

**REGINA STA. ROMANA VDA. DE ALCANTARA, PETITIONER, VS.
HONORABLE CORONA IBAY SOMERA IN HER CAPACITY AS
PRESIDING JUDGE, COURT OF FIRST INSTANCE OF LA UNION
(BALAOAN), JOAQUIN STA...**

G.R. No. L-55398. July 30, 1981

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is a petition to annul an Order of the respondent judge dated August 13, 1979, which granted a Motion and Manifestation filed by Jose dela Peña (one of the private respondents) and another Order dated September 16, 1980, which denied a motion to set aside the first order. Both orders were issued in Civil Case No. 165-V of the Court of First Instance of La Union.

The facts are as follow:

Regina Sta. Romana Vda. de Alcantara, the petitioner herein, filed on December 27, 1977, in the Court of First Instance of La Union, a complaint against her brother Joaquin P. Sta. Romana praying for the partition of certain real properties which had been left by their deceased parents. After issues had been joined and during the pre-trial conference, Regina and Joaquin with the assistance of their lawyers entered into a compromise agreement which they submitted to the respondent judge for approval. On February 14, 1979, the respondent judge issued the following order:

"When this case was called for pre-trial, parties through their counsel manifested that they have finally settled the case between them and sub-mitted a Compromise Agreement duly signed by plaintiff and defendant together with their respective counsel, herein below quoted:

"COMPROMISE AGREEMENT

COME NOW the plaintiff and the defendant in the above-entitled case assisted by their respective counsel, unto this Honorable Court, respectfully present the following Compromise Agreement as a basis in rendering its decision:

1. That the parties have agreed to partition the two (2) parcels of land described in the complaint in the following manner:

a) that the property located at Consuegra, Bangar, La Union covered by Tax Declaration No. 49059, bounded on the north by Emilia Mosuela; on the East by Carretera Gen. and Romana Coloma; on the South by Romana Coloma and M. Olba and on the West by Petra Gavina with an approximate area of 3132 square meters, more or less be divided between the two parties equally, the area to be allocated to the plaintiff shall be on the portion actually occupied by her house while the portion corresponding to the defendant shall be on the portion actually occupied by his house, the division shall start from the national highway going backward;

b) that the property located at Balbabino, Rissing, Bangar, La Union covered by Tax Declaration No. 49056, bounded on the North by Nicolas Ramirez; on the East by Liberato Mabanag; on the South by Eduardo Mangibin and on the West by Paulino Partible containing an area of 5314 square meters, more or less shall also be equally divided between the plaintiff and defendant, the area corresponding to the plaintiff shall be on the southern portion whereas the area corresponding to the defendant shall be on the northern portion;

c) that plaintiff hereby obligates herself to pay to defendant the sum of P500.00 as reimbursement of her share in the redemption of the property located at Barrio Rissing, on or before April 16, 1979.

2. That this Compromise Agreement shall be subject to the claim of the brother of plaintiff and defendant, Benito Santa Romana who has gone to the United States as early as 1916 which up to now has not returned to the Philippines and presumed to be dead.

3. That plaintiff and defendant hereby waive all claims and counterclaims against each other.

WHEREFORE, it is respectfully prayed that the COMPROMISE AGREEMENT be approved and that a decision be rendered in accordance forthwith.

Balaoan, La Union, this 8th day of February, 1979.

s/t JOAQUIN P. SANTA ROMANA s/t REGINA SANTA ROMANA

(Defendant) VDA DE ALCANTARA

(Plaintiff)

Assisted by: Assisted by:

s/t RICARDO C. TANGALIN s/t MARCELINO B. BERMUDEZ

Counsel for Defendant Counsel for the Plaintiff

Baguio City 10 Pedro Tuazon Blvd.

Cubao, Quezon City"

Finding the above-quoted Compromise Agreement to be not against public order, policy and morale, same is hereby approved and the parties are hereby required to abide with the provisions of said Compromise Agreement." (Expediente, pp. 83-84.)

