petitioners maintain that respondent Judge of Branch IV, Court of First Instance of Quezon has no power or authority to retain jurisdiction over Special Proceedings No. 2641 which, at its inception, originally pertained to Branch I-Lucena City, Court of First Instance of Quezon. To support such claim, petitioners contend that the Second Order dated July 29, 1968 requiring private respondent for an inventory and accounting of the ward's property confirms that the Presiding Judge of Branch I has resumed its jurisdiction over said case, more so, when respondent Judge ordered on February 20, 1969 the transmittal of the records of the case to the Deputy Clerk of Court, Court of First Instance, Branch I-Lucena City.

Private respondent, on the other hand, justifies the retention of jurisdiction by respondent Judge over Special Proceedings No. 2641 contending, among others, that the two (2) orders dated July 29, 1968 issued by then Judge A. Melencio-Herrera are not sufficient bases for claiming that Branch IV has been deprived of its jurisdiction because jurisdiction is vested upon the court not upon any particular branch or judge thereof and the issuance of such orders constitute undue interference with the processes and proceedings already undertaken by respondent Judge; that petitioners are guilty of estoppel when they failed to raise the issue of jurisdiction from the very beginning and when they voluntarily appeared before respondent Judge, filed their answer and other pleadings, and moved for postponements of the scheduled dates of hearing.

We sustain petitioners' stand. Of course, jurisdiction is vested in the court not in any particular branch or judge, and as a corollary rule, the various branches of the Court of First Instance of a judicial district are a coordinate and co-equal courts[19] one branch stands on the same level as the other. Undue interference by one on the proceedings and processes of another is prohibited by law. In the language of this Court, the various branches of the Court of First Instance of a province or city, having as they have the same or equal authority and exercising as they do concurrent and coordinate jurisdiction should not, cannot, and are not permitted to interfere with their respective cases, much less with their orders or judgments.[20] A contrary rule would obviously lead to confusion and might seriously hinder the administration of justice. A judge is competent to act so long as the case remains before him, but after it passed from his branch to the other, the case could be acted upon by the judge of the latter branch.[21] Otherwise, an anomalous situation would occur at the detriment of the party-litigants who are likewise confused where to appear and plead their cause.

In the case before Us, there is no dispute that both Branch I and Branch IV of the Court of First Instance of Quezon, have jurisdiction over the subject matter, a guardianship proceedings under Section 1, Rule 92 of the Rules of Court and Section 44(a) of the Judiciary Act of 1948. While it is recognized that when a case is filed in one branch, jurisdiction over the case does not attach to the branch or judge alone, to the exclusion of the other branches,[22] We are of the view however, considering the unusual circumstances and incidents attendant in this case the situation in the case at bar is different. Here, it must be noted that the Presiding Judge of Branch I asserted and resumed its prior jurisdiction by issuing two (2) orders, one of which requires private respondent to render an inventory and accounting of the property of the ward. On the other hand, respondent Judge of Branch IV, in confirmation of such resumption of jurisdiction, ordered the return of the records of Special Proceedings No. 2641 to Branch I-Lucena City, Court of First Instance of Quezon, but, instead of regularly relinquishing jurisdiction over the case, respondent Judge continued to take further action on the case in total disregard of the two (2) orders of the Presiding Judge of Branch I. Should one branch be permitted to equally assert, assume or retain jurisdiction over a case or controversy over which another coordinate or co-equal branch has already resumed its jurisdiction, We would then sanction undue interference by one branch over another. With that, the judicial stability of the decrees or orders of the courts would be a meaningless precept in a well-ordered administration of justice.

There is no question that the prior proceedings had in Branch IV by respondent Judge were valid and regular as they were admittedly authorized by the Secretary of Justice. It must be emphasized however, that Branch IV lost its jurisdiction over Special Proceedings No. 2641 when respondent Judge ordered the return of the records to Branch I after having been informed in a motion for reconsideration filed on January 30, 1969 of the existence of the two (2) orders issued by the Presiding Judge of Branch I. From that point of time, all subsequent proceedings and processes in connection with or related to Special Proceedings No. 2641 undertaken by the respondent Judge became irregular. It amounted to an undue interference with the processes and proceedings of Branch I.

