

MACARIA INOC VDA. DE LEGASPINA, ESTELA L. MIRANDA, TERRY LEGASPINA, CECILIA LEGASPINA, DANILO LEGASPINA, MARINA LEGASPINA, AND HELEN LEGASPINA, PETITIONERS, V. HON. ROLANDO G. M...

Ponente: ELBINIAS, J.

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ELBINIAS, J.:

For disposition is a Petition for Certiorari[1] filed under Rule 65 of the Rules of Court. The Petition assails the Order[2] dated June 1, 2004 issued by Hon. Judge Rolando G. Misleng (“respondent Judge” for brevity) of the Regional Trial Court of Dagupan City, Branch 42 (“respondent court” for brevity) in SP. PROC. No. D-2758 and CIVIL CASE No. 10370-D[3]. The Petition also questions the respondent court's Order[4] dated July 7, 2004, which denied petitioners' eventual Motion for Reconsideration[5].

The pertinent facts are as follows:

On November 28, 1997, a Joint Decision[6] was rendered by respondent court in the two (2) consolidated cases docketed as Special Proceeding No. D-2758 and Civil Case No. 10370-D. Special Proceeding No. D-2758 was filed by Gregoria Legaspina Narvasa (“Gregoria” for brevity) for the appointment of an Administrator for the several parcels of land (“subject estate” for brevity) left by the spouses Juan Legaspina and Romana Blanquera, who both died intestate. Civil Case No. D-10370 was filed by Gregoria for the partition of the subject estate.[7]

Considering that the Joint Decision[8] had become final and executory[9], respondent court issued a Writ of Execution[10] on January 7, 1999 upon Motion of Gregoria.[11]

However, the heirs failed to agree on how the remaining portion of the subject estate, particularly the land covered by OCT No. 2957 (“remaining portion of the estate” for brevity), should be distributed to them. Consequently, respondent court issued an Order[12] dated June 26, 2002, which stated that the “remaining portion of the land covered by OCT No. 2957 should be divided” by the five (5) heirs or their predecessors-in-interest in the manner convenient to them.[13] The dispositive portion of the Order[14] decreed:

“WHEREFORE, premises considered, this Court rules and so holds that the share of petitioner-appellee Gregoria Legaspina Narvasa from the land covered by OCT No. 2957 should be carved out as shown in the Sketch prepared by the son of petitioner-appellee and as shaded in yellow color with the dimensions of 142 meters on the west and east sides and 172 meters on the north and south sides thereof. The Court cannot go along with the idea that the share of the oppositors-appellants should be Lots 2 and 4 of the Sketch prepared for the oppositors-appellants by Geo Engr. Tandingan as it will not be in accord with the spirit of the decision that the heirs will retain that portion of the estate under their respective control. Under the Sketch prepared by Engr. Nodesto Narvasa, Jr. the area in actual physical possession of petitioner-appellee has been merely enlarged (sic) the additional area of which to complete the total area of what should pertain to the latter as her share taken from the portion of the land adjacent to the area already in her physical possession. Indeed, it is grossly unfair for the petitioner-appellee to be given an area with a hilly terrain, not adjacent to the area occupied by her house at that.

Since the five other heirs or their predecessors-in-interest have chosen to band together to take issue with the petitioner-appellee the remaining portion of the land covered by OCT No. 2957 should be divided among themselves in the manner convenient to them.

SO ORDERED.”[15] (Emphasis supplied)

Subsequently, one of the heirs, private respondent Brgy. Captain Raul Ariel Abaoag (“private respondent” for brevity), started to construct a house on an area (“disputed area” for brevity) of the remaining portion of the estate, which area was being occupied by petitioners Macaria Inoc vda. de Legaspina, Estela L. Miranda, Terry Legaspina, Cecilia Legaspina, Danilo Legaspina, Manina Legaspina, and Helen Legaspina (“petitioners” for brevity).[16]

On March 1, 2004, petitioners filed an “URGENT APPLICATION FOR THE ISSUANCE OF A TEMPORARY RESTRAINING ORDER AND/OR WRIT OF PRELIMINARY INJUNCTION”[17] (“Application for TRO And/Or WPI” for brevity) in order to enjoin private respondent from “further constructing a house on the portion allotted to Luis Legaspina”[18].