On June 5, 1979, petitioner's counsel filed a motion praying for the execution of the Order above-quoted on the ground, inter alia, that it "has already become final, unappealable and executory." (Expediente, pp. 89-90.)

On July 25, 1979, the respondent judge granted the motion.

However, on August 13, 1979, the respondent judge issued the Order which is sought to be annulled in this case and which reads as follows:

"This is a Motion and Manifestation filed by Jose de la Peña which bears the conformity of plaintiff Regina Sta. Romana Vda. de Alcantara and defendant Joaquin Sta. Romana. In said motion, movant Jose de la Peña alleged that he is a cousin of both plaintiff and defendant and upon confrontation among them, Jose de la Peña is entitled to one-six (1/6) of the property subject matter of this case which is equivalent to 594 square meters (33 x 18), hence, prays that the property be placed in possession among the parties including movant Jose de la Peña.

"Finding the motion and manifestation of Jose de la Peña to be in accordance with their agreement with

plaintiff and defendant, and considering further that said motion bears the conformity of both plain-tiff and defendant, same is hereby granted and let a writ of execution be issued accordingly." (Expediente, p. 95.)

The basis of the order is a Motion and Manifestation filed by Jose de la Peña, the other private respondent in this case, which reads as follows:

"COMES NOW the undersigned and unto this Honorable Court most respectfully manifests:

"That an order was issued by this Honorable Court in accordance with a Compromise Agreement submitted by plaintiff and defendant in this case;

"That upon confrontation among us with plaintiff and defendant, the undersigned being the cousin of the parties is entitled to one-sixth (1/6) of the properties subject matter of this case which is equivalent to FIVE HUNDRED NINETY FOUR (594) square meters, (33 x 18), middle portion;

"That plaintiff and defendant are willing to give to the undersigned the said portion entitled to him, hence, prays that the parties be put in possession in accordance with their agreement;

"WHEREFORE, it is respectfully prayed of this Honorable Court to grant this motion and prays for other reliefs just and equitable under the premises.

"Balaoan, La Union, this 25th day of June, 1979.

(Sgd.) JOSE DE LA PEÑA

Movant

"With our conformity:

(Sgd.) REGINA STA. ROMANA VDA DE ALCANTARA

(Plaintiff)

(Sgd.) JOAQUIN P. SANTAROMANA

(Defendant) "

(Expediente, p. 94.)

The above-quoted Motion and Manifestation is dated June 25, 1979, but there is nothing on its face to indicate when it was filed in court.

On August 15, 1979, a writ of execution was issued by Deputy Clerk of Court Manuel Luis Florendo for the purpose of enforcing the order of the respondent judge which had been issued the previous day. (Expediente, p. 96.)

On September 11, 1979, petitioner's counsel filed a Motion to Set Aside the Order of the Court dated August 13, 1979, on the grounds, among others:

"That upon receipt of said order the undersigned immediately contacted the plaintiff and asked her whether she in fact had recognized the ownership of Jose dela Peña on the property mentioned in the decision which is equivalent to 1/6 or 594 square meters and she told this representation that she did not consent to such agreement. She also said that she was coerced to sign a document which she did not know its contents;

"That the plaintiff is represented by a Counsel and the Court should have notified him so that he could have assisted the plaintiff when the document denomina-ted as "Motion and Manifestation" was heard and a copy thereof could have been furnished him;

"That the decision dated February 14, 1979 is already final, and the Court has no more power to amend the same; Likewise, Jose dela Peña has no authority to enter into the case because he was not a party thereto;

"Since the plaintiff has not voluntarily agreed to the contents embodied in the Motion and Manifestation and was not represented by her Counsel, it is evident that the order of the Honorable Court dated August 13, 1979 changing the nature of the decision dated February 14, 1979 is null and void; This is so because the Court has already lost its jurisdiction over the case much more so when it allowed Jose dela Peña who is not a party to the action intervened." (Expediente, pp. 103-104.)

