

**GO TECSON, ET AL., PETITIONERS, VS. HON. HIGINO MACADAEG, ET AL., RESPONDENTS.***G. R. No.. L-3937. April 27, 1951*

Ponente: BENGZON, J.

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This is a petition to quash an order of the Manila court of first instance appointing a receiver in its civil case No. 5436 Go Chi Gun, et al., vs. Go Cho, et al, wherein the plaintiffs sued the successors of their deceased brother Paulino P. Gocheco and asserted co-ownership rights over some properties of their common ancestor Go Checo, particularly certain lots and buildings on Azcarraga and Aguilar Streets in the City of Manila. By a sworn petition they requested for receivership over said realties alleging, in short, that these had been mortgaged; that although the buildings earned sufficient rentals, the indebtedness had been negligently left unpaid; that the mortgage was under foreclosure, and there was grave danger the property would be lost thru a forced sale, unless a receiver was appointed to collect the rents and apply them to release the encumbrance.

By order of May 27, 1940, Judge Rafael Dinglasan granted the petition and appointed JEufemio S. Eufemio receiver of the properties.

Subsequently, an order dated July 23, 1949 discontinued the receivership upon a motion for reconsideration calling the court's attention to the circumstance that Paulino P. Gocheco's estate was in process of settlement in Case No. R-569 "Intestate of Paulino P. Gocheco" and that the properties were consequently in custodia legis.

Without unnecessary delay the plaintiffs sought intervention in the said intestate proceedings, presenting a motion for the removal and substitution of the administrator because he negligently failed to liquidate the aforesaid mortgage. The probate court denied the motion for the reason that the realties involved were no longer under the administrator.

In view of this denial which practically held that the lot and buildings had ceased to be in custodia legis, the plaintiffs in civil case No. 5436 renewed their petition for receivership, and the court reinstated the receivership. Hence this petition for certiorari.

Background of the request for receivership was the complaint (Case No. 5436) wherein Go Chi Gun and Go Away substantially made the following material allegations:

In February 1914 Go Checo died intestate leaving as legal heirs his eight children of two marriages, among them these two plaintiffs and Paulino P. Gocheco, the eldest son.

In March 1914 Paulino P. Gocheco instituted Intestate Proceedings No. 11588 of the court of first instance of Manila to settle the estate of their deceased father. The herein plaintiffs, then in China, were purposely kept ignorant thereof by Paulino, who was administrator; and notwithstanding their minority, no guardian was designated for them, except in the last stages when he proposed the appointment as guardian ad litem of one Go Cuay with whom he conspired to deprive plaintiffs of their rightful portion.

Paulino presented a project of partition under which each of the two plaintiffs received shares of stock and cash amounting to P3,995.56, whereas Paulino was awarded two parcels of land, one in Calle Aguilar, Manila with an area of 1475.74 sq. m. and another on Calle Azcarraga, Manila with an area of 477 sq. m., both lots having been priced at their assessed valuation (f3,995) instead of their actual market value, which was very much higher. (What the other heirs obtained is immaterial, as they are not parties hereto).

Further to accomplish the deception, Paulino got himself appointed in 1916 as the guardian of the persons and possessions of his brothers and sisters, including the plaintiffs; but these were never notified thereof. And although the guardianship ceased a long time ago, they have not received their patrimony.

Paulino made these plaintiffs understand that their father had died in penury. Go Chi Gun could manage to come to the Philippines only in January 1948, when she discovered that Go Checo had left substantial cash and resources in Manila. Go Away entered the Philippines in 1926 and, in pursuance of his plan to keep her from knowledge of their father's belongings, Paulino induced her to pose as the daughter of one Lim Tui, a local merchant, warning her not to disclose to anyone that she was Go Checo's daughter because the latter had died insolvent and was disqualified to bring his family into this country. Go Away stayed with her husband in Cagayan until the year 1940. Plaintiff Go Chi Gun and Go Away maintain that all the assets thus fraudulently obtained, and retained by Paulino P. Gocheco in a fiduciary capacity was commingled and thereby constituted a co-ownership which he used in furtherance and operation of his business interests now estimated at more than one million pesos. Consequently believing they are each entitled to one third of all his holdings, they demand partition after suitable accounting.

