

EULALIO ARCE, LEONOR LAPERAL, LORENZA ARCE, PEDRO GARCIA, RAMON ARCE, JR., NIEVES DRUECO, MAURO ARCE, PRISCILLA SORIANO, AND AURELIA ARCE, PETITIONERS, VS. THE HON. CARLOS L. SU...

G.R. No. L-33081. March 10, 1976

Ponente: ANTONIO, J.

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ANTONIO, J.:

We apply here the settled rule that while the Judges of the Courts of First Instance are conferred a broad discretion in the appointment of a receiver, such authority must not be exercised arbitrarily, and sound reasons for the appointment of the receiver should appear in the record of the case in which the receivership is initiated.

The facts as may be gathered from the pleadings and other relevant documents may be briefly stated as follows:

Ramon Arce died testate on May 12, 1961 leaving as heirs his sons, daughters and grandchildren, to wit: Eulalio Arce (son), Lorenza Arce (daughter), Ramon Arce, Jr. (son). Mauro Arce (son) and Aurelia Arce (daughter), Ofelia Arce (grandchild), Esperanza Arce (daughter), Exaltacion and Evangeline Arce (granddaughters), who were all made legatees or devisees of his will. The first six, except Ofelia Arce, are the petitioners, while the last three are the respondents in this petition. The last will and testament of the deceased Ramon Arce executed in the City of Manila on October 12, 1960, was duly probated, and allowed, letters testamentary issued, and his estate settled in Special Proceedings No. Q-5864, entitled "In the Matter of the Testate Estate of the Late Ramon Arce, deceased; Eulalio Arce, petitioner-executor" of the Court of First Instance of Rizal, Quezon City, Branch V.

The Project of Partition dated March 13, 1962 made in accordance with the disposition contained in the last will and testament of the deceased was approved by the probate court. In its order of August 18, 1962, the court, noting that the estate and inheritance taxes had already been paid and that there being nothing more to be done, considered the said proceedings closed and terminated.

Pursuant to the afore-mentioned Project of Partition, the respective transfer certificates of title covering the real properties bequeathed by the deceased were all cancelled, and new ones issued to the legatees, in the following pro indiviso proportions: "Eulalio Arce, married to Leonor Laperal 329/2240; Lorenza Arce, married to Pedro Garcia, 329/2240; Ramon Arce, Jr., married to Nieves Drueco, 329/2240; Mauro Arce, married to Priscilla Soriano, 329/2240; Ezperanza Arce, married to Marcelino Vergel de Dios, 329/2240; Aurelia Arce, single, 329/2240; Ofelia Arce, single, 330/2240; and Exaltacion Arce and Evangeline Arce * * * 36/2240* * *." Likewise, the personal properties of the deceased were divided in the same pro indiviso proportion.

On November 25, 1970, private respondents (except respondent Alicia S. Bustos) filed an action for partition and accounting[1] against the petitioners before the Court of First Instance of Bulacan. According to the private respondents, defendant Mauro Arce, from August 30, 1962, has unilaterally managed and administered the two (2) parcels of land at Baliwag, Bulacan and planted to more or less 700 fruit-bearing mango trees and other

seasonal crops and has received and disposed of the produce thereof; that defendant Eulalio Arce has likewise collected rentals from the lessees of various properties of the estate, and that from August 30, 1962, said defendants Mauro Arce and Eulalio Arce have respectively managed, operated and controlled the Selecta-Refreshments-Restaurants-Caterer business at No. 1994 Claro M. Recto Avenue, Manila and the factory connected therewith at No. 32 Selecta Drive, A. Bonifacio, Quezon City. It is alleged that the above-mentioned properties form part of the estate left by the deceased Ramon Arce. It is likewise alleged that from the time they began administering the properties, defendants have failed to render an accounting of their management to the plaintiffs, or to deliver the corresponding share of plaintiffs in the income therefrom despite the latter's repeated demands therefor. Plaintiffs also averred that they "have reliably learned" that defendants have secured various loans from different corporations and have mortgaged some of the real properties owned in common as security, which loans they concealed from them. Plaintiffs, therefore, prayed that the real and personal properties inherited by plaintiffs and defendants from their deceased parent be partitioned among them; that defendants Mauro Arce and Eulalio Arce be ordered to render an accounting of the properties and businesses separately and jointly administered and managed by them, and to deliver to the plaintiffs their corresponding shares in the income therefrom, with interest at the legal rate; and, pending final resolution of the case, that a receiver be appointed to take over the management of the properties.[2]