Nevertheless, from the standpoint of the pertinent law on the matter, it may be observed that the detail of

respondent Judge of Branch IV stationed permanently in Calauag, Quezon to Branch I in Lucena City, Quezon authoritatively rests on the provision of Section 51 of the Judiciary Act of 1948 which reads:

"Section 51. Detail of judge to another district or province. - Whenever a judge stationed in any province or branch of a court in a province shall certify to the Secretary of Justice that the condition of the docket in his court is such as to require the assistance of an additional judge, or when there is any vacancy in any court or branch of a court in a province, the Secretary of Justice may, in the interest of justice, with the approval of the Supreme Court and for a period of not more than three months for each time, assign any judge of any court or province, whose docket permits his temporary absence from said court, to hold sessions in the court needing such assistance or where such vacancy exists. No judge so detailed shall take cognizance of any case when any of the parties thereto objects and the objection is sustained by the Supreme Court. (underscoring supplied)

x x x"

Apparently, when the circumstances contemplated under Section 51 of the Judiciary Act of 1948 occur, the detailed Judge holds sessions in the court needing such assistance or where such vacancy exists as if he is the presiding judge of that particular branch where the clogged docket or vacancy exists. The detailed Judge does not hold sessions therein as if he is the Presiding Judge of the branch where he is originally or permanently designated. In the case before Us, respondent Judge Kayanan was duly authorized to help unclog the docket of Branch I stationed in Lucena City, Quezon which at that time was rendered vacant due to the death of Judge Vicente Arguelles. When respondent Judge Kayanan took cognizance of the cases left by Judge Arguelles, pending the designation of a replacement, he merely sits as a judge of Branch I, Court of First Instance of Quezon Province. In the event of designation of a new Presiding Judge of Branch I, accepted practice and procedure of speedy administration of justice requires that the detailed judge turns over the cases he took cognizance of to the new Presiding Judge. Justification for the continued retention of jurisdiction over those cases in the case at bar appears to be not convincing.

We find no plausible indication how estoppel could operate against petitioners. It is true that petitioners filed their answer to the urgent petition of private respondent and appeared before respondent Judge of Branch IV without questioning the latter's authority to hear the case. The answer to the urgent petition of private respondent dated May 13, 1968 was filed by petitioners on June 5, 1968 or almost two (2) months before Judge Melencio-Herrera of Branch I issued the two (2) orders dated July 29, 1968 asserting jurisdiction over the case. The appearances of petitioners and counsel in the Sala of respondent Judge during the intervening period from July 29, 1968 were apparently due to the fact that petitioners came to know only of the two orders of Branch I when they examined the records of the case prompted by the manifestation of the counsel of private respondent, in the course of the proceedings in Branch IV, to submit for an accounting in connection with the administration of the properties of the ward Soledad Rodriguez. Petitioners manifested such information to respondent Judge in a petition for reconsideration of the order of January 8, 1968 authorizing the presentation of evidence ex-parte. The silence or inaction of petitioners was therefore due to their lack of knowledge of respondent Judge's lack of authority to retain or take further action on the case. Such lack of authority was confirmed when respondent Judge, acting on the petition for reconsideration dated January 30, 1969, issued on February 20, 1969 an order authorizing the return of the records of the case to Branch I. In claiming that the records referred to by the order concern the first portion of the records of Special Proceedings No. 2641 and not the second portion containing the urgent petition filed by private respondent on May 13, 1968, private respondent would then encourage split jurisdiction of courts which is abhorred by the law.

Assuming that Branch IV-Calauag, Court of First Instance of Quezon has jurisdiction over Special Proceedings No. 2641 notwithstanding the attendant circumstances adverted to earlier, We now dwell on another issue, which standing alone would decisively resolve the assigned errors raised in this petition, that is, whether or not Branch

IV exercising limited and special jurisdiction as a guardianship court under Section 6 Rule 96 of the Rules of Court has jurisdiction to order the delivery or reconveyance of the three parcels of land in question to the ward, represented herein by private respondent.

