

FORTUNATO RECENTES, BENJAMIN DE GRACIA AND RAMONA MERCED, PETITIONERS, VS. COURT OF FIRST INSTANCE OF ZAMBOANGA DEL NORTE, BRANCH I, PRESIDED BY HON. DIMALANES E. BUISSAN, AND C...

G.R. No. L-40504. July 29, 1983

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Petition to set aside several orders issued in Civil Case No. 2080 of the defunct Court of First Instance of Zamboanga del Norte, namely the orders of June 13, 1974 (Annex L), July 5, 1974 (Annex M), January 9, 1975 (Annex O), February 21, 1975 (Annex Q) and March 31, 1975 (Annex S) which are described below.

Concepcion V. Zosa filed a complaint dated September 8, 1970, in the CFI of Zamboanga del Sur (Civil Case No. 2080) against Fortunato Recentes, Benjamin de Gracia and Ramona Merced for accounting and payment of money alleged to be due to her as their partner in Zamboanga Ports Terminal and Arrastre Service. The answer alleged that proper accounting and payment had already been made.

Two years after issues had been joined but the case still untermiated, Zosa asked the Court to appoint Ramona Merced as receiver of the partnership. She alleged that the assets of the partnership were being squandered by mismanagement. The court, thru Judge Onofre Abalos, appointed Merced as receiver and she qualified.

Subsequently, Fortunato Recentes and Benjamin de Gracia filed a motion to annul and dissolve the receivership. Reason given: the partnership was no longer in existence because its term of ten years expired in 1967.

Judge Rafael T. Mendoza, granted the motion. However, Judge Dimalanes B. Buissan who succeeded Judge Mendoza reconsidered the latter's action by reinstating the receivership in his order dated June 6, 1974.

In the order dated June 13, 1974 (Annex L), Judge Buissan explained why he reinstated the receivership:

"The order of Honorable Judge Mendoza terminating the receivership appears to be premised on the fact that the partnership known as the Zamboanga Ports Terminal and Arrastre Service has automatically been dissolved after the termination of its ten-year existence provided for in the partnership disregarding the fact that, after the termination of the ten-year period from January 1967, the defendants Recentes and de Gracia and the treasurer of the partnership never rendered an accounting for the purpose of dissolving the partnership even up to the present, so that ordinarily the partnership still continuously exists as usual. However, defendants de Gracia and Recentes formed another partnership known as the Zamboanga Ports Arrastre and Stevedoring Service and continued the business that was conducted by the former partnership. This is shown by the fact that the last partnership is doing business with the clientele of the old partnership. It should be noted also that only plaintiff Concepcion Zosa was not included in the so-called new partnership.

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"The movant failed to consider the fact that while the existence of the former partnership may have been

already terminated, its existence as such partnership with respect to its members and third-parties who may have interest therein, is not terminated until the officers who are defendants in this case, and who were charged by law to make the necessary accounting and liquidation for the purpose of terminating the previous partnership shall comply with the requisites of the law."

The order dated July 5, 1974 (Annex M), directed that:

"x x x the management and operation of the partnership will remain with the officers of said partnership and that Ramona Merced as receiver will only receive the net profit of the partnership and to keep each income, account for them when required by this court until such time as the same will be distributed to those who may be entitled to it."

The order dated January 9, 1975 (Annex O), reiterated the order dated July 5, 1974.

The order dated February 21, 1975 (Annex Q), directed the defendants and Ramona Merced, the receiver, to submit an accounting of the partnership affairs under pain of contempt.

And the order of March 31, 1975 (Annex S), reiterated the previous orders.

The issue in this case is simple: Was there lack of jurisdiction or grave abuse of discretion in the issuance of the questioned orders? The answer is equally simple: No.

Art. 1829 of the Civil Code stipulates:

"Art. 1829. On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed."

Obviously, all the questioned orders are intended to wind up the partnership affairs in an orderly manner and to protect the interest of the plaintiff who is the private respondent in this case. The respondent judge not only had jurisdiction to issue the orders, he also acted prudently in the premises.

WHEREFORE, the petition is hereby denied for lack of merit. Costs against the petitioners.

SO ORDERED.

Makasiar, (Chairman), Aquino, Concepcion, Jr., Guerrero, and Escolin, JJ., concur.
De Castro, J., on sick leave.

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