

AURORA CAMARA VDA. DE ZUBIRI, PETITIONER, VS. HON. TEODULO C. TANDAYAG, DETAILED JUDGE, COURT OF FIRST INSTANCE OF LANA DEL NORTE, BRANCH II, CITY OF ILIGAN, HON. HERNANDO PINE...*G.R. No. L-28858. May 29, 1980*

Ponente: CONCEPCION, JR., J.

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Petition for certiorari, to annul and set aside the orders of the Court of First Instance of Lanao del Norte in Spec. Proc. No. IL-2, entitled: "In the Matter of the Intestate Estate of the Deceased Jesus Zubiri, Wenceslao (Ben) Zubiri, Administrator," dated May 10, 1967, December 8, 1967, and January 10, 1968, as well as the orders issued in Civil Case No. IL-219, entitled: "Aurora Camara Vda. de Zubiri, plaintiff, versus Wenceslao (Ben) Zubiri, et al., defendants," dated December 7, 1967 and January 10, 1968, all directing the clerk of said court to deliver to Wenceslao (Ben) Zubiri the rentals deposited by the tenants of the intestate estate of the deceased Jesus Zubiri with the said clerk; and thereafter, to direct the said Wenceslao (Ben) Zubiri to return said amounts withdrawn by him to the clerk of court to await the result of Civil Case No. IL-219 and such other case or cases that might be filed as a consequence of the conflict of property rights between the petitioner and the respondent Wenceslao (Ben) Zubiri, relative to the properties left by the deceased Jesus Zubiri.

The respondents answered that the issue is moot and academic since Civil Case No. IL-219 has already been terminated even before the filing of the present petition for certiorari, and that the respondent Judges did not exceed their jurisdiction, nor abused their discretion in issuing the questioned orders since the private respondent Wenceslao (Ben) Zubiri had been declared the owner of the property, from where these rentals are derived, in Spec. Proc. No. IL-2 of the Court of First Instance of Lanao del Norte, which proceeding has long since been terminated, and the collection of rentals from said property is but an exercise of his right as owner thereof.[1]

The record shows that Jesus Zubiri, a resident of the City of Iligan, died intestate in Spain on July 5, 1956, leaving two (2) commercial lots in the said City of Iligan which are possessed and administered by Wenceslao (Ben) Zubiri.[2] To settle his estate, Special Proceedings No. IL-2 was commenced in the Court of First Instance of Lanao del Norte. After proper hearing, with due notice to the widow, herein petitioner Aurora Camara Vda. de Zubiri,[3] Wenceslao (Ben) Zubiri was appointed administrator of the intestate estate of the decedent, and upon his filing of a bond in the amount of P5,000.00, the probate court declared Wenceslao (Ben) Zubiri to be the sole and only heir of the deceased Jesus Zubiri and adjudicated the entire estate to him. The court further ordered the proceedings closed and terminated.[4]

On April 17, 1959, Aurora Camara Vda. de Zubiri, filed with the Court of First Instance of Lanao del Norte a complaint against Wenceslao (Ben) Zubiri and the Standard Vacuum Oil Company, docketed therein as Civil Case No. IL-219, for the recovery of her alleged share in the aforementioned property. She claimed that the said lots were conjugal property having been purchased by her and her late husband, Jesus Zubiri, during their

marriage so that at least one-half of the same belonged to her plus the equal share of the heir or heirs of the decedent. She further claimed that the said parcels of land are in the possession of the defendant who, "unless he can prove before this Honorable Court that he is a duly recognized natural child of the late Jesus Zubiri, (he) has no right, interest, and participation whatsoever over the aforementioned two lots." [5] On May 5, 1959, four (4) pleadings were filed in the aforementioned case, namely: (1) the answer of the defendant Wenceslao (Ben) Zubiri; (2) the answer of the defendant Standard Vacuum Oil Co.; (3) a Stipulation of Facts; and (4) a motion to render judgment on the pleadings. On May 6, 1959, the trial court rendered judgment in accordance with the Stipulation of Facts. Since in both the answer of Wenceslao (Ben) Zubiri and the Stipulation of Facts, Wenceslao (Ben) Zubiri admitted practically all the allegations of the complaint, the decision rendered in accordance therewith was actually in favor of the plaintiff. On June 5, 1959, Wenceslao (Ben) Zubiri filed a petition to set aside the judgment upon the grounds: (1) that his answer, the stipulation of facts and the motion to render judgment on the pleadings were all prepared by the plaintiff's counsel and that he was made to sign all of them when he was ill and, therefore, incapable of realizing the full consequences of the act; and (2) that the plaintiff's cause of action was barred by a prior judgment. Under this latter ground, Wenceslao (Ben) Zubiri averred that the properties claimed by the plaintiff had already been determined and adjudicated to him in a decision rendered in Spec. Proc. No. IL-2 of the Court of First Instance of Lanao del Norte, which has since become final. After due hearing, the trial court denied the petition to set aside judgment. The subsequent motion for the reconsideration having been denied too, Wenceslao (Ben) Zubiri appealed to this Court. [6] On December 17, 1966, the Court rendered a decision thereon, the dispositive portion of which reads, as follows:

"IN VIEW OF ALL THE FOREGOING, the order of the court below denying the appellant's petition to set aside judgment is hereby revoked and set aside. Let the said petition be granted and the plaintiff--appellee's complaint under Civil Case No. IL-219 be heard or tried on its merits, after the herein appellant shall have been allowed to file his answer or the necessary responsive pleading thereto. No pronouncement to cost."

Pursuant thereto, Wenceslao (Ben) Zubiri filed his answer to the complaint in Civil Case No. IL-219 on January 30, 1967. As affirmative defenses, he claimed that the complaint is barred by a prior judgment or by the doctrine of res adjudicata in that the probate court entered a final order in Spec. Proc. No. IL-2 on April 14, 1958, declaring him to be the sole and only heir of the deceased Jesus Zubiri and the properties subject matter thereof are precisely the same properties subject matter of the present controversy; and that the plaintiff received money from the deceased Jesus Zubiri in consideration of her renunciation of whatever claim or claims she had or may have had against the deceased or his estate. [7]

Then, on April 6, 1967, Wenceslao (Ben) Zubiri filed a motion to dismiss the complaint on the ground that it is barred by prior judgment or res adjudicata in that the court entered a final order in Spec. Proc. No. IL-2 on April 14, 1968, declaring him to be the sole and only heir of Jesus Zubiri and the properties subject matter therein are the same properties litigated in the instant controversy. [8] At the start of the hearing of the motion, the parties agreed that since the ground of the motion to dismiss is but a reiteration of one of the affirmative defenses, the hearing to be conducted should be considered a preliminary hearing within the purview of Sec. 5, Rule 16 of the Rules of Court. [9]

On May 8, 1967, Wenceslao (Ben) Zubiri filed a motion, in Spec. Proc. No. IL-2, to withdraw from the clerk of court all the rentals of the intestate estate of the late Jesus Zubiri deposited with the said clerk after paying the real estate taxes due the city government. [10] The probate court granted the motion on May 10, 1967, but only to the extent of P6,000.00 in view of the pendency of Civil Case No. IL-219. The court further ordered the clerk of court to pay the real estate taxes on the land, and to hold the balance, including the incoming rentals, until final termination of Civil Case No. IL-219. [11] On May 11, 1967, the clerk of court delivered the amount of P5,400.00 to Wenceslao (Ben) Zubiri, promising that "the balance of SIX HUNDRED PESOS (P600.00) out of the SIX

THOUSAND PESOS (P6,000.00), stated in the aforementioned order will be paid as soon as the deposit with the Provincial Treasurer in the amount of TWELVE THOUSAND SIX HUNDRED TWENTY PESOS (P12,620.00), shall have been withdrawn.[12]

On May 15, 1967, the trial court dismissed the complaint filed in Civil Case No. IL-219, upon the ground that the complaint is barred by the order or judgment rendered in Spec. Proc. No. IL-2.[13] A copy of the order was received by the plaintiff on May 29, 1967,[14] and on June 17, 1967, she filed a motion for the reconsideration of the orders issued on May 10, 1967 and May 15, 1967.[15] The trial court, however, denied the motion on August 7, 1967.[16] Thereupon, on September 14, 1967, Aurora Camara Vda. de Zubiri filed a notice of appeal and appeal bond.[17] The following day, September 15, 1967, she filed a motion for ex-tension of time of 30 days within which to submit her record on appeal.[18] The trial court granted her an extension of 30 days, beginning September 18, 1967, within which to file the record on appeal.[19]

