

CIRILO D. DOLAR AND LUIS B. TUPAS, PETITIONERS, VS. CARLOS L. SUNDIAM, GREGORIO LIRA AND REMIGIO LUMAMPAO, RESPONDENTS.

G.R. No. L-27631. April 30, 1971

Ponente: CASTRO, J.

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CASTRO, J.:

This is an original action for certiorari and prohibition to set aside an order of the Court of First Instance of Iloilo dated December 1, 1966, in Special Proceeding 472, granting the petition of the herein respondent Remigio Lumampao for the appointment of a receiver over two (2) parcels of land subject of a motion, filed by the said respondent Lumampao, to set aside the sale thereof made by the herein petitioner Luis Tupas, in his capacity as judicial administrator of the testate estate of one Generoso Tupas, Sr., in favor of his herein co-petitioner Cirilo Dolar.

On June 25, 1948, one Generoso Tupas, Jr. filed a petition with the Court of First Instance of Iloilo (docketed as Special Proceeding 472) for the allowance of his father's will and the appointment of an administrator for the deceased's estate. The deceased was survived by his spouse, his son Generoso Tupas, Jr., and his other children by a first marriage.

After the probate of the will and the appointment of the deceased's widow (later replaced by Luis Tupas) as judicial administrator of the testate estate, Generoso Tupas, Jr., on December 5, 1953, sold to the herein respondent Lumampao, for the price of P40,000, two (2) parcels of land bequeathed to him by his father. On August 9, 1955, Lumampao, by virtue of this purchase, asked the surrogate court to be allowed to intervene in the proceedings. The court granted his motion.

On July 9, 1956, a project of partition of the testate estate, comprising at least two hundred twenty-three (223) hectares, was submitted to the probate court for approval, by the herein petitioner Luis Tupas, as judicial administrator thereof. The two parcels of land of the testate estate previously sold to Lumampao, with an area of ninety-two (92) hectares, more or less, were thereunder expressly assigned to Generoso Tupas, Jr. This project of partition was approved by the probate court on July 16, 1956.

On February 18, 1957, however, a complaint for the recovery of the said two parcels of land was filed by Lumampao against Generoso Tupas, Jr. and Luis Tupas with the Court of First Instance of Iloilo (docketed as civil case 4276), on the ground that the defendants therein, by use of force, threats, stealth, strategy and intimidation, deprived him of the possession of the said properties and gathered all the products therefrom. The validity of the sale to him of these properties, which was brought in issue in the said case, was upheld by the court a quo on May 15, 1959.

This decision, in turn, was affirmed on appeal, by the Court of Appeals in CA-G.R. 26507-R on April 2, 1964. The dispositive portion of the appellate court's decision reads as follows:

“WHEREFORE, the judgment appealed from [declaring Lumampao the owner of said parcels of real estate] is AFFIRMED, with the modification that Generoso Tupas, Jr. pay plaintiff P437.20 and that defendants pay plaintiff P4,000.00 for the bodega and sugar mill and P6,000.00 annually from the crop year 1954-55 up to the delivery of the land to plaintiff. Costs against defendants.”

The foregoing decision was appealed to this Court in L-23134, but in a minute resolution dated December 15, 1964 we dismissed the appeal.

Prior to the final adjudication on the aforementioned complaint of Lumampao, however, Luis Tupas filed with the probate court, on February 9, 1960, a motion for authority to sell four (4) parcels of land of the testate estate for the payment of taxes due to the Government in the amount of P1,701.68, attorney's fees and other obligations. The said motion included the two parcels of land previously sold to Lumampao. The motion was approved by the probate court on February 13, 1960 with Judge Wenceslao Fernan presiding, subject to the condition that "before executing the sale, the price must first be referred [to] and approved by this Court."