On the date the complaint was filed, respondent Judge issued an ex parte order appointing Mrs. Alicia S. Bustos as receiver of the aforesaid properties, it appearing that "from the allegations in the verified complaint filed by plaintiffs * * * there is really a need for the appointment of a receiver in this case." As ordered by the court, Mrs. Alicia S. Bustos filed a receiver's bond in the amount of P10,000.00.

On December 12, 1970, petitioners filed in the court below an "Urgent Motion to Discharge Receiver and/or Motion for Reconsideration" wherein they prayed that the appointed receiver be discharged, alleging that there is no factual and legal basis for the principal action, and for the appointment of a receiver, as the prohibition against the partition of the properties was imposed by the Last Will and Testament, and "any modification thereof must be sought from the probate court"; therefore, the regular court has "no jurisdiction over the matter." Moreover, according to petitioners, majority of the co-heirs are in favor of the indivision and the present management and administration of the estate. On December 14, 1970, petitioners likewise filed an "Ex Parte motion for Order Requiring Receiver to Desist Temporarily from Discharging Powers", as well as their answer to the complaint.

The "Urgent Motion to Discharge Receiver and/or Motion for Reconsideration" and the "Ex Parte Motion for Order Requiring Receiver to Desist Temporarily from Discharging Powers" were set for hearing on December 16, 1970. On December 15 1970, private respondents moved for extension of time to file their opposition to the above motions, and on December 16, 1970, respondent Judge granted them ten (10) days from December 17, 1970 within which to file said pleading. In the same order, defendants were also granted five (5) days from receipt of the opposition within which to file their rejoinder. On December 22, 1970, private respondents asked for an additional fifteen (15) days from December 27, 1970, but this motion was not acted upon by respondent Judge. On December 31, 1970, petitioners notified respondent Judge that no copy of private respondents' opposition had been received, notwithstanding the lapse of the period granted. It was only on January 21, 1971 that petitioners received a copy of private respondents' opposition, which pleading was dated January 12, 1971. On January 26, 1971, petitioners requested for an extension of the period to file their rejoinder, but it turned out that on January 15, 1971, respondent Judge had already issued an order denying petitioners' motion to discharge receiver and their ex parte motion for an order requiring the receiver appointed to desist temporarily from discharging her duties.

From the foregoing order, petitioners interposed the present petition, alleging that respondent Judge acted arbitrarily in appointing the receiver, there being no legal basis therefor, (a) it not having been shown that the

properties involved were in any immediate danger of disappearing or being wasted; (b) the present management of the properties in question never having been questioned for a period of eight (8) years by all the heirs and co-owners, which management has been performed faithfully and conscientiously; (c) the business enterprises mentioned in paragraphs 13, 14 and 19 of the Complaint not being part of the properties owned in common, and, assuming that they are, the management thereof requires special training, skill and experience which is not possessed by the receiver who is not a businesswoman of experience or training to operate and manage said enterprises, as she is a Doctor of Philosophy, working as full-time professor and department head at the University of the East; and (d) the appointment having been procured ex parte by parties who can lay claim to only 25/140 interest in the property in question, to the prejudice of petitioners who are owners of 105/140 thereof.

On February 1, 1971, this Court issued a writ of preliminary injunction enjoining the respondent Judge from implementing his challenged orders and the receiver from discharging her duties.

We find the petition meritorious.

