

MANILA TRADING AND SUPPLY CO., PETITIONER, VS. HON. EDUARDO D. ENRIQUEZ, IN HIS CAPACITY AS JUDGE OF THE COURT OF FIRST INSTANCE OF NEGROS OCCIDENTAL, AND SOCORRO ZAYCO, RESPOND...

G.R. No. L-12836. April 26, 1961

Ponente: LABRADOR, J.

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LABRADOR, J.:

Petition for mandamus with preliminary injunction to compel the respondent judge of the Court of First Instance of Negros Occidental to approve the record on appeal filed by the petitioner herein in Special Proceedings Nos. 6682 and 854 of said court, respectively entitled "Testate Estate of Lorenzo Zayco" and "Testate Estate of Flora Rubin", and to enjoin the respondent administratrix from disposing of the properties of these estates pending consideration of this petition. Upon the filing of the petition we granted the preliminary injunction.

In said Special Proceedings Nos. 6682 and 854, the respondent judge issued an order approving a plenary project of partition submitted by the respondent administratrix and said order is now the subject of appeal in the Court of Appeals as CA-G. R. Nos. 20262-R and 20263-R. The plenary project of partition approved in said order excludes therefrom the petitioner Manila Trading & Supply Company.

On May 27, 1957 after the perfection of said appeal, the respondent administratrix sent a notice to the petitioner that she would submit for the approval of the trial court her "Partial Project of Partition and Declaration of Heirs dated June 24, 1956." This partial project of partition was filed earlier than the plenary project and was then still pending before the trial court.

When this partial project of partition was filed, an opposition thereto dated July 24, 1956 was presented by the petitioner, alleging that if the partial project is approved, there will be no other properties against which the petitioning company may resort to, if after accounting it is entitled to more than the value of the lots mentioned in the "certificado de Venta definitiva". Again when said partial project was resubmitted, the petitioner filed another opposition dated May 29, 1957, thus:

"COMES NOW claimant, Manila Trading & Supply Co., through counsel, and before this Honorable Court respectfully states:

I

That in an order dated November 23, 1956, this Honorable Court approved the Project of Partition presented by the administratrix on February 25, 1956.

II

That the said order of this Honorable Court dated November 23, 1956 is now on appeal before the Court of Appeals.

III

That the approval of the project of partition dated February 25, 1956 is tantamount to a denial of the Partial Project of Partition and Declaration of the Heirs dated June 24, 1956.

WHEREFORE, it is respectfully prayed that in view of the foregoing facts, the Partial Project of Partition and Declaration of Heirs dated June 24, 1956 cannot and should not now or hereafter be resubmitted for consideration by this Honorable Court.

Manila for Bacolod City, May 29, 1957."
(Annex 'B', p. 16, Records.)

On June 10, 1957, the court overruled the objection of petitioner thereto on the ground that the properties partitioned are not encumbered in favor of the Manila Trading Company. The order also contained a declaration of heirs. On July 8, 1957, petitioner filed a motion for reconsideration which reads as follows:

"COMES NOW claimant, Manila Trading & Supply Co., through counsel and before this Honorable Court respectfully moves for a reconsideration of the order of this Honorable Court dated June 10, 1957 and received by the undersigned on June 20, 1957.

Without waiving or abandoning the grounds for the opposition set forth in our first opposition dated July 24, 1956 filed shortly after receipt by the undersigned of the "Motion, for Approval of Partial Project of Partition and Declaration of Heirs", the attention of this Honorable Court is respectfully called to our opposition dated May 29, 1957 which was filed shortly after the undersigned received on May 27, 1957 the notice from the attorney for the administratrix to the effect that the "Partial Project of Partition and Declaration of Heirs" dated June 24, 1956 would be resubmitted for consideration, by this Honorable Court. In the last mentioned opposition dated May 29, 1957, it was pointed out that in an order dated November 23, 1956, this Honorable Court, approved the Project of Partition presented by the administratrix on February 23, 1956 is now on appeal before the Court of Appeals docketed as cases CA-G. R. Nos. 20262-R and 20263-R. It was also pointed out that the approval of the Project of Partition dated February 25, 1956 which is now on appeal had the effect of denying the "Partial Project of Partition and Declaration of Heirs" dated June 24, 1956.

It is respectfully submittedN that since the perfection of the appeal from the order of this Honorable Court dated November 23, 1956 approving the Project of Partition this Honorable Court lost jurisdiction to consider or approve any other Project of Partition including the "Partial Project of Partition and Declaration of Heirs." (Annex "D", pp. 20-21, Records).

The motion for reconsideration above set forth was denied in an order dated July 13, 1957. On July 30 r 1957 petitioner filed its record on appeal, appeal bond and notice of appeal. Opposition to the approval thereof was filed on August 7, 1967 on the ground that it was filed out of time and that it contains pleadings foreign to the appeal. On August 10, 1957, the court disapproved the record on appeal on two grounds, namely, that the motion for reconsideration dated July 8, 1957 (filed the following day) is pro forma and did not suspend the running of the period for appeal, and that the record on appeal contain matters not related to the order sought to be appealed from. On August 17, 1957, before the petitioner received the order of denial, it filed a reply to the opposition to the approval of the record on appeal, and on August 22, 1957, it again filed a motion for reconsideration of the order disapproving the record on appeal. The motion for reconsideration having been denied on August 27, 1957, the present petition was filed.

The principal question for resolution is whether or not the motion for reconsideration filed by petitioner on July 8, 1957 is pro forma and did not suspend the running of the period for appeal.

The reason given by the respondent court for considering the motion for reconsideration as pro forma is that it

does not allege any new ground or matter aside from those already alleged in petitioner's two oppositions and it did not, therefore, suspend the running of the period, for the perfection of the appeal. Petitioner contends that the cases cited by the court below to support its conclusion do not apply because in said cases the motions alluded to were second motions for reconsideration, not first motions such as the one at bar. We find petitioner's contention meritorious, i. e., that the rule on pro forma motions enunciated therein cannot apply because they refer to second motions for new trial or reconsideration. In the case at bar only one motion for reconsideration has been presented and Rule 37 Section 4 is inapplicable (for it expressly refers to a second motion).

But even if the motion for reconsideration now under consideration were a second motion, still it may not be considered as pro forma because it alleges another ground for the setting aside of the decision, namely, that the court a quo has lost jurisdiction to consider the partial project of partition because the project of partition had already been approved by it and was then on appeal to the Court of Appeals.

The order denying the approval of the record on appeal is hereby set aside and the petition is granted; The court below is hereby ordered to forward the record on appeal and all pertinent papers as the Rules provide. The preliminary injunction is hereby made permanent. With costs against respondents.

Bengzon, Acting C.J., Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Paredes, and Dizon, JJ., concur.

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