In two leading cases, *Castillo vs. Bustamante*, 64 Phil. 839 and *Cui vs. Piccio, et al.*, 91 Phil. 712, this Court laid the rule on the issue raised before Us as interpreted in the light of Section 6 Rule 96 of the Rules of Court which reads:

"Section 6. Proceedings when person suspected of embezzling or concealing property of the ward. - Upon complaint of the guardian or ward, or of any person having actual or prospective interest in the estate of the ward as creditor, heir, or otherwise, that anyone is suspected of having embezzled, concealed, or conveyed away any money, goods, or interest, or a written instrument, belonging to the ward or his estate, the court may cite the suspected person to appear for examination touching such money, goods, interests, or instrument, and make such orders as will secure the estate against such embezzlement, concealment or conveyance."

In *Cui vs. Piccio, et al.*, *supra*, this Court held that the jurisdiction of the court in guardianship proceedings, ordinarily, is to cite persons suspected of having embezzled, concealed or conveyed the property belonging to the ward for the purpose of obtaining information which may be used in an action later to be instituted by the guardian to protect the right of the ward. Generally, the guardianship court exercising special and limited jurisdiction cannot actually order the delivery of the property of the ward found to be embezzled, concealed or conveyed. In a categorical language of this Court, only in extreme cases, where property clearly belongs to the ward or where his title thereto has been already judicially decided, may the court direct its delivery to the guardian.[23] In effect, there can only be delivery or return of the embezzled, concealed or conveyed property of the ward, where the right or title of said ward is clear and undisputable. However, where title to any property said to be embezzled, concealed or conveyed is in dispute, under the *Cui* case, the determination of said title or right whether in favor of the person said to have embezzled, concealed or conveyed the property must be determined in a separate ordinary action and not in guardianship proceedings.

In the case at bar, We are not prepared to say, at this pre-mature stage, whether or not, on the basis alone of the pleadings of the parties in the trial court, the title or right of the ward Soledad Rodriguez over the three (3) parcels of land in question is clear and undisputable. What is certain here is the fact that the sale of the properties in question were duly approved by the respondent Judge in accordance with the provisions on selling and encumbering of the property of the ward under Rule 97 of the Rules of Court. It must be noted that while the original urgent petition dated May 13, 1968 prayed for the examination of petitioners herein regarding the alleged concealing, conveyancing and embezzling of the questioned properties, the amended petition dated March 24, 1969 asked for reconveyance.

Moreover, it may be observed that private respondent contended that the sale of the first two lots was actually a loan agreement with right of recovery while that of the third lot was subject to condition, hence, a fictitious or simulated sale. On the other hand, according to petitioners, the sales were all absolute and protected by the Torrens System since new transfer certificate of titles were issued in their name. Apparently, there is a cloud of doubt as to who has a better right or title to the disputed properties. This, We believe, requires the determination of title or ownership of the three parcels of land in dispute which is beyond the jurisdiction of the guardianship court and should be threshed out in a separate ordinary action not a guardianship proceedings as held in *Cui vs. Piccio, supra*.

The ruling in *Castillo vs. Bustamante*, 64 Phil. 839, relied upon by private respondent finds no application in the instant case. As differentiated from the case at bar, in *Castillo* case, the right or title of the ward to the property in dispute was clear and undisputable as the same was donated to her through compromise agreement approved by

the court which title had the authority of *res judicata*. As enunciated above, the right or title of the ward to the properties in question is in dispute and as such should be determined in a separate ordinary action.

Furthermore, private respondent's claim that petitioners are barred by laches to raise the issue of jurisdiction is without merit. In support of such claim, private respondent invoked the exception laid down in *Tijam vs. Sibonghanoy*, 23 SCRA 29, to the rule that the lack of jurisdiction over the subject matter is fatal and may be raised at any stage of the proceedings; that it is conferred only by law, and in the manner prescribed by law and an objection on the lack of jurisdiction cannot be waived by the parties; and the infirmity cannot be cured by silence, acquiescence, or even by express consent, or will of the parties.[24]

