

JOHN U. OSMOND, PETITIONER, VS. THE COURT OF APPEALS; HON. SANTIAGO O. TANADA, PRESIDING JUDGE OF BR. XXXIII, CFI OF RIZAL, CALOOCAN CITY BRANCH; TERESITA O. NIBUNGCO AND PILAR ...

G.R. NO. L-35607. July 31, 1974

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for review of the decision of the Court of Appeals dated July 28, 1972 in CA-G.R. No. SP-01051 entitled John U. Osmond vs. Hon. Santiago O. Tanada et al. dismissing the petition for certiorari therein which impugned the order issued by the trial court placing under receivership the "business" of a corporation denominated Osmond Metal Works, Inc. which was never a party in this judicial controversy until it filed in this Court a motion to intervene which was granted without objection of all the other parties hereto.

Under date of August 7, 1971, herein private respondents, Teresita O. Nibungco and Pilar O. Cosgayon, filed a complaint with the trial court presided by respondent judge, the Honorable Santiago O. Tanada, alleging inter alia that sometime in 1955, they were in association with equal shares with their mother Lutgarda Umali and their brother Carlos U. Osmond in a business known as Carlos U. Osmond Metal Works; that later the said association took in or employed their father Henry V. Osmond as manager and their other brother John U. Osmond, now petitioner herein, as superintendent, on salary basis, but that in 1958, these two, conspiring and confederating together, in bad faith and for the purpose of defrauding plaintiffs of their share in the business aforementioned, formed a "fictitious" corporation, the Osmond Metal Works, Inc., and taking advantage thereafter of their positions as manager and superintendent as already stated absorbed all the business and assets of Carlos U. Osmond Metal Works into that of the Osmond Metal Works, Inc. and then later, contrary to an assurance that plaintiffs' "interests would be amply protected", defendants refused to recognize any share or interest of plaintiffs in the business of the corporation, whose recorded sole incorporators were their father Henry, their mother Lutgarda, their sister Virginia and their brothers John and Carlos; and that their mother Lutgarda, had died and her estate, of which her shares in the corporation were a part, had not yet been settled; and prayed that defendants be sentenced to (1) "make an accounting of the business of Osmond Metal Works, Inc. and deliver 1/4 of the profits thereof to each of plaintiffs"; (2) "transfer one-fourth of all the shares of stock of the corporation to each of them"; and (3) insofar as Henry Osmond was concerned, "settle the estate of their mother and deliver one-sixth share thereof to each of them."

Subsequently, on December 10, 1971, after a motion to dismiss filed by the defendants had been denied, a receivership of the "business" of the corporation was sought upon the grounds that "the business has been mismanaged; its funds have been used for purposes other than the operation and furtherance of the business; that there is no inventory of the equipment and supplies thereof; and that individuals who have no interest at all in the business have participated in the management; that "there is grave danger that the assets of the business may be lost or removed or concealed or materially injured, unless a receiver be appointed to guard and preserve it"; and

"that in view of estranged relations between plaintiffs and defendant John U. Osmond, the appointment of a receiver is the most convenient and feasible means of preserving and administering the business in litigation." This move was opposed by petitioner, principally upon the ground that it would be improper to place under receivership the "business" of the corporation, the same not being a party to the litigation. Over such opposition, on January 17, 1972, Judge Tanada granted the receivership prayed for. And in the certiorari proceeding in the Court of Appeals assailing such order of receivership as having been issued in grave abuse of discretion, the appellate court denied the petition, hence the instant petition to which the Court promptly gave due course, and, as already stated, later it granted the motion to intervene of Osmond Metal Works, Inc. and the other stockholders thereof including transferees of shares of stock therein.

After all briefs were filed, the Court decided to set the case for hearing and find out if in a confrontation among the parties, an earlier termination of the proceedings could be ironed out.

Effectively, at the hearing, the most important matter that came to the forefront was that as early as September 25, 1971, after the main action herein had been initiated, the parties had already entered into an amicable settlement or compromise of their differences as follows:

"A G R E E M E N T

Total shares of the Corporation to be divided as follows:

- John Osmond — forty percent (40%)
- Carlos Osmond — twenty five percent (25%)
- Teresita O. Nibungco — fifteen percent (15%)
- Pilar O. Cosgayon — fifteen percent (15%)
- Virginia Osmond — five percent (5%)

Our father, Henry Osmond, medical expenses to be borne by the Corporation; present salary to continue during his lifetime;

Virginia Osmond to get allowance equivalent to monthly minimum wage as fixed by law; medical expenses to be borne also by the Corporation.

- (Sgd.) JOHN OSMOND
- (Sgd.) CARLOS OSMOND
- (Sgd.) TERESITA NIBUNGCO
- (Sgd.) PILAR O. COSGAYON
- (Sgd.) VIRGINIA OSMOND

(SGD.) Gaudencio U.

(SGD.) Ramona Umali

(SGD.) Enriqueta U. Francisco

(SGD.) Genoveva P. Mendoza."

Accordingly, and inasmuch as this agreement has the effect and authority of res adjudicata upon the parties and could be enforceable as a formal judgment once judicially approved, pursuant to Article 2037 of the Civil Code, it is obvious that, unless all the parties have decided to disregard the same, all proceedings held subsequent thereto had no reason for being, the whole controversy among the parties having become moot and academic. It was,

therefore, pointed out that the most expeditious and simple remedy of private respondents is to either seek specific performance of the compromise or have the same approved by the trial court and thereafter have the judgment executed.

After all, the receivership sanctioned by the Court of Appeals does not appear to be very well in order, if only because the corporation whose "business" and properties are directly subjected thereto was not a party in the proceedings below, and in this respect, the allegation that the incorporation thereof was fraudulent and fictitious is no excuse for its non-joinder not to speak of the fact that respondents' allegation in their complaint that when the corporation was formed, their father Henry and brother John had given their assurances that their interests would be protected would seem to belie their theory about the fictitiousness of said corporation. And with regard to the claim of petitioner that the agreement was not signed by Virginia, that matter can be threshed out in the proceeding for the approval or enforcement thereof, it being alleged by respondents that she had verbally agreed thereto.

The Court required the parties to submit within ten (10) days from July 5, 1974, a written manifestation as to whether or not they would rather proceed along the lines just indicated instead of awaiting a judgment on the merits of their respective contentions. Up to the present, only petitioner's and intervenors' counsel have manifested their willingness to forego their procedural pose. Under the circumstances, the Court feels it can dispose of this case in spite of private respondents' disrespectful non-compliance with its resolution of July 5, 1974.

WHEREFORE, the decision of the Court of Appeals of July 28, 1972 is reversed and the order of receivership of the trial court and all its orders related thereto are set aside, without prejudice to private respondents taking the corresponding steps to enforce the compromise agreement of September 25, 1972, including the possibility of another receivership, reserving at the same time to the petitioner and intervenors whatever defense they might have against such enforcement. Costs against private respondents.

Zaldivar, (Chairman), Fernando, Antonio, Fernandez, and Aquino, JJ., concur.

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