It is settled that the appointment of a receiver ex parte or without notice to the other party who has a prima facie right to the possession of the property is one of the most drastic actions known to law or equity and should be exercised with great caution, and only where great emergency or imperative necessity requires it. In every case where the court is asked to deprive the defendant of his property without a hearing, the particular facts and circumstances which justify such summary procedure should be clearly set forth in the application.

In the absence of special circumstances tending to show the existence of an emergency or indicating that irreparable loss will be occasioned unless a receiver is immediately appointed, it is error for the court to appoint a receiver without notice.[3] This rule is well supported by the authorities.[4] Some held the view that "It should be a strong case of emergency and peril, well fortified by affidavits, to authorize the appointment of a receiver without notice to the other party." [5]

The verification must be made in positive terms, and one based on mere information and belief is considered insufficient.[6] It has been said that "If the allegations, however positively made, are sworn to only upon information furnished to the affiant by some third person, then they are merely hearsay and ought not to have been given any evidentiary value, for the evidence necessary to move the appointing power must be legal evidence." [7]

As clearly stated in *Claudio vs. Zandueta*, [8] "In order that a receiver may be appointed in a case, an application under oath to that effect must be filed, alleging all the facts necessary to convince the court to grant the same, for the purpose of preserving the property which is the subject of the litigation and protecting thereby the rights of all the parties interested therein. This is due to the fact that, as stated by this Court in the case of *Velasco & Co. vs. Gochuico & Co.* (28 Phil. 39), the power to appoint a receiver is a delicate one, that said power should be exercised with extreme caution and only when the circumstances so demand, either because there is imminent danger that the property sought to be placed in the hands of a receiver be lost or because they run the risk of being impaired, endeavoring to avoid that the injury thereby caused be greater than the one sought to be averted." (Italics supplied).

In the case at bar, nowhere in said complaint or affidavit is there any allegation that the properties owned in common are in danger of being "lost, removed or materially injured unless a receiver be appointed to guard and preserve it." [9] Neither is there any factual basis for the allegation that the "appointment of a receiver is the most convenient and feasible means of preserving, administering or disposing of the property in litigation." [10] The appointment of a receiver is not a matter of absolute right. While the appointment of receivers for the conservation of property in litigation rests largely in the discretion of the court, the discretion must of course be sound and cannot be exercised arbitrarily. The "remedy being an equitable one, it can only be resorted to in cases

where there is no other adequate remedy." [11] This discretion is to be exercised with great caution and circumspection after full consideration of the particular facts and the interests of all parties concerned.

Here, there are no clear indications that an irreparable loss would take place if a receiver is not immediately appointed, much less has any exceptional circumstance been shown to warrant an ex parte appointment of a receiver. Upon the other hand, petitioners, in their urgent motion to discharge the receiver or motion for reconsideration, have alleged before respondent court that all the heirs have agreed to enforce the provision in the will of the deceased Ramon Arce, prohibiting the partition of the inherited properties for a period of twenty (20) years from the date of testator's death; that the petitioners entrusted with the management of the aforesaid enterprises have done so faithfully and conscientiously and have rendered periodic accounting to their co-heirs, and distributed to them their shares in the proceeds thereof; and that contrary to the averments of the private respondents, no properties inherited from their deceased parent have been mortgaged or encumbered by petitioners. Until these issues of facts have been threshed out at an appropriate hearing, the court should have refrained from placing the properties under receivership.

Consider also the effect of such receivership which is to change the management of the afore-mentioned business enterprises by removing it from the hands of the Arce brothers and placing it in the hands of a stranger. Obviously, those business enterprises would require for their management a person who is not only familiar with or has thorough knowledge of the scope, nature and complexity of such businesses, but also must have the requisite training, experience and expertise. These circumstances underscore the necessity for the trial court to have conducted a hearing before granting the receivership. Indeed, it should have exercised extreme caution before granting the remedy and the consequences or effects thereof should have been considered in order to avoid causing grave injustice or injury to petitioners who are entitled to as much consideration as the private respondents.

The foregoing indicates that the respondent Judge acted arbitrarily in granting the receivership ex parte.