The doctrine laid down in *Tijam vs. Sibonghanoy*, *supra*, and in the later case of *Rodriguez vs. Court of Appeals*, 29 SCRA 419 is not applicable in the case at bar. In *Tijam* case, the appellant had all the opportunity to challenge the court's jurisdiction in the court *a quo* as well as in the Court of Appeals but instead invoked its jurisdiction to obtain affirmative relief and submitted its case for final adjudication on the merits. It was only after an adverse decision was rendered by the Court of Appeals and fifteen (15) years later from the inception of the case that it finally chose to raise the question of jurisdiction. It is clear that the circumstances present in *Tijam* case are not present here. The petitioners in the instant case challenged the authority of the trial court to take further cognizance of the case the moment they become aware of Branch I assuming jurisdiction. The lack of jurisdiction was raised in a petition for reconsideration of the order dated January 8, 1969, in a petition for reconsideration of the decision dated April 15, 1969, in a second petition for reconsideration of the said decision, and alleged as an additional ground in the petition for certiorari in the Court of Appeals. In any case, the operation of the principle of estoppel on the question of jurisdiction seemingly depends upon whether the lower court actually had jurisdiction. If it had no jurisdiction, but the case was tried and decided upon the theory that it had jurisdiction, the parties are not barred, on appeal, from assailing such jurisdiction, for the same must exist as a matter of law, and may not be conferred by consent of the parties or by estoppel.[25]

As respondent trial court has no jurisdiction, We deem it unnecessary to pass upon the assigned errors raised in the petition.

WHEREFORE, the Resolution of the Court of Appeals dated January 20, 1971 is hereby reversed and set aside, and the decision rendered by respondent Judge of Branch IV-Calauag, Court of First Instance of Quezon dated April 15, 1969 and the orders issued thereafter are declared null and void, and the case is hereby remanded to Branch I-Lucena City, Court of First Instance of Quezon for further proceedings.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., Abad Santos, Ericta, and Escolin, JJ., concur. Aquino, J., attached dissent.

[1] Resolution penned by Justice Eulogio S. Serrano, with Justices Ramon O. Nolasco, Edilberto Soriano, concurring; Justices Juan P. Enriquez, Carmelino G. Alvendia, dissenting, p. 154, Rollo.

[2] See excerpts of the Decision, pp. 136-144, Rollo.

[3] pp. 58-65, Rollo.

[4] Annexes M, O, T and Z to the Petition, pp. 68, 73, 81, 98, Rollo, respectively.

[5] See dissenting opinion, CA Justice Juan P. Enriquez, p. 164, Rollo.

[6] p. 76, Rollo.

- [7] p. 50, Rollo. The Second Order dated July 29, 1968 requires private respondent to explain why the amount of P8,000.00 representing the proceeds for the sale of Lot 1207 covered by TCT No. 16945 is not reflected as income for June 30, 1968 and to submit a statement of accounts for the period January 1, 1966 to June 20, 1968, p. 51, Rollo.
- [8] p. 56, Rollo.
- [9] p. 58, Rollo.
- [10] p. 73, Rollo.
- [11] p. 81, Rollo.
- [12] p. 90, Rollo.
- [13] p. 98, Rollo.
- [14] p. 13, Brief for the Respondent.
- [15] Decision penned by Justice Eulogio S. Serrano, with Carmelino Alvendia, Nicasio A. Yatco, concurring; p. 146, Rollo.
- [16] Resolution penned by Justice Juan Enriquez, with Justice Carmelino Alvendia, Nicasio A. Yatco, concurring; p. 146, Rollo.
- [17] p. 154, Rollo.
- [18] p. 238, Rollo.
- [19] Mateo C. Bacalso, et al. vs. Hon. Modesto R. Ramolete, et al., 21 SCRA 519.
- [20] De Leon vs. Salvador, 36 SCRA 567; Cabigao vs. Del Rosario, 44 Phil. 182.
- [21] PNB vs. Javellana, 92 Phil. 525.
- [22] Bacalso et al. vs. Hon. Ramolete, et al., *supra*.
- [23] Cui vs. Piccio, et al. 91 Phil. 712.
- [24] Republic vs. Court of Appeals, 83 SCRA 453 (1978).
- [25] People vs. Casiano, 1 SCRA 479, citing 5CJS851-863.

DISSENTING OPINION

AQUINO, J.:

I dissent. I vote for the affirmance of the decision of Judge Union C. Kayanan, Calauag Branch IV of the Court of First Instance of Quezon Province dated April 15, 1969 in Special Proceeding No. 2641, entitled "Guardianship of the Incompetent Soledad Rodriguez, Francisco Rodriguez, Jr., Guardian."