An answer to the motion was filed on October 18, 1979 by Jose de la Peña. (Expediente, pp. 109-111). A reply to the answer was filed on November 13, 1979. (Expediente, pp. 114-117.)

The motion was heard on February 15, 1980, and petitioner's counsel was "given fifteen (15) days to submit his written memorandum to substantiate his motion and afterwhich the motion shall be deemed submitted for resolution." (Expediente, p. 131.) On March 3, 1980, the memorandum was filed. (Expediente, p. 134.)

It was only on September 16, 1980, after more than six (6) months from the submission of the motion that it was resolved by the respondent judge. She denied the motion and according to petitioner's counsel he received the order of denial on October 3, 1980.

There are two versions on how the questioned Order of August 13, 1979, was issued by the respondent judge. However, whichever version we accept, the petition has to be granted and the questioned orders have to be annulled.

The petitioner's version:

"(n) That in the first week of July 1979 the Honorable respondent Judge summoned the petitioner to appear before her for conference and petitioner, accompanied by her daughter Manuela Alcantara went to the Court as directed. In that conference the Honorable respondent Judge has shown her inte-rest to amend the decision dated February 14, 1979 by telling herein petitioner and her daughter that there is evidence that respondent Jose dela Peña is entitled to one sixth of the property located in Barrio Consuegra, Bangar, La Union and it would be better to give his share to avoid court litigation, and in fact they are relatives. That herein petitioner and her daughter countered that the said one sixth portion was already delivered to the mother of petitioner while both were still alive in payment of an indebtedness incurred by the mother of respondent Jose dela Peña and that the evidence of transfer covering the said one sixth portion is in the possession of respondent Joaquin Sta. Romana who is more fortunate because he finished his College Education, hence they could not accede to the proposal of respondent Honorable Judge.

"(o) That few days thereafter, a person who claimed himself an employee of the Court where the Honorable respondent Judge is holding session went to the house of the petitioner requesting the latter to sign a prepared document but the latter refused to sign reasoning out that she did not know about what she would sign and her lawyer was not present.

"(p) That when the petitioner did not sign the document, which was presented to her by the person who went to her residence, after few days thereafter a subpoena was sent to petitioner requiring her to appear before the Office of the Deputy Clerk of Court, Manuel Luis Florendo on August 10, 1979, which provides, 'fail not under penalty of law.' The person who served the said subpoena warned the petitioner to comply with the subpoena, otherwise, she would be arrested, and because of the warning, petitioner went to the Office of the Deputy Clerk of Court even without her lawyer or any of her children because she had no companion in the house and just went to the Court with maid and without being accompanied by any of her children or her attorney. Upon her arrival in the Office of the Deputy Clerk of Court, the latter brought out a document and told petitioner to sign the same but the latter at first refused reasoning out that she did not know what she was signing about and her lawyer was not present. Furthermore, she could not read and see what she was signing.

He told the petitioner that she would just sign the document in order that her case be terminated and in fact it is for her advantage. That petitioner insisted to the person who was requiring her to affix her signature on the document that she could not see and yet she could not read it, but he was told again that the contents thereof is for her own advantage and then her hand was held and guided where to affix signature. A xerox copy of the subpoena requiring her to appear on August 10, 1979 at the Office of the Deputy Clerk of Court, Manuel Luis Florendo is hereto attached as Annex "N". [Note: The issuance of the subpoena is admitted by the respondent judge in her comment. However, a copy of the subpoena cannot, be found in the expediente.]

"(q) That sometime in the third week of August 1979, Atty. Marcelino B. Bermudez was surprised to receive an order from the respondent Honorable Judge dated August 13, 1979 and also a writ of execution for the enforcement of said Order dated August 13, 1979 giving one sixth portion of the property subject matter of the action located in Consuegra, Bangar, La Union in favor of respondent Jose dela Peña, which in effect, has amended the original decision dated February 14, 1979. A certified copy of the Order dated August 13, 1979 is hereto attached as Annex "O", while the writ of execution, as Annex "P".