The notice of appeal, notwithstanding, counsel for Aurora Camara Vda. de Zubiri filed a motion on September 27, 1967 to reopen Spec. Proc. No. IL-2 to enable her to intervene therein and prove that she is the only legitimate heir of the deceased Jesus Zubiri.[20] Counsel also filed a motion for the reconsideration of the order dismissing the complaint filed in Civil Case No. IL-219.[21] However, on November 9, 1967, counsel submitted the record on appeal, without waiting for any action that may be taken on the motions.[22]

On December 3, 1967, Wenceslao (Ben) Zubiri, claiming that he "is sickly and does not have regular employment and (he) needs the money for medical treatment and support of his family," filed a motion in Spec. Proc. No. IL-2, asking for the withdrawal of all the remaining rentals deposited with the court.[23] The court granted the motion and issued the disputed order of December 7, 1967, allowing Wenceslao (Ben) Zubiri to withdraw the amount of P1,380.00.[24]

On December 7, 1967, Wenceslao (Ben) Zubiri again asked the probate court in Spec. Proc. No. IL-2 to be allowed to withdraw the balance of P6,750.00 deposited with the court, offering to put up a bond in the amount of P4,000.00 to answer for whatever damages the plaintiff Aurora Camara in Civil Case No. IL-219, may suffer as a result of the withdrawal of said amount.[25] The probate court granted the motion on December 8, 1967, upon the conditions above-mentioned.[26]

On December 19, 1967, Wenceslao (Ben) Zubiri again filed a motion in Spec. Proc. No. IL-2 and Civil Case No. IL-219, seeking to withdraw the rentals deposited with the court.[27] The motion was granted on January 10, 1968[28] and the amount of P6,750.00 was delivered to Wenceslao (Ben) Zubiri on January 18, 1968.[29]

On January 19, 1968, the probate court denied the motion to reopen Spec. Proc. No. IL-2.[30] It also denied the second motion for the reconsideration of the order of May 15, 1967, dismissing the complaint in Civil Case No. IL-219, for the reason "that said second motion for reconsideration could no longer be entertained because plaintiff is trying to create a vicious circle out of this case for the purpose of either preventing or delaying its final termination which is contrary to the spirit and purpose of the Rules of Court. Besides, as plaintiff has already filed a Notice of Appeal from the order of this court of May 15, 1967 dismissing the complaint after her motion for reconsideration was denied on August 7, 1967, she must adhere to said course of action and bear the logical consequences of said act instead of filing another inconsistent course of action, (20 Corpus Juris 38, 39; De la Rosa vs. Yanson, 52 Phil. 446), otherwise, there will be confusion in the legal proceedings of the court." [31]

In another order dated January 19, 1968, the trial court dismissed the appeal of Aurora Camara for having been filed out of time.[32]

On February 3, 1968, Aurora Camara filed a motion for the reconsideration of the order dismissing her appeal,

insisting that her appeal was filed within the reglementary period,[33] but the Court denied her motion on February 26, 1968.[34]

On March 12, 1968, Aurora Camara filed a "Last Motion for Reconsideration" of the order dismissing her appeal,[35] which the Court denied in an order issued on March 30, 1968.[36]

As a consequence, on March 30, 1968, Aurora Camara Vda. de Zubiri filed another complaint against Wenceslao (Ben) Zubiri before the Court of First Instance of Lanao del Norte, docketed therein as Civil Case No. 1298, for the annulment of the order issued in Spec. Proc. No. IL-2 of the CFI of Lanao del Norte on April 14, 1958, and for damages on the ground that "plaintiff was intentionally, fraudulently and deceitfully omitted in the petition as an heir of the deceased Jesus Zubiri." [37]

On this same day, March 30, 1968, she filed the instant petition for certiorari, praying that the orders, directing the clerk of court of the Court of First Instance of Lanao del Norte to deliver to Wenceslao (Ben) Zubiri the rentals deposited by the tenants of the intestate estate of the deceased Jesus Zubiri, be annulled and set aside; and that the respondent Wenceslao (Ben) Zubiri be ordered to return the amounts withdrawn by him to the clerk of court "to await the result of Civil Case No. IL-219 and such other case or cases that might be filed as a consequence of the conflict of property rights between the petitioner and the respondent Wenceslao (Ben) Zubiri relative to the properties left by the deceased Jesus Zubiri."