In that decision, Judge Kayanan ordered the spouses Luis Parco and Virginia Bautista to reconvey to Lot No. 3437 (613 square meters), Lot No. 4389 (4,069 square meters) and Lot No. 1207 (63,598 square meters), all of the Sariaya, Tayabas cadastre, to the guardian Francisco Rodriguez, Jr. upon the latter's payment to the said spouses of the sum of twelve thousand pesos which he had borrowed from them (p. 65, Rollo).

Since the ward died intestate on September 15, 1970 and the guardian died on October 24, 1973, the reconveyance should be made to the ward's heirs, namely, her sisters, Concepcion Rodriguez-Sapalo and Milagros Rodriguez-Sanchez, and the children of the ward's deceased brother Mario Rodriguez (who died on March 8, 1972), namely, Mario, Jr., Ramoncito, Liza and Rodulfo, all surnamed Rodriguez, represented by their guardian, their mother, Leonisa S. Rodriguez (pp. 232-236, Rollo). Said heirs should pay the Parco spouses the sum of twelve thousand pesos as a condition for the reconveyance.

It should be noted that the said guardianship proceeding was assigned originally to Branch I presided over by Judge Ameurfina Melencio-Herrera. It was transferred to Branch IV presided over by Judge Kayanan who was detailed at Lucena City to assist in decongesting the dockets of Branches I and II.

Judge Kayanan had authorized the sale of the three lots to the Parco spouses so that the proceeds of the sale could be used for the maintenance of the ward. It turned out that the sales or transfers were made under certain conditions which were violated by the Parco spouses.

A copy of Judge Kayanan's decision was received by petitioners' counsel on May 29, 1969. Sixteen days later or on June 14, they filed a motion for reconsideration. The order denying that motion was received by the petitioners on June 26. They filed their notice of appeal and appeal bond on June 28 (pp. 86 and 92, CA Rollo).

The last day for submitting the record on appeal was July 10. The petitioners asked for a ten-day extension within which to file their record on appeal. Instead of submitting it, they filed on July 10 a second motion for reconsideration on the ground of lack of jurisdiction.

The lower court denied the motion for extension of time within which to file the record on appeal. It also denied the second motion for reconsideration in its order of July 18, 1969.

The petitioners did not file any record on appeal. They filed on August 20, 1969 a petition for certiorari in the Court of Appeals to set aside the said decision of April 15. The Court of Appeals in its extended resolution of September 27, 1969 dismissed the petition on the ground that the petitioners' remedy was an appeal which they had abandoned.

That resolution was reconsidered. The petition was given due course. The Court of Appeals in its decision of August 21, 1970 dismissed the petition. (Per Justice Eulogio Serrano with Alvendia and Nolasco, JJ., concurring. Justices Enriquez and Yatco dissented.)

Petitioners' motion for the reconsideration of that decision was denied in the resolution of January 20, 1971. (Per Justice Eulogio Serrano with Justices Nolasco and Soriano concurring. Justices Enriquez and Alvendia dissented.)

The petitioners appealed to this Court. The decision of the Court of Appeals should be affirmed because (1) the petitioners inexcusably did not file a record on appeal, (2) the question as to whether the guardianship court should set aside the conveyances to the petitioners is not a jurisdictional question but merely a procedural matter which could be waived (*Lachenal vs. Salas*, L-42257, June 14, 1976, 71 SCRA 262) and (3) the petitioners and the guardian hoodwinked the guardianship court to the ward's prejudice.

It is the duty of the courts, in the exercise of the State's prerogative to protect persons under disability (*parens patriae*), to set aside the transfers to the petitioners and thus avoid unjust enrichment at the expense of the ward and do justice in this case. Technicalities should be eschewed.

As to the power of a branch of the Court of First Instance to act in a case transferred to it from another sala of the same court, see *Eleazar vs. Zandueta*, 48 Phil. 193; *Hizon Mercado vs. Ocampo*, 72 Phil. 318; *San Miguel Brewery, Inc. vs. Court of Industrial Relations*, 91 Phil. 178.

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