"(r) That immediately upon receipt of the said order and the writ of execution annex hereto as Annex "O" and "P", by Counsel for the petitioner, Atty. Marcelino B. Bermudez, the latter summoned the petitioner and her children and showed them the Order of the Honorable respondent Judge dated August 13, 1979, and the writ of execution whether said petitioner and her children had agreed to give respondent Jose dela Peña the one sixth portion of the property located in Consuegra, Bangar, La Union and Petitioner was surprised saying that she never consented.

"(s) That in view of the denial of the petitioner and her children of the voluntary giving out of the one sixth portion of the said property in Consuegra to respondent Jose dela Peña, Counsel, Atty. Marcelino B. Bermudez went to the Office of the Deputy Clerk of Court presided by the Honorable respondent Judge and found the document, entitled 'Manifestation and Motion' dated June 25, 1979, wherein the signatures of the petitioner, respondent Joaquin Sta. Romana and Jose dela Peña appeared whereby the petitioner appears to have agreed to the new partition. The said document is even tampered. A certified xerox copy of the said document entitled 'Manifestation and Motion' is hereto attached as Annex "Q".

"(t) That Atty. Marcelino B. Bermudez, Counsel for the petitioner, questioned the Deputy Clerk of Court, Manuel Luis Florendo, the person pointed to by the petitioner who required her to sign the document which later on was found to be the 'Manifestation and Motion' dated June 25, 1979 which was the basis of the Honorable respondent Judge in issuing her Order dated August 13, 1979, and asked him why he subpoenaed said petitioner to appear before the Court on August 10, 1979 and did not inform her Counsel considering that she is represented by Counsel, and why he ordered her to affix her signature on the above mentioned document and telling her further that what she was signing does not affect her right and interest and that she would do so only in order that her case be finally terminated, said Court personnel said that the petitioner voluntarily affixed her signature which was vehemently denied by the latter. The Deputy Clerk of Court informed Counsel for petitioner that it was the Honorable respondent Judge who ordered him to prepare the Manifestation and Motion and to issue the subpoena requiring petitioner to appear before the Court on August 10, 1979.

"(u) That petitioner and her Counsel also conferred with the Honorable respondent Judge why these things had happened considering that the case was already finally decided and still allowed respondent Jose dela Peña who was not a previous party to enter into the case without previous Motion and notification to the Counsel for the petitioner, and the Honorable respondent Judge, claimed that there is sufficient proof that respondent Jose dela Peña owns one sixth of the property located in Consuegra and therefore it is the obligation of the petitioner and respondent Joaquin Sta. Romana to give the said portion to respondent Jose dela Peña in order to avoid expensive Court litigation. The truth however is that the portion will go to respondent Joaquin Sta. Romana who is really interested to get said portion. The respondent Judge also told Counsel, Atty. Marcelino B. Bermudez that the petitioner had allegedly agreed voluntarily to give to respondent Jose dela Peña her share on the said one sixth portion and to which the petitioner had vehemently denied. "(Rollo, pp. 8-12.)

The version of the respondents is to the effect that Regina Sta. Romana Vda. de Alcantara voluntarily gave her conformity to the Motion and Manifestation dated June 25, 1979. In the words of the respondent judge in her comment:

"It was not on the first week of July, 1979 that the respondent Judge called both parties (plaintiff Regina Sta. Romana Vda. de Alcantara and defendant Joaquin Sta. Romana) for conference but on June 25, 1979. It so happened that on said date Atty. Bermudez, counsel of plaintiff-petitioner calendared for hearing his Motion to Issue a Writ of Execution. Defendant-respondent Joaquin Sta. Romana and plaintiff-petitioner Regina Sta. Romana Vda. de Alcantara were present. Respondent Jose de la Peña likewise appeared on said date bringing with him the Escritura de Compraventa. Plaintiff-petitioner Regina Sta. Romana Vda. de Alcantara likewise, on said date, filed with the Deputy Clerk of Court a letter of her counsel Atty. Marcelino B. Bermudez, hereinbelow quoted:

"The Clerk of Court

CFI Balaoan, La Union

GREETINGS:

I will just submit my motion for the Issuance of Writ of Execution without oral argument. This motion has been set for hearing on June 25, 1979 at 8:30 o'clock in the morning.

