

**ANTONIO BANTA, PETITIONER, VS. REMEDIOS B. TIANGCO,
MADELINE JANE T. BANTA AND THE REGIONAL TRIAL COURT, BR.
169, MALABON CITY, RESPONDENTS.**

Ponente: GAERLAN, S.H., J.

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GAERLAN, S.H., J.:

Before this Court is a petition[1] for certiorari under Rule 65 of the 1997 Rules of Civil Procedure seeking to nullify the Orders[2] dated: (a) 18 May 2010; (b) 19 October 2010; and (c) 24 January 2012, issued by the Regional Trial Court (RTC) – Branch 169[3] (Malabon City) in Civil Case No. 2920-MN, entitled Remedios B. Tiangco versus Antonio Banta, for Declaration of Nullity of Marriage.

FACTS

Sometime in November 1998, Remedios B. Tiangco (private respondent) filed a petition[4] for declaration of nullity of her marriage to Antonio Banta (petitioner) before the RTC of Malabon City. The ground invoked by private respondent is psychological incapacity under Article 36 of the Family Code.

Records show that the parties were married on 5 April 1975 and were blessed with one child, Madeline Jane T. Banta, born in 1977. During their marriage, the spouses acquired several properties including a commercial lot located in the National Housing Authority (NHA) Dagat-Dagatan Project. Relative to said lot, the spouses, on 6 February 1989, entered into a conditional contract to sell[5] with the NHA upon initial payment of P770,500.00.

After trial, the RTC rendered a Decision[6] (dated 8 February 2001) granting the petition, the dispositive portion thereof reads:

“WHEREFORE, premises considered, judgment is hereby rendered:

1.

Declaring the marriage between petitioner Remedios B. Tiangco and respondent Antonio Banta VOID AB INITIO;

2.

Terminating their conjugal partnership of gains;

3.

Providing for the liquidation, partition and distribution of the properties of the spouses in accordance with Article 50 of the Family Code after the resolution of the pending criminal and civil cases between the parties, the same to include the lease rentals deposited by Petron with the Office of the Clerk of Court, Regional Trial

Court of Malabon; and

4.

Delivering the presumptive legitime of Madeline Jane in accordance with Articles 50 and 51 of the Family Code.

x x x

SO ORDERED.” (emphasis supplied)

More than eight (8) years after, on 18 September 2009, private respondent filed an Omnibus Motion[7] before the RTC, praying that she be allowed to purchase, with her own money, the commercial lot subject of the contract to sell with the NHA, and thereafter, to transfer and register title thereto in favor of their only child, Madeline Jane.

Apparently, the spouses were in arrears in their contractual obligation with the NHA. A demand letter[8] was already sent to petitioner giving him the option to purchase the property under a new contract, or vacate the property upon the expiration of the grace period granted by the NHA.

Despite opportunity given by the RTC, no comment or opposition to private respondent's Omnibus Motion was filed by petitioner. Thus, on 18 May 2010, the RTC issued the first assailed Order, the pertinent portion thereof states:

“Finding the Omnibus Motion to be well-taken, the same is hereby GRANTED.

WHEREFORE, petitioner Remedios B. Tiangco is authorized to settle their account with the National Housing Authority (NHA) pertaining to Commercial Lot 7, Block 19 (formerly Block 6), Phase IV-G, DDDP and thereafter, to have the title over the subject property placed in the name of MADELINE JANE T. BANTA, the parties' common child, the same to be considered as an advance on her legitime.

Furnish the National Housing Authority and the respondent with copies of this Order.

SO ORDERED.”

Consequently, petitioner filed a Notice of Appeal[9] which was opposed by private respondent, arguing that the remedy of appeal is no longer available inasmuch as the 18 May 2010 Order of the RTC has already become final and executory. Also, private respondent averred that said Order is merely interlocutory and no appeal may be taken therefrom.[10]

On 19 October 2010, the RTC issued the second assailed Order, denying due course to petitioner's appeal. The RTC found merit in private respondent's argument that the 18 May 2010 Order is interlocutory in nature, thus, appeal therefrom is not available.

Petitioner moved for reconsideration of the second Order, but was again denied by the RTC through the challenged 24 January 2012 Order.

Hence, this petition anchored on the following grounds:[11]

ISSUES

I.

WHETHER THE 18 MAY 2010 ORDER OF PUBLIC RESPONDENT RTC BRANCH 169 OF MALABON CITY WHICH GRANTED PRIVATE RESPONDENT REMEDIOS B. TIANGCO "TO SETTLE WITH THE NATIONAL HOUSING AUTHORITY (NHA) PERTAINING TO COMMERCIAL LOT 7, BLOCK 19 (FORMERLY BLOCK 6), PHASE 1V-G, DDPP" WAS ISSUED WITH GRAVE ABUSE OR IN EXCESS OF JURISDICTION TANTAMOUNT TO LACK OF JURISDICTION.

II.