The petition for receivership filed May 4, 1949 in the same case No. 5436 alleged, under oath, that among the properties involved there are two parcels, one fronting Calle Azcarraga and the other fronting Calle Aguilar; that buildings are erected thereon; that since 1927 the realties had been mortgaged to Paz E. Siguion; that since 1937 the lots have been encumbered by a second mortgage in favor of Alberto M. Torres; that no part of the capital amounting to P50,000 has been repaid; that interest has been satisfied up to December 31, 1941 only; that foreclosure proceedings have been instituted, that such nonpayment was due to mal-administration, mismanagement or diversion of funds, because although the buildings are rented for not less than P4,500 monthly, and Paulino had sold properties amounting to over P200,000, no part of the liability has been discharged; that there is danger the mortgaged properties will be forfeited thru the foreclosure proceedings, unless receivership is established so that the rentals may be utilized to settle the debt.

Under the Rules, the provisional remedy of receivership may be secured whenever it appears that the party applying for it has interest in the property which is the subject of the action and that such property is in danger of being lost unless a receiver is named, or whenever it appears that the appointment of a receiver is the most convenient and feasible means of preserving, administering or disposing of the property in litigation. (Rule 61 sec. 1 pars, (b) and (e).)

The power to appoint a receiver pendente lite is discretionary with the judge of the court of first instance [1]; and once the discretion is exercised, the appellate court will not interfere, except in a clear case of abuse thereof, or an extralimitation of jurisdiction.[2]

Now, have the petitioners demonstrated a situation within the aforesaid exceptions?

They invoke the following particulars or propositions:

- (1) The estate of Go Checo was judicially settled and distributed more than thirty years ago;
- (2) Said partition may not be annulled without including the other heirs of Go Checo, and all the assets of the estate;

(3) The allegations are insufficient to justify receivership; and

(4) The lots would be subject to two judicial administrators, to wit, one appointed in the proceedings to settle the estate of Paulino Go Checo and another, the receiver designated in this case.

Under the first they argue that due to the lapse of so many years plaintiffs will not eventually prevail in their demands. However, plaintiffs allege that thru the machinations, active fraud and continuous deception of Paulino they were kept out of court and deprived of their rightful heritage, and that they came to discover the deceit only in April 1948 i. e. one month before they submitted their complaint. If these allegations are provisionally admitted for the purposes of this case, as they should be, plaintiffs have a subsisting cause of action 3 what with the fiduciary ties that have allegedly been abused.

True, the other co-heirs are not impleaded, but that is owing to the fact that plaintiffs do not attribute any trickery to them. And as plaintiffs' theory is that, inasmuch as Go Checo used their hereditary share in building up his business they became co-owners thereof, the other heirs need not be bothered. Anyway the latter have legal means to protect their interests.

The undenied allegations in the petition for receivership were prima facie adequate. They exhibited either diversion of funds or maladministration. It is inconceivable that property renting P4,500 monthly should not yield in so many years (since 1927 and/or 1937) enough money to wipe out two mortgages amounting to P50,000, or at least to forestall foreclosure proceedings.

As to the fourth circumstance, there is already an ex press declaration of the probate court that these properties are not under the management of the administrator appointed by it. Hence the danger of dual control suggested by petitioners does not actually exist.

Wherefore, finding no abuse of discretion by the lower court, that unquestionably had jurisdiction to appoint a receiver, we hereby deny this petition. Costs against petitioners.

Paras C. J., Feria, Pablo, Padilla,, Tuason, Montemayor, Jugo and Bautista Angelo, JJ., concur.

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[1] Teal Motor Co. vs. Court of First Instance, 51 Phil., 549; Sabado vs. Gonzalez, 53 Phil., 770.

[2] Teal Motor Co. supra; De la Cruz vs. Guinto, 45 Of. Gaz.; (Sup. A) 43.

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