Please give the writ of execution to the plaintiff, bearer hereof, for delivery to the Sheriff so she can pay the sheriff's service fee.

I thank you for your prompt action.

Very truly yours,

(s/t) MARCELINO B. BERMUDEZ

Counsel for the plaintiff

10 Pedro Tuason Boulevard

Cubao, Quezon City'

"Since both the plaintiff-petitioner and defendant-respondent were present, the respondent Judge called both of them and Jose de la Peña in her chamber for conference. In the conference the respondent Judge explained the contents of the document to both the plaintiff-petitioner Regina Sta. Romana Vda. de Alcantara and defendant-respondent Joaquin Sta. Romana and respondent Jose de la Peña. At the time the plaintiff-petitioner was accompanied by a daughter and was also present at the conference. After the explanation, plaintiff-petitioner and defendant-respondent voluntarily and freely informed the respondent Judge to deliver to respondent Jose dela Peña that portion due to her mother Rosa de la Peña, thus, they were referred to the Deputy Clerk of Court.

"The respondent Judge's action in calling the parties to a conference in her chamber that day was not an interest to amend her Decision dated February 14, 1979 as alleged by the plaintiff-petitioner but to inform the parties of their respective rights and interest. There was no deception or consent vitiated by the respondent Judge to the parties. They all freely conferred among themselves later as the respondent Judge went back to her rostrum to continue the hearing of other cases calendared for the day.

"With respect to the allegations of the plaintiff?petitioner in paragraphs O and p which states 'that few days thereafter, a person who claimed himself an employee of the Court where the Honorable respondent Judge is holding session went to the house of the petitioner requesting the latter to sign a prepared document but the

latter refused to sign reasoning out that she did not know about what she would sign and her lawyer was not present; that when the petitioner did not sign the document, which was presented to her by the person who went to her residence, after few days thereafter a subpoena was sent to petitioner requiring her to appear before the Office of the Deputy Clerk of Court, Manuel Luis Florendo on August 10, 1979. The person who served the said subpoena warned the petitioner to comply with the subpoena, otherwise, she would be arrested, and because of the warning, petitioner went to the office of the Deputy Clerk of Court even without her lawyer or any of her children because she had no companion in the house and just went to the Court with maid and without being accompanied by any of her children or her attorney. Upon her arrival in the Office of the Deputy Clerk of Court, the latter brought out a document and told petitioner to sign the same but the latter at first refused reasoning out that she did not know what she was signing about and her lawyer was not present. Furthermore, she could not read and see what she was signing. He told the petitioner that she would just sign the document in order that her case be terminated and in fact it for her advantage. That petitioner insisted to the person who was requiring her to affix her signature on the document that she could not see and yet she could not read it, but he was told again that the contents thereof is for her own advantage and then her hand was held and guided where to affix her signature.' Same allegations were contained in their Verified Memorandum for the Plaintiff filed by Atty. Marcelino B. Bermudez, counsel for plaintiff-petitioner. As alleged therefore in said verified memorandum, the Court in view of the imputations or irregularities committed by an employee of the Court enforcing the plaintiff-petitioner to sign the Motion and Manifestation made her own investigation regarding said circumstances and it turned out that said allegations and imputations were not true and correct. Confrontations were made with the Deputy Clerk of Court as well as the employees of this Court regarding these imputations and the confrontations showed that said imputations were a result of one's fertile imagination to suit their purpose.