For some unexplained reason, Luis Tupas did not take any action relative to the foregoing authority, for, on May 14, 1963, or more than three (3) years later, another motion for authority to sell the same parcels of land mentioned in his motion of February 9, 1960 was filed by him with the probate court, again for the payment of municipal taxes in the same amount of P1,701.68 and P10,000 for counsel's services. This motion, however, unlike the first motion, bore the signed conformity of the heirs of the deceased, except Generoso Tupas, Jr. The said motion was approved on May 31, 1963 by the probate court, with Judge Jesus Rodriguez, presiding, subject to the condition that the real properties mentioned therein shall be sold, as per prayer of Luis Tupas, for not less than P15,000.

On June 4, 1963, Luis Tupas sold to his herein co-petitioner Cirilo Dolar for the price of P15,000 the four (4) parcels of land specified in his motion, comprising an aggregate area of 143 hectares, more or less, inclusive of the 92 hectares previously sold to Lumampao by Generoso Tupas, Jr. for P40,000. It will be noted that at this time, the validity of the sale to Lumampao was still pending adjudication in the Court of Appeals.

On January 24, 1964, the probate court, through Judge Imperial Reyes, who temporarily took over the functions of the court a quo in the absence of its presiding judge who was then in Manila, affixed his signature at the foot of the deed of sale executed by Luis Tupas to his co-petitioner Cirilo Dolar, indicating his conformity therewith.

On November 6, 1965, Lumampao, in his capacity as intervenor in the settlement proceedings, filed with the surrogate court an amended motion to set aside the order of the said court dated May 31, 1963 insofar as it authorized the sale of the two (2) parcels of land conveyed to him by Generoso Tupas, Jr. Among the grounds adduced by Lumampao in his motion are (a) that the said parcels of land belong to him by virtue of a final and executory decision of the Court of Appeals; (b) that contrary to section 7(b), Rule 89 (formerly Rule 90) of the New Rules of Court no notice was given to him and to some of the heirs of the deceased of both motions of Luis Tupas for authority to sell said properties; (c) that the probate court's approvals of the said motions were all made without his knowledge; (d) that the approval of the conveyance to Cirilo Dolar of the said parcels was made without any corresponding motion therefor; and (e) that the testate estate has other properties with which to pay its obligations.

On October 22, 1966, pending decision on his motion to set aside, Lumampao filed with the probate court a petition for the appointment of a receiver over the two parcels of land conveyed and adjudicated to him.

On December 1, 1966, the probate court, with Judge Carlos Sundiam presiding, granted Lumampao's petition, and, on February 8, 1967, appointed the herein respondent Gregorio Lira receiver over the said parcels of land.

On June 7, 1967, Tupas and Dolar filed with this Court the instant petition to set aside the receivership order of the court a quo. On June 16, 1967, we issued a writ of preliminary injunction against the herein respondents Judge Sundiam, Lumampao and Lira.

The principal object of the ancillary relief a receivership is to secure and preserve the property or thing in controversy pending litigation in order that, as far as practicable, a judicial tribunal, in aid of its jurisdiction, may be able to effectively bestow to the parties litigant the rights to which they are entitled, or exact from them the obligations to which they are subject, under the law. Ordinarily, therefore, this remedy will not lie where the property involved is already in custody of law, such as that in the hands of an executor or administrator. In these cases, the practical and equitable purposes to be accomplished under a receivership are then virtually available.

The fact remains, however, that relief by way of receivership is essentially equitable in nature, and consequently, must be controlled by, and administered on, equitable principles, in the absence of statutory principles specifically defining or laying out the dimension of its coverage, scope or application. Thus, the *Corpus Juris Secundum*,^[1] in a brief resume of the decisions of several learned American tribunals, says:

"Ordinarily, a receiver cannot be put on property which is already in custody of the law under process from another court of competent jurisdiction; and there cannot be more than one receiver over the same property. ... A court of equity has power to appoint a receiver of property which is already in the hands of an executor or administrator, but such power should be exercised with caution, and a receiver should not be appointed to take assets out of the hands of legally appointed representatives except in cases of manifest danger of loss or destruction of, or material injury to, assets. ...

"... Also, a receiver will be appointed when the executor or administrator has been guilty of misconduct, waste, or misuse of assets, and there is real danger of loss; and conversely, a receiver will not be appointed to take assets from the custody of an executor or administrator unless there is manifest danger of loss or destruction of, or material injury to, the assets and a receivership is clearly necessary to protect and preserve the property."