Finally, petitioners contend that any action of a party to terminate the co-ownership imposed by the last will and testament of the deceased belongs to the probate court. We find this devoid of merit. The special proceedings wherein the aforesaid will was probated has been closed and terminated. In its order of August 30, 1962, the court stated that the " * * * corresponding estate and inheritance taxes due the estate having been paid already * * * and there being nothing more to be done in this proceedings, the same is hereby closed and terminated." There is also no question that the properties have been delivered to the heirs. According to private respondents, pursuant to the project of partition, "the respective transfer certificates of title covering the real estate properties were cancelled and new ones were issued in the names of petitioners and private respondents" pro indiviso. [12] The probate court loses jurisdiction over the estate under administration after payment of all the debts and the delivery of the residue of the estate to the heirs entitled to receive them. [13] Contrary to the contentions of petitioners, this action of private respondents is not a demand and claim "filed by any heir, legatee, or party in interest to a testate or intestate succession * * *" within the context of *Arroyo v. Gerona* [14] but an ordinary action for partition under Rule 69 of the rules, which is within the jurisdiction of the regular court.

WHEREFORE, the petition for certiorari is granted and the orders of respondent court, dated November 20, 1970 and January 15, 1971, are hereby set aside. Costs against private respondents.

Fernando, (Chairman), Barredo, Aquino, and Concepcion, Jr., JJ., concur.

[1] Civil Case No. 204-B, entitled "Esperanza Arce, et al. vs. Eulalio Arce, et al."

[2] The complaint of private respondents contains the following averments:

"8. That plaintiffs desire and intend, and have several times notified defendants of their said desire and intention to have the above real estate and personal properties partitioned amicably between them in order to put an end to indivision for the mutual interest and benefits of all the parties but notwithstanding repeated demands of plaintiffs, said defendants refused and still refuse, without justifiable cause or reason, to accede to the partition of said real and personal properties;

* * * * *

"11. That from said period from August 30, 1962 up to the present time, said defendant Mauro Arce has failed, and continues to fail, to render an accounting to plaintiffs of the yield of the said properties and has likewise failed and continues to fail to deliver the share of plaintiffs during the said period, either in cash or in kind, in spite of repeated reminders and demands from the plaintiffs;

* * * * *

"14. That from said period August 30, 1962 up to the present time, said defendants Eulalio Arce and Mauro Arce have failed, and continue to fail, to render an accounting to plaintiffs of their said management, operation and control of the said 'Selecta-Refreshment-Restaurant-Caterers, Home of Quality Ice Cream and Fresh Milk' businesses and factory in spite of repeated reminders and demands from plaintiffs AND of late, plaintiffs have even been absolutely denied entry and access by defendant Mauro Arce to the factory which place, as well as the machineries and equipments used therein, as above stated, are among the properties owned in common by the parties herein;

"15. That from August 30, 1962 up to the present time, defendant Eulalio Arce has failed and continues to fail to render an accounting of the rentals he has collected from the different lessees of the properties described in Nos. 2, 3, 7, 9, paragraph 4(c) of this Complaint, and has likewise failed and continues to fail to deliver the share of plaintiffs in said rental income in spite of repeated demands from plaintiffs;

"16. That plaintiffs have reliably learned that defendants, thru defendant Eulalio Arce have applied and secured various loans from different corporations/companies and as security for the payment of said loans have mortgaged some of the aforesaid real estate properties owned in common, and inspite of repeated inquiries and demands said defendants have failed and continue to fail, to inform plaintiffs the total amount, purposes, present status of said loans, and the mortgagee-corporations/companies;

* * * * *

"18. That, under the facts stated above, and considering further the strained relationship between the parties, the most convenient and feasible means of preserving, administering the real and personal properties in litigation, as well as disposing of the produce of some of the properties in litigation, pending this litigation, is by the appointment of a RECEIVER by this Honorable Court under such terms and conditions of appointment, bond, etc. that it may provide and fix;

