

**TERESA, NICOLASA, BERNARDO, ALL SURNAMED FERRER AND
PATERNO BANDORIO, PETITIONERS, VS. HON. CESARIO C. GOLEZ,
PRESIDING JUDGE OF BRANCH I, COURT OF FIRST INSTANCE OF
CAPIZ, ADER...**

G.R. Nos. L-23370-71. September 28, 1968

Ponente: DIZON, J.

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DIZON, J.:

Petition for certiorari and mandamus filed by Teresa, Nicolasa, Bernardo, all surnamed Ferrer, and Paterno Bandorio, against the Honorable Cesario C. Golez, Presiding Judge, Branch I, Court of First Instance of Capiz, Aderiano, Bernardo, Leoncia, all surnamed Leonor, and others, praying "that the respondent presiding judge, Honorable Cesario C. Golez be ordered to set aside his Order of May 5, 1964, granting motion to dismiss of plaintiff-appellee Leoncia (Aloncia) Leonor the same being issued without jurisdiction and null and void ab initio; to give due course to the appeal by plaintiffs-appellants in Civil Cases Nos. V-2589 and V-2607; ordering respondent presiding judge the substitution of the decedent plaintiff-appellant Rufino Ferrer by his legal heirs and attorneys-in-fact, who are the legitimate heirs of the deceased; and granting unto the petitioners such other or further relief as may be deemed just and equitable".

In Civil Case No. V-2589 of the court named above, Rufino Ferrer filed a complaint to annul certain deeds of sale and to recover from the therein defendants Aderiano Leonor and others the ownership and possession of one-half of the five parcels of land described in said pleading, with damages.

In Civil Case No. V-2607 of the same court, the spouses Leoncia Leonor and Rufino Ferrer filed a verified complaint against Nicasio Timtiman and others to annul the deed of sale attached thereto as Annex A and the deed of mortgage allegedly executed by them in favor of the spouses Nicasio Timtiman and Bibiana L. Timtiman, and to recover ownership and possession of the parcel of land described in said pleading and instruments, also with damages.

As the parcel of land involved in the second case was one of the five parcels subjectmatter of the first and both cases involved the same parties, they were consolidated.

In Civil Case No. V-2589 defendant Enicitas Corsino Vda. de Leonor filed her answer (See the record on appeal attached to the petition under consideration as Annex C, p. 28-32), while the other defendants Enicitas Corsino Vda. de Leonor, Aloncia Leonor Ferrer, Aderiano and Bernardo Leonor and Silvestre Bandorio filed their respective separate answers (See at pp. 10-12, 28-40 of the record).

As the present action does not involve the merits of the case, all that we need to state here is that all the answers of the defendants prayed that the complaint be dismissed and that the sales sought to be annulled be declared valid.

In Civil Case No. V-2607 the spouses Nicasio Timtiman and Bibiana L. Timtiman filed their answer to the

complaint now appearing at pp. 34-40 of the same Annex C, praying, in-ter alia, for a declaration of the validity of the deed of sale questioned in the complaint, and for damages.

The other defendant Enicita Corsino filed her own answer now appearing at pp. 4-45 of the same Annex C praying for the dismissal of the complaint and for a declaration of validity of the deed of sale questioned in the complaint, and for damages.

The plaintiffs, in turn, filed their answer to the counterclaims interposed by the defendants.

After several incidents involving the issuance of a writ of preliminary injunction, the cases were tried on the merits and finally, on July 23, 1963, the Court rendered its judgment now appearing at pp. 95-101 of Annex C, the dispositive portion of which reads as follows:

"WHEREFORE, judgment is hereby entered dismissing the complaint in the above-captioned cases, with costs in both instance against the plaintiffs. The defendants Necitas Leonor and her co-defendants, her minor children, are hereby declared owners of the land in Batiano (described in Exhibit 5) and the land in Maralag (described in Exhibit 6), except the portion of two and a half (2-1/2) hectares of the Maralag, land, which is hereby declared as the property of the spouses defendants Nicasio Timtiman and Bibiana L. Timtiman by virtue of the sale a retro embodied in Exhibit 16. Said defendants are likewise declared entitled to possession of their respective properties, and Plaintiffs are hereby ordered to pay to the defendants spouses Timtiman 40 Cavans of palay per agri-cultural crop year starting the month of April 1962 or their equivalent marked value until the portion of the Maralag land pertaining to said Timtimans shall have been returned to them."

It is not disputed that the defeated parties filed their notice of appeal, appeal bond and record on appeal amended subsequently pursuant to an order of the court - within the reglementary period, and that the appeal was duly perfected on January 3, 1964.