The four questioned orders, allowing Wenceslao (Ben) Zubiri to withdraw accumulated rentals from the clerk of court are claimed to be null and void and of no effect as they were issued without or in excess of jurisdiction or with grave abuse of discretion in that the said orders were issued while Civil Case No. IL-219 is still pending, and without previous notice to the petitioner who was, consequently, deprived of her property without due process of law. The petitioner argues that Civil Case No. IL-219 is still pending in court because the order of May 15, 1967, dismissing the complaint in Civil Case No. IL-219 is a complete nullity since it violated the law of the case -- the mandate of the Supreme Court in G.R. No. L-16745 that the lower court should try Civil Case No. IL-219 on the merits.

The contention is without merit. In said case G.R. No. L-16745, this Court ruled that "the plaintiff-appellee's complaint under Civil Case No. IL-219 be heard or tried on its merits, after the herein appellant shall have been allowed to file his answer or the necessary responsive pleading thereto." The record shows that there was substantial compliance with this order. Thus, after the remand of the case to the court below for further proceedings, the defendant therein, Wenceslao (Ben) Zubiri filed his answer to the complaint. As affirmative defenses, he claimed: (1) that the complaint is barred by a prior judgment or by the doctrine of res adjudicata in that the probate court had entered a final order in Spec. Proc. No. IL-2 on April 14, 1958, declaring him to be the sole heir of the late Jesus Zubiri and was awarded the properties of the decedent by virtue thereof, and that the properties subject matter of said proceedings are the same properties litigated in the present controversy; and (2) that the plaintiff had renounced her claim to the estate of the deceased Jesus Zubiri. Thereafter, Wenceslao (Ben) Zubiri filed a motion to dismiss the complaint upon the ground that it is barred by res adjudicata. At the start of the hearing of the motion to dismiss, the parties agreed that since the ground of the motion to dismiss is but a reiteration of one of the affirmative defenses in the answer, the hearing to be conducted should be considered a preliminary hearing within the pur-view of Sec. 5, Rule 16 of the Rules of Court. The trial court did conduct a preliminary hearing with full opportunity to the parties to present their respective sides, and subsequently dismissed the complaint. Such preliminary hearings are not summary proceedings, but are separate trials of separate issues.[38] Hence, the order dismissing the complaint filed in Civil Case No. IL-219 is valid. The title of Wenceslao (Ben) Zubiri over the property adjudicated to him in Spec. Proc. No. IL-2 is, thus, confirmed. As a result, the issue of the withdrawal of accumulated rentals has become moot and academic. As owner of the

property, Wenceslao (Ben) Zubiri is entitled to its fruits.[39]

The filing of another complaint against Wenceslao (Ben) Zubiri (Civil Case No. 1298), disputing the order issued by the probate court in Spec. Proc. No. IL-2 on May 14, 1958, cannot be considered sufficient reason to order Wenceslao (Ben) Zubiri to return the rentals already withdrawn. The issues raised there-in have been previously determined and the complaint is a brazen attempt to make a mockery of the administration of justice. Thus, the petitioner claimed therein that the order is null and void because the probate court did not acquire jurisdiction over her person as she was not given notice of the hearing of the petition filed in Spec. Proc. No. IL-2. This claim is incompatible with her complaint filed in Civil Case No. IL-219 wherein she alleged the following:

"14. That Attorneys PELAEZ, PELAEZ & PELAEZ thru Atty. Efrain G. Pelaez, filed their appearance as attorneys of the plaintiff on July 20, 1957, appearing on page 48 of the record of the Special Proceeding No. IL-2, Intestate Estate of Jesus Zubiri, x x x;"[40]

Besides, the issue had already been determined by the trial court in the order of May 15, 1967, which dismissed the complaint filed in Civil Case No. IL-219. The trial court said the following:

"It could not be said that fraud was employed by Wenceslao (Ben) Zubiri in the procurement of said order because Aurora Camara, the plaintiff in this case, was duly notified of the filing of Special Proceeding IL-2 by Wenceslao (Ben) Zubiri before this court and of the pendency of the same not only thru publication, as required by the Rules of Court, but she had also personal knowledge of the filing and pendency of said case before this court as she retained the services of the law firm of Pelaez, Pelaez and Pelaez of Cebu City as her counsels in said case as borne out by the written appearance of said law firm found on page 43 of this record in said Special Proceeding No. IL-2. However, Aurora Camara did not file any opposition to the petition for administration of the intestate estate of Jesus Zubiri in Special Proceeding No. IL-2 so that said case was heard without her presence and of her counsels resulting in the issuance of the order, Exhibit 'I'. If Aurora Camara was left out as one of the surviving heirs of Jesus Zubiri in said Intestate Proceeding No. IL-2, it was due to her negligence or lack of interest in asserting and protecting her rights as an alleged surviving widow and heir of Jesus Zubiri in said intestate proceeding due to her failure and neglect to oppose the petition of Wenceslao (Ben) Zubiri in said case. She is, therefore, now estopped to indirectly ask for the setting aside of said order by the filing of this complaint which might result in the throwing out by another judge the order, Exhibit 'I', in Special Proceeding No. IL-2 which has long become final and executory and binding and conclusive against the herein plaintiff, Aurora Camara, and other persons interested. (Sec. 49 (a), Rule 39, Revised Rules of Court; Ramos et al. versus Ortuza, et al., supra.)"[41]

At any rate, We find that the questioned orders were not issued capriciously or whimsically because the orders allowing the withdrawal of rentals were made after the properties in dispute had already been awarded to Wenceslao (Ben) Zubiri, in Spec. Proc. No. IL-2, which proceeding has long since been terminated.

Besides, it appears that the said Wenceslao (Ben) Zubiri had put up a bond in favor of Aurora Camara Vda. de Zubiri to answer for whatever damages the said Aurora Camara Vda. de Zubiri might suffer by reason of the withdrawal of the deposited funds.[42]

But, be that as it may, the record shows that the petitioner had previously signified her intention to appeal from the disputed order of May 15, 1967 and her appeal had been dismissed by the trial court. The petitioner cannot now resort to certiorari after her appeal had been disallowed. In her memorandum, the petitioner, citing the late Chief Justice Moran, claims that certiorari could be substituted for appeal if the right to appeal was lost through fraud, accident, mistake or excusable negligence. The petitioner, however, has not shown probable merits of her claim.

WHEREFORE, the petition should be, as it is hereby, dismissed. With costs against the petitioner.

SO ORDERED.

Barredo, (Chairman), Abad Santos, and De Castro, JJ., concur.
Aquino, J., concurs in the result.

[**] Wenceslao (Ben) Zubiri died on November 9, 1969, (Rollo, p. 354) survived by his wife Luz Butalid Zubiri and their children Elnora Zubiri Almendras, Edna B. Zubiri, Elvin B. Zubiri, Eleanor B. Zubiri and Edwina B. Zubiri, (Rollo, p. 366).

[1] Rollo, p. 136.

[2] Id., p. 168.

[3] Id., p. 25.

[4] Id., p. 23.

[5] Id., p. 168.

[6] See G.R. No. L-16745, Dec. 17, 1966, 18 SCRA 1157.

[7] Rollo, p. 12.

[8] Id., p. 21.

[9] Id., p. 25.

[10] Id., p. 32.

[11] Id., p. 34.

[12] Id., p. 36.

[13] Id., p. 25.

[14] Id., p. 175.

[15] Id., p. 179.

[16] Id., p. 29.

[17] Id., p. 203.

[18] Id., p. 205.

[19] Id., p. 176.

[20] Id., p. 206.

[21] Id., p. 210.

[22] Id., p. 176.

[23] Id., p. 37.

[24] Id., p. 39.

[25] Id., p. 40.

- [26] Id., p. 42.
- [27] Id., p. 43.
- [28] Id., p. 52.
- [29] Id., p. 50.
- [30] Id., p. 216.
- [31] Rollo, p. 217.
- [32] Id., p. 175.
- [33] Id., p. 219.
- [34] Id., p. 226.
- [35] Id., p. 227.
- [36] Id., p. 238.
- [37] Id., p. 115.
- [38] King v. Wall & Weaver Street Corp., 45 F(2d) 377.
- [39] Art. 441, Civil Code.
- [40] Rollo, pp. 168, 172.
- [41] Id., pp. 25, 26-27.
- [42] Id., p. 42.

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