WHETHER THE ORDER OF 18 MAY 2010 OF PUBLIC RESPONDENT RTC BRANCH 169 OF MALABON CITY WHICH GRANTED PRIVATE RESPONDENT REMEDIOS B. TIANGCO TO HAVE THE TITLE OVER THE SUBJECT PROPERTY BE PLACED IN THE NAME OF MADELINE JANE T. BANTA, THE PARTIES' COMMON CHILD, AND THE SAME TO BE CONSIDERED AS AN ADVANCE ON HER LEGITIME," WAS ISSUED WITH GRAVE ABUSE OR IN EXCESS OF JURISDICTION TANTAMOUNT TO LACK OF JURISDICTION.

III.

WHETHER THE 19 OCTOBER 2010 ORDER , WHICH DENIED DUE COURSE TO (SAID) NOTICE OF APPEAL, OF PUBLIC RESPONDENT RTC BRANCH 169 OF MALABON CITY WAS ISSUED WITH GRAVE ABUSE OR IN EXCESS OF JURISDICTION TANTAMOUNT TO LACK OF JURISDICTION.

IV.

WHETHER THE 24 JANUARY 2012 OF PUBLIC RESPONDENT RTC BRANCH 169 OF MALABON CITY, WHICH DENIED PETITIONER'S MOTION FOR RECONSIDERATION OF THE ORDER OF 19 OCTOBER 2010, WAS ISSUED WITH GRAVE ABUSE OR IN EXCESS OF JURISDICTION TANTAMOUNT TO LACK OF JURISDICTION.

OUR RULING

Petitioner contends that the RTC's 18 May 2010 Order is a surplusage because as early as October 2009, private respondent has already settled the spouses' account with the NHA. Petitioner also asserts that the court a quo committed grave abuse of discretion when it ordered the transfer of title over the disputed commercial lot to the parties' common child, as an advance on her legitime, notwithstanding the fact that the ground for the nullity of his marriage with private respondent is Article 36 of the Family Code. Relying on *Diño v. Diño*,^[12] petitioner argues that the rules on co-ownership govern the liquidation of properties owned in common by the parties whose marriage was declared void under Article 36. The rule on advance legitime of the parties' common children finds no applicability in the present case.^[13]

Anent the last two issues, petitioner avers that the 18 May 2010 Order did not attain finality because he never received a copy of said Order. Thus, the RTC gravely abused its discretion when it denied due course to petitioner's appeal and the subsequent motion for reconsideration.^[14]

On the other hand, private respondent, in her Comment^[15], insists that the 18 May 2010 Order of the lower court is interlocutory in nature. The notice of appeal filed by petitioner is clearly a wrong remedy inasmuch as no appeal may be taken from orders that are merely interlocutory. The RTC therefore did not commit grave abuse of discretion when it denied due course to petitioner's appeal.^[16]

The petition has no merit.

The issues raised actually boil down to whether or not the court a quo committed grave abuse of discretion in denying due course to petitioner's appeal. We rule in the negative.

The Supreme Court has defined an interlocutory order as referring to something between the commencement and the end of the suit which decides some point or matter but (it) is not the final decision on the whole controversy. It does not terminate or finally dismiss or finally dispose of the case, but leaves something to be done by the court before the case is finally decided on the merits.[17] It is one which does not finally dispose of the case, and does not end the court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the court.[18]

In general, interlocutory orders are neither appealable nor subject to certiorari proceedings. Appeal in due time is the proper remedy, provided there was no grave abuse of discretion or excess of jurisdiction or oppressive exercise of judicial authority.[19]

In the case at bench, there is no question that the 18 May 2010 Order of the RTC is interlocutory in nature. It was issued during the proceedings for liquidation of the spouses' common properties as a consequence of the petition for declaration of nullity of marriage filed by private respondent. Said Order did not settle with finality the partition of all the parties' conjugal properties. Stated differently, although the lower court, in said Order, allowed private respondent to purchase the disputed commercial lot and register the same in favor of her child with petitioner, still, the final distribution of the spouses' common properties is yet to be had.

Moreover, the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages[20] requires liquidation, partition, and distribution of the properties of the spouses before a final decree of absolute nullity or decree of annulment of marriage can be issued by the family court.[21]

The 18 May 2010 Order being merely interlocutory, appeal is unavailing. Clearly, petitioner availed of the wrong remedy in assailing said Order of the RTC. The court a quo therefore did not commit grave abuse of discretion when it denied due course to petitioner's appeal.

Also, We find that the first two issues raised by petitioner are not the proper subject of the present petition. The wisdom and correctness of the RTC's ruling that the liquidation and distribution of the parties' properties be done in accordance with the procedure under Articles 50 and 51 of the Family Code should have been challenged by petitioner through an ordinary appeal from the very Decision of the RTC granting private respondent's petition. This remedy is provided[22] for by the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages.