In appreciating the foregoing principles, it must be borne in mind that, thus far, we have proceeded upon the assumption that the estate upon which receivership is prayed for is under the custody of law. Apparently, the two parcels of land in dispute cannot be said to be within this category, judged from the records of this case. The said two parcels of real estate were, by virtue of a final and executory judgment, adjudicated in favor of Lumampao. Consequently, they can no longer be said to form part of the testate estate of the late Generoso Tupas, Sr. over which the probate court can validly exercise jurisdiction in connection with the distribution and liquidation of the said estate.

The probate court's order authorizing the sale of the said parcels of land was issued and their subsequent sale to Cirilo Dolar was consummated prior to the rendition of the judgment of the Court of Appeals upholding the validity of the sale to Lumampao. Consequently, at the time of the sale of these two parcels to Cirilo Dolar, the status of such parcels as belonging to the testate estate or to Lumampao was then still fairly controversial. But the inevitable time-lag that goes with the disposal of court cases cannot, in the present controversy, alter the fact that the Court of Appeals' decision on the merits of the controversy below was based upon the validity of the deed of sale of the said parcels to Lumampao, and, thus, in law, said properties belonged to him even before the authority to sell them was issued by the probate court to Luis Tupas. Hence, although the appellate court's decision on the ownership question came later, it nevertheless had merely the effect of erasing once and for all any doubt or uncertainty about the real ownership of the said parcels. Appellate courts, beset as they are by heaps of cases, cannot be expected naturally to act on the hour on every litigation brought to them. A court exercising original jurisdiction over a suit ought, by constant exposure to this exacting job of unraveling what is true and just, to comprehend the quantum of caution required for the avoidance of simple problems that may in the future hamper

the closure of a dispute before it. There appears, for instance, no plausible reason why the sale of the two parcels in dispute was authorized by the probate court considering that the testate estate was still quite enormous, and considering further that the court a quo itself had, only a short time before that, upheld the validity of their sale to Lumampao.

Moreover, it is essentially the duty of every person dealing at arms' length with the administrator of an estate subject to settlement and liquidation to inquire about the existence of claims against, or of persons having interests in, the estate subject of probate and settlement proceedings, for such proceedings are, by their nature and purpose, open notice to all and sundry once put into motion. Every diligent person ought to know that such proceedings require not just the collection, identification, division and distribution of assets; they not infrequently involve matters more complicated than these.

The foregoing opinion notwithstanding, we find it essential for the purpose of disposing of the specific issue raised in the instant petition --- that the respondent court has no jurisdiction to grant receivership over the said parcels of land in dispute --- to allow the respondent court the benefit of the doubt, that when it authorized Luis Tupas to sell the real properties in dispute and approved their sale in favor of Cirilo Dolar, it was acting under an honestly mistaken impression that the questioned properties still formed part of the inventorable estate of the late Generoso Tupas, Sr.

In our opinion, where, as in this case, a piece of property which originally is a part of the estate of a deceased person is sold by an heir of the deceased having a valid claim thereto, and said piece of property is, by mistake, subsequently inventoried or considered part of the deceased's estate subject to settlement, and, thereafter, with the authority and approval of the probate court, is sold once more to another person, a receiver of the property so sold may, during the pendency of a motion to set aside the second sale, be appointed by the court when in its sound judgment the grant of such temporary relief is reasonably necessary to secure and protect the rights of its real owner against any danger of loss or material injury to him arising from the use and enjoyment thereof by another who manifestly cannot acquire any right of dominion thereon because the approving surrogate court had already lost jurisdiction to authorize the further sale of such property to another person.

Under the particular facts of the instant dispute, we find no compelling reason for disturbing the respondent court's order granting the petition of Lumampao for the appointment of a receiver over the parcels of land in question.

ACCORDINGLY, the order of the court a quo dated December 1, 1966 is hereby affirmed. The said court is, however, enjoined to act in consonance with the tenor and intendment of this decision. No costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] See 75 C.J.S. Secs. 14 and 24.

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