"19. That pending the appointment of a receiver, said defendants Eulalio Arce and Mauro Arce be immediately enjoined and/or a restraining order issue, from continuing their management, operation and control of the 'Selecta-Refreshments-Restaurants-Caterers' business and factory considering that unless said defendants are immediately enjoined and/or a restraining order issue, they will continue to manage, operate and control said business and factory to plaintiffs' great and irreparable damage and injury;

* * * * *

The affidavit attached to the complaint recited:

"2. That briefly, as alleged in the aforesaid complaint:

a) The real and personal properties involved in the said case are owned in-common by the parties therein and which properties plaintiffs desire and intend to partition for the mutual interests and benefits of all the parties but notwithstanding repeated demands by plaintiffs, said defendants refused and still refuse, without justifiable reason or cause, to accede to the said partition;

b) Since August 30, 1962 one of the defendants Mauro Arce, has unilaterally managed and administered two (2) of the said real properties owned in-common located at Baliwag, Bulacan, which are planted to mango trees consisting of 700 fruit bearing trees, more or less, and other seasonable crops/fruits and, as such, has received and disposed of all the produce thereof but up to the present has failed and continues to fail, to render an accounting to plaintiffs of the yield of the said properties and has likewise failed and continues to fail to deliver the share of plaintiffs during the said period, either in cash or in kind, inspite of repeated demands from the plaintiffs;

c) Since August 30, 1962 defendants, Eulalio Arce and Mauro Arce, have managed, operated and controlled the businesses commonly known as 'SELECTA-Refreshments-Restaurants-Caterer-Home of Quality Ice Cream and Fresh Milk', with the former taking the active management, operation and control of the refreshments, restaurants and catering businesses located at No. 1994 C. M. Recto Ave., corner Lepanto St., and at Roxas Blvd., corner Romero Sales St., Manila, and the latter taking the active management, operation and control of the factory of said businesses located at Selecta Drive, A. Bonifacio, Balintawak, Quezon City, but from said date up to the present, said defendants have failed and continue to fail to render an accounting to plaintiffs of their said management, operation and control of said businesses and factory inspite of repeated demands from plaintiffs AND OF LATE plaintiffs have been absolutely denied entry and access by defendant Mauro Arce to the said factory;

d) Plaintiffs have reliably learned that defendants, thru defendant Eulalio Arce, have applied and secured various loans from different corporations/companies and as security for the payment of said loans have mortgaged some of the real properties owned in-common, and inspite of repeated inquiries and demands from plaintiffs, said defendants have failed and continue to fail, to inform plaintiffs the total amount, purposes, present status and the mortgagee-corporations/companies, of said loans;

"3. Under the facts briefly stated above and detailedly alleged in the said complaint, and considering further the strained relationship presently existing between the parties, the most convenient and feasible means of preserving and administering the real and personal properties involved in said case, as well as disposing of the produce of some of the said properties, pending said litigation, is by appointment of a RECEIVER by the said Court under such terms and conditions of appointment, bond, etc., that it may provide and fix."

[3] A.L.R. 1128.

[4] Pycott v. Prudential Ins. Co., 131 Pac. 914.

[5] Thompson, et al. v. Tower Manufacturing Co., 87 Ala. 733, 6 South 928.

[6] Henderson v. Reynaldo, 11 Ann. Cas. 977, 978-979.

[7] Benipe-Owenhouse Co. v. Scheidegger, 32 Mont. 424, 80 Pac. Rep., 1024, 11 Ann. Cas. 980.

[8] 64 Phil. 812, 817-818.

[9] Rule 59, Section 1(b), Revised Rules of Court.

[10] Section 1(e), Ibid.

[11] Sabado v. Cristina Gonzales, Inc., 53 Phil. 770, Real Motor Co. vs. Court of First Instance of Manila, 51 Phil. 549.

[12] Memorandum of Private Respondents, p. 2.

[13] *Timbol v. Cano*, 1 SCRA 1271, 1276.

[14] 54 Phil. 909.

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