If petitioner believes that the RTC erred in applying Articles 50 and 51 of the Family Code in the dissolution and liquidation of his and private respondent's conjugal partnership of gains, he should have raised said error through and on appeal before this Court. Indeed, when the court has jurisdiction over the case and person of the defendant, any mistake in the application of the law and the appreciation of evidence committed by a court may be corrected only by appeal.[23] Evidently, petitioner failed to traverse this course of action.

Even assuming arguendo that the 18 May 2010 Order was indeed tainted with grave abuse of discretion or was patently erroneous and contrary to law, petitioner should have immediately resorted to certiorari under Rule 65 inasmuch as said Order is interlocutory and there was no appeal nor any plain, speedy and adequate remedy at law available to him. Unfortunately, petitioner opted to file a Notice of Appeal, which, as already stated, is a wrong remedy. For want of proper compliance with procedural and substantive requirements (i.e. pre-requisite motion for reconsideration, period for filing, and substantial allegations of jurisdictional errors), this Court cannot validly rule on the alleged grave abuse of discretion committed by the RTC with respect to the 18 May 2010 Order.

All told, the petition is bereft of sufficient factual basis that will warrant the issuance of the extraordinary writ of certiorari. The writ may be issued only where it is convincingly proved that the lower court committed grave abuse of discretion, or an act too patent and gross as to amount to an evasion of a duty, or to a virtual refusal to perform the duty enjoined or act in contemplation of law, or that the trial court exercised its power in an arbitrary and despotic manner by reason of passion or personal hostility.[24] None of these circumstances exists in the instant case.

WHEREFORE, premises considered, the petition is hereby DENIED. The Orders dated 19 October 2010 and 24 January 2012 of the Regional Trial Court-Branch 169 (Malabon City) are AFFIRMED.

The Order dated 18 May 2010 of said court STANDS.

SO ORDERED.

Salazar-Fernando (Chairperson) and Bruselas, Jr., JJ., concur.

[1] Rollo, pp. 3-17

[2] Rollo, pp. 19-20 and 22-23

[3] Through Honorable Judge Emmanuel D. Laurea

[4] Rollo, pp. 122-128

[5] Rollo, pp. 30-31

[6] Rollo, pp. 129-139

[7] Rollo, pp. 66-67

[8] Rollo, p. 68

[9] Rollo, pp. 24-25

[10] Rollo, pp. 71-72

[11] Page 6 of the Petition (Rollo, p. 10)

[12] G.R. No. 178944, January 19, 2011; cited on page 9 of the Petition (Rollo, p. 13)

[13] Pages 7-9 of the Petition (Rollo, pp. 11-13)

[14] Pages 10-11 of the Petition (Rollo, pp. 14-15)

[15] Rollo, pp. 57-60

[16] See paragraphs 4-8 of the Comment (Rollo, pp. 57-59)

[17] Valente Raymundo v. Teofista Isagon Vda. Suarez, et. al. (G.R. No. 149017, November 28, 2008)

[18] Eric U. Yu v. Hon. Judge Agnes Reyes-Carpio and Caroline T. Yu (G.R. No. 189207, June 15, 2011)

[19] Leni O. Choa v. Alfonso C. Chua (G.R. No. 143376, November 26, 2002)

[20] A. M. NO. 02-11-10-SC (March 4, 2003)

[21] "Section 19. Decision. - (1) If the court renders a decision granting the petition, it shall declare therein that

the decree of absolute nullity or decree of annulment shall be issued by the court only after compliance with Article 50 and 51 of the Family Code as implemented under the Rule on Liquidation, Partition and Distribution of Properties.

x x x

(4) Upon the finality of the decision, the court shall forthwith issue the corresponding decree if the parties have no properties.

If the parties have properties, the court shall observe the procedure prescribed in Section 21 of this Rule.

x x x

Section 21. Liquidation, partition and distribution, custody, support of common children and delivery of their presumptive legitimes. - Upon entry of the judgment granting the petition, or, in case of appeal, upon receipt of the entry of judgment of the appellate court granting the petition, the Family Court, on motion of either party, shall proceed with the liquidation, partition and distribution of the properties of the spouses, including custody, support of common children and delivery of their presumptive legitimes pursuant to Articles 50 and 51 of the Family Code unless such matters had been adjudicated in previous judicial proceedings.”

[22] “Section 20. Appeal. -

(1) Pre-condition. - No appeal from the decision shall be allowed unless the appellant has filed a motion for reconsideration or new trial within fifteen days from notice of judgment.

(2) Notice of appeal. - An aggrieved party or the Solicitor General may appeal from the decision by filing a Notice of Appeal within fifteen days from notice of denial of the motion for reconsideration or new trial. The appellant shall serve a copy of the notice of appeal on the adverse parties”.

[23] *Triplex Enterprises, Inc. v. PNB-Republic Bank and Solid Builders, Inc.* (G.R. No. 151007, July 17, 2006)

[24] *Ibid.*

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