"The allegation that a subpoena was sent to plaintiff-petitioner to appear before the Court on August 10, 1979 is not a true information regarding this matter. In fact, in their Annex "N", the sub-poena was addressed to both the plaintiff-petitioner Regina Sta. Romana Vda. de Alcaritara and defendant?respondent Joaquin Sta. Romana to appear in the Office of the Deputy Clerk of Court on August 10, 1979. It should be noted that said subpoena was signed by the Deputy Clerk of Court and the date when it was prepared was on August 1, 1979. It is therefore very clear that it is not only the presence of the plaintiff-petitioner which was needed in the office but also that of the defendant respondent Joaquin Sta. Romana. If the purpose of said subpoena was only to seek the signature of the plaintiff-petitioner and to force her into signing the Motion and Manifestation, then it would appear illogical for the defendant-respondent to be present on same date. It is therefore manifest that the purpose of calling both parties to appear in the office of the Deputy Clerk of Court was in the desire to ultimately bring the parties to reconcile them as being brother and sister and a cousin. Since there was no showing of animosity and discord among the parties with respect to the motion and manifestation filed by movant Jose de la Peña, the Court issued an order approving the motion and manifestation on August 13, 1979.

"The respondent Judge in approving the Motion and Manifestation of Jose de la Peña in spite of the fact that Jose de la Peña is not a party to Civil Case No. 165-V, is of the belief that there is no necessity of making respondent Jose de la Peña a party to said civil case when both the plaintiff-petitioner Regina Sta. Romana Vda. de Alcantara and defendant-respondent Joaquin Sta. Romana recognize his right to a portion of the lot as evidenced by the Escritura de Compraventa." (Rollo, pp. 107-109.)

The version of the respondents is open to serious doubts. For one thing, if the petitioner had in fact voluntarily given her conformity to the Motion and Manifestation of Jose de la Peña on June 25, 1979, why was it still necessary to subpoena the petitioner to appear before the respondent judge on August 10, 1979, for a conference? At the risk of repetition this is what happened on June 25, 1979 according to the respondent judge:

"Since both the plaintiff-petitioner and defendant-respondent were present, the respondent Judge called both of them and Jose de la Peña in her chamber for conference. In the conference the respondent Judge explained the contents of the document to both the plaintiff-petitioner Regina Sta. Romana Vda. de Alcantara and

defendant-respondent Joaquin Sta. Romana and respondent Jose de la Peña. At the time the plaintiff-petitioner was accompanied by a daughter and was also present at the conference. After the explanation, plaintiff-petitioner and defendant respondent voluntarily and freely informed the respondent judge to deliver to respondent Jose dela Peña that portion due to her mother Rosa de la Peña, thus, they were referred to the Deputy Clerk of Court."

And this is her explanation with respect to the subpoena:

"It is therefore manifest that the purpose of calling both parties to appear in the office of the Deputy Clerk of Court was in the desire to ultimately bring the parties to reconcile them as being brother and sister and a cousin."

We also note the undue haste in issuing a writ of execution to enforce the Order of August 13, 1979; the writ was issued the following day without the benefit of a motion for its issuance.

However, as stated above, whichever version we accept, we have to grant the petition and annul the orders of the respondent judge.

The Order of February 14, 1979, which was served on the parties on the same day had the effect of a judgment which became final thirty (30) days thereafter. Accordingly, when the respondent judge issued the Order of August 13, 1979, which has the effect of modifying the previous order she was without jurisdiction to do so. Moreover, it passes understanding why the respondent judge allowed respondent Jose de la Peña to file a Motion and Manifestation when he was never a party to the case which had already been decided. Finally, it was highly improper for the respondent judge to act on a paper supposedly signed by the petitioner and which affected her rights when she was not assisted by her counsel. Respondent judge also deserves to be censured for her delay of more than six (6) months in resolving the motion to set aside her Order of August 13, 1979.

WHEREFORE, the petition is granted and the orders of the respondent judge dated August 13, 1979 and September 16, 1980, are hereby set aside. Costs against the respondents.

SO ORDERED.

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

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