On June 1, 2004, respondent court issued the assailed Order[19] denying petitioners' Application for TRO And/Or WPI.[20]

After petitioners' Motion for Reconsideration[21] was denied by the respondent court in the other assailed Order[22] dated July 7, 2004, petitioner filed the Petition[23] at bench, praying that the “Petition be given due course and that the Orders dated June 1, 2004 and July 7, 2004 issued by respondent Judge be annulled and that the respondent Judge be declared to have acted with grave abuse of discretion amounting to lack or excess of jurisdiction and that a temporary restraining order or writ of preliminary injunction be issued.”[24]

Petitioners raised this lone ground:

“The respondent Judge has acted in excess of or with grave abuse of discretion amounting to lack of jurisdiction in not issuing a temporary restraining order and writ of preliminary injunction.”[25] (Emphasis was made in the original)

To begin with, on November 17, 2010, petitioners submitted a COMPLIANCE[26] which stated that the “decision based on the compromise agreement has rendered the instant case moot and academic”. However, such COMPLIANCE[27] did not specifically state that the Petition at bench should be dismissed. Moreover, no sufficient showing was made that the property subject of the compromise agreement which was stated in the attached Decision[28] of the Regional Trial Court of Dagupan, Branch 44 in Civil Case No. 2003-0299-D was the same property subject of the Petition[29] at bench, such as to render the Petition[30] moot and academic. Private respondent failed to file any Comment to petitioners' COMPLIANCE[31] despite being directed to do so by Us in a Resolution[32] dated October 7, 2010. Thus, there is a need to delve into the merits of the Petition.

Contrary to petitioners' arguments in their sole assigned ground, respondent court properly denied petitioners' Application for TRO And/Or WPI[33].

Petitioners had argued as follows:

“The only issue to be resolved in this petition is whether or not the respondent Judge committed grave abuse of discretion amounting to lack of jurisdiction in refusing to issue a temporary restraining order or writ of preliminary injunction to stop the private respondent Brgy. Capt. Abaoag from entering the disputed portion of the estate in question and constructing a residential house therein.

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Under the foregoing circumstances, the petitioners have all the rights to prevent the private respondent from taking over a portion of the estate covered by OCT No. 2957 to the exclusion of the remaining four other heirs. It is thus grave abuse of discretion amounting to lack of jurisdiction when the respondent Judge refused to issue a temporary restraining order or writ of preliminary injunction to stop the private respondent from taking possession of a portion of the property covered by OCT No. 2957 and constructing a house therein. The authority of the respondent Judge to grant the same had he chosen so is not without any factual and legal bases. Firstly, the cases at bar are for partition of the estate of Juan Legaspina and Romana Blanquera. The joint decision rendered therein has become and final (sic) executory. In fact, the share of Gregoria Legaspina Narvasa has been fully satisfied. xxx

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But the division of the remaining estate among the five (5) other heirs as proposed by the Sheriff did not merit the approval of the heirs of Luis Legaspina. Hence, the Motion for Reconsideration of the Order dated December 1, 2003. The fact that the four (4) heirs have given their imprimatur to the proposed sharing by the Sheriff does not authorize any one of them to appropriate for himself a portion of the remaining estate. xxx

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Secondly, the Order dated June 26, 2002 of then Honorable Presiding Judge Luis M. Fontanilla is very clear that 'the remaining portion of the land covered by OCT No. 2957 should be divided among themselves in the manner convenient to them.' The records will show that the remaining heirs continue to disagree on the partition of the remaining area of the estate. Thus, private respondent has no authority to do a shortcut to appropriate for himself a definite portion of the estate without the consent of the other remaining heirs.

Thirdly, the partition proposed by Sheriff Tomas Eugenio as contained in his Manifestation/Motion is not acceptable to the heirs of Luis Legaspina, the herein petitioners. Hence, the pendency of their Motion for Reconsideration on the order giving due course to the Manifestation/Motion of the Sheriff. Thus, there is nothing definite yet as to the segregated shares of the other remaining heirs. Ergo, private respondent is without rights to arrogate unto himself a particular portion of the estate.

Partition may be made by agreement between the parties or by judicial proceedings. Partition shall be governed by the Rules of Court insofar as they are consistent with this Code (Art. 496, Civil Code). Since the heirs have decided to bring the issue of their inheritance to the court, they have to abide by the laws and rules in the distribution of the estate. And if any one of them attempts to deviate from the established procedure then he should be stopped in his tracks. Thus, when private respondent entered the portion intended for the petitioners, he should be stopped to preserve the status quo until a hearing can be had to determine the propriety of injunctive relief, temporary or permanent. xxx Thus, respondent Judge, with due respect, failed in his bounden duty when he refused to act accordingly.”[34] (Emphasis supplied)

Defeating petitioners' arguments however, is that the grant or denial of a Writ of Preliminary Injunction rests on the sound discretion of the court and must not be interfered with, except when there is grave abuse of discretion.[35] Here, respondent judge denied petitioners' Application for TRO And/Or WPI[36] for petitioners' failure to show that they were clearly entitled to the disputed area of the remaining portion of the estate where private respondent had constructed a house.