It is also an admitted fact that Rufino Ferrer, plaintiff in Civil Case No. V- 2589, died in the month of December 1963 - five months after the cases were decided. On April 27, 1964, after the perfection of the appeal mentioned heretofore but before the elevation of the record on appeal and other pertinent papers to the Court of Appeals, his widow, Leoncia Leonor: filed in both cases a motion to dismiss the appeal interposed therein (Exhibit D attached to the petition). Said motion was granted by the respondent judge in his order of May 6 the same year (Exhibit E attached to the same petition).

Under date of May 20, 1964 Paterno Banderio, through counsel, filed an unverified motion to set aside the order of the Court dismissing the appeal, with a notice to the Clerk of Court to set it for hearing ten days later. On May 30, 1964 the respondent judge issued an order declining to take cognizance of, and to act upon said motion for re-consideration because of movants' failure to serve notice thereof upon the attorney of record of the adverse party (Exhibit G attached to the petition).

It appears further that on May 27, 1964, that is, previous to the issuance of the abovementioned order of May 30, 1964, the respondent judge, acting upon a motion for execution filed by the winning parties, issued an order for the issuance of said writ in view of the fact that, according to the record, the decision rendered in both cases had become final and executory due to the withdrawal of the appeal interposed by the defeated parties.

Under date of June 8, 1964 Paterno Banderio again filed a motion for reconsideration of the order dismissing the appeal and for another order suspending enforcement of the writ of execution.

Under date of July 10, 1964, another motion to set aside the order granting the motion to dismiss the appeal was filed by Teresa, Nicolasa, and Bernardo Ferrer, and also by Paterno Banderio - the latter as alleged

attorney-in-fact of the spouses Leoncia Leonor and of the deceased Rufino Ferrer - supported by an alleged affidavit of merit whose main allegations were that Leoncia Leonor was the surviving spouse of the deceased Rufino Ferrer; that the latter had died intestate and without any dependents; that his only surviving heirs were his widow and his sisters, the movants Nicolasa and Teresa Ferrer, the other movant Paterno Bandorio being only the son of the latter; that the order of dismissal was irregularly issued because the motion to dismiss the appeal was filed by Leoncia Leonor alone.

Resolving the two motions for reconsideration mentioned above, the respondent judge on July 18, 1964 issued an order of the following tenor:

"With the objection of counsel for the defendants on the ground that the movants herein are strangers to those cases, the motion to set aside the within order granting a previous motion filed by the plaintiffs to dismiss the appeal is, for lack of merits, hereby dismissed."

As stated heretofore, the respondent judge refused to take cognizance of, and act upon the motion for re-consideration filed by Paterno Bandorio under date of May 20, 1964 because of the latter's failure to serve notice thereof upon the attorney of record of the adverse party. In other words, his Honor considered said motion - end correctly so - as a motion pro-forma. As such, therefore, it did not suspend the running of the period of appeal from the order of dismissal.

The second motion for reconsideration filed by Paterno Bandorio was dated June 8, 1964, while the third filed by the same party, together with Teresa and Nicolasa Ferrer, was dated July 10, 1964. The former may be pre-sumed to have been filed within the reglementary period of thirty days from notice of the order dismissing the appeal, but the contrary presumption applies to the latter because it was filed more than sixty days from the date of the issuance of the order dismissing the appeal. More-over, the respondent judge found that all the parties who filed the motions to set aside the order dismissing the appeal had no legal standing in the case.

Paterno Bandorio filed said motions in his alleged capacity as attorney-in-fact of the spouses Rufino Ferrer and Leoncia Leonor. As far as Rufino Ferrer is concerned, said power of attorney, assuming it to have been validly executed, must be deemed to have lapsed upon his death which took place in the month of December 1963. On the other hand, it must be deemed to have been cancelled or withdrawn by the surviving principal, Leoncia Leonor, when the latter took over the prosecution of the case by filing a motion to dismiss the appeal interposed by her.

As far as the other movants are concerned, namely, Teresa and Nicolasa Ferrer, it does not appear that they had ever asked the respondent court to allow them to intervene or to allow the substitution of the deceased Rufino Ferrer either by his legal representative or by his intestate heirs - which they claim to be, together with the surviving spouse. Therefore, the pronouncement made by the respondent judge to the effect that they were strangers to the case at the time their motion for reconsideration was filed and was resolved is correct.

Upon the foregoing, it is clear that the respondent judge, in issuing the order granting the motion for the dismissal of the appeal, acted within his jurisdiction and did not commit any grave abuse of discretion amounting in law to lack of jurisdiction. Consequently, the writs prayed for are denied and the present action is hereby dismissed, with costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Sanchez, Castro, Angeles, and Fernando, JJ., concur.
Zaldivar, J., did not take part.

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