Records reveal that the remaining portion of the estate was still co-owned by the five remaining heirs, including petitioners and private respondent. Given that no division of the remaining portion of the subject estate was made by the heirs, then private respondent, as a co-owner, could exercise his rights over the undivided portion of the subject estate, including the disputed area.

Consequently, petitioners could not assert their rights over the remaining portion of the estate to the exclusion of

all the other heirs, including private respondent, who was only exercising his rights as a co-owner of the property. That a party, such as petitioners here, seeking for the issuance of a Writ of Preliminary Injunction must show that he is clearly entitled to the rights sought to be enjoined is pursuant to the following pronouncement of the Supreme Court in Jose T. Barbieto vs. The Honorable Court of Appeals, et al.[37]:

“For the writ to issue, two requisites must be present, namely, the existence of the right to be protected, and that the facts against which the injunction is to be directed are violative of said right. xxx

A writ of preliminary injunction may be granted only upon showing by the applicant of a clear and unmistakable right that is a right in esse. Maj. Gen. Barbieto claims that his right in esse that is being violated herein is his right to liberty.” (Emphasis supplied)

No reason was therefore shown to justify any deviation from the following findings of respondent court, which were in accordance with the facts and the law:

“Upon examining the records of the cases, this Court is not convinced to grant the application for a temporary restraining order and/or writ of preliminary injunction in favor of the petitioners. In not granting the application, this Court hereby reproduces and adopts the ratiocination in its order dated December 1, 2003 on the point raised by the petitioners that the distribution of the remaining area of the land covered by OCT No. 2957 should be in accordance with the Sketch Plan prepared by Engr. Modesto Narvasa, Jr., xxx

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Therefore, since the remaining area of the land covered by OCT No. 2957 is still under co-ownership and that there is yet no specific portion thereof allocated to each of the remaining heirs in view of their disagreement, this Court believes that Hon. Judge Luis M. Fontanilla's order dated June 26, 2002 viz. the last paragraph of the dispositive portion shall be observed.”[38] (Emphasis supplied)

After careful consideration of all the facts, arguments, and issues appearing on the records, as well as of the pertinent laws and jurisprudence, respondent court, in issuing the assailed Resolutions, was shown not to have committed grave abuse of discretion, which in turn is meant as such capricious and whimsical exercise of judgment that is equivalent to an excess or lack of jurisdiction.[39]

IN VIEW OF ALL THESE, the Petition for Certiorari is DENIED.

SO ORDERED.

Dicdican (Chairman) and Dimagiba,[*] JJ., concur.

[*] Acting Junior Member vice J. Paredes per Office Order No. 34-14-RSF dated January 30, 2014.

[1] Rollo, pp. 2 - 12

[2] Rollo, pp. 15 - 17

[3] Rollo, p. 15

[4] Rollo, p. 18

[5] Rollo, pp. 95 - 96

[6] Rollo, pp. 19 – 41

[7] Rollo, pp. 46 - 47

- [8] Rollo, pp. 19 – 41
- [9] Rollo, pp. 43, 49, 61 - 62
- [10] Rollo, pp. 46 - 47
- [11] Rollo, pp. 46 - 47
- [12] Rollo, pp. 49 - 52
- [13] Rollo, p. 52
- [14] Rollo, pp. 49 - 52
- [15] Rollo. pp. 51- 52
- [16] Rollo, p. 6
- [17] Rollo, pp. 84 - 88
- [18] Rollo, p. 86
- [19] Rollo, pp. 15 - 17
- [20] Rollo, p. 17
- [21] Rollo, pp. 95 - 96
- [22] Rollo, p.18
- [23] Rollo, pp. 2 - 12
- [24] Rollo, p. 12
- [25] Rollo, p. 9
- [26] Rollo, p. 131
- [27] Rollo, p. 131
- [28] Rollo, pp. 133 - 135
- [29] Rollo, pp. 2 - 12
- [30] Rollo, pp. 2 - 12
- [31] Rollo, p. 131
- [32] Rollo, pp. 129 - 130
- [33] Rollo, pp. 84 - 88
- [34] Rollo, pp. 9 - 12
- [35] Australian Professional Realty, Inc., Jesus Garcia, and Lydia Marciano vs. Municipality of Padre Garcia Batangas Province, G. R. No. 183367, March 14, 2012
- [36] Rollo, pp. 84 - 88
- [37] G.R. No. 184645, October 30, 2009

[38] Rollo, pp. 15 - 17

[39] First Women's Credit Corporation, et al. v. Glicerio Perez, G.R. No. 169026, June 15, 2006

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