

TERESITA C. YAPTINCHAY, PETITIONER, VS. HON. GUILLERMO E. TORRES, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, PASIG BRANCH; VIRGINIA Y. YAPTINCHAY, IN HER OWN BEHALF AND IN H...

G.R. No. L-26462. June 09, 1969

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

The problem posed in this, an original petition for certiorari, is whether or not this Court in the exercise of its supervisory powers should strike down as having been issued in excess of jurisdiction or with grave abuse of discretion, the respondent judge's order of June 15, 1966 in Civil Case 8873 (Court of First Instance of Rizal) directing petitioner to deliver to Special Administratrix Virginia Y. Yaptinchay of the estate of the deceased Isidro Y. Yaptinchay the North Forbes Park property hereinafter described, and to refrain from disturbing or interfering in any manner whatsoever with the latter's possession thereof, such order having been amended by said respondent judge's subsequent order of June 28, 1966 in turn enjoining defendants in said case (private respondents herein) and/or their duly authorized agents or representatives from selling, disposing, or otherwise encumbering said property in any manner whatsoever pending the termination of said case. We granted the writ of preliminary mandatory injunction prayed for and directed respondents to return the possession of the North Forbes Park property to petitioner upon a P50,000-bond.

The controlling facts are the following:

On July 13, 1965, herein petitioner Teresita C. Yaptinchay sought in the Court of First Instance of Rizal, Pasay City Branch, her appointment first as Special Administratrix and then as regular administratrix of the estate of Isidro Y. Yaptinchay who died in Hongkong on July 7, 1965. This is known in the record as Special Proceedings 1944-P. Petitioner there alleged that the deceased Isidro Y. Yaptinchay had lived with her continuously, openly and publicly as husband and wife for nineteen (19) years: from 1946 to 1964 at 1951 Taft Avenue, Pasay City, and from 1964 to July 1965 at 60 Russel Avenue, Pasay City; that the deceased who died without a will left an estate consisting of personal and real properties situate in- the Philippines, Hongkong and other places with an estimated value of about P500,000; that to petitioner's knowledge and information, the deceased left three daughters, Virginia Yaptinchay, Mary Yap-tinchay Eligir and Asuncion Yaptinchay, all of age; that on July 7, 8 and 11, 1965, certain parties carted away from the residences aforesaid personal properties belonging to the deceased together with others exclusively owned by petitioner. It was averred that in these circumstances the appointment of a special administrator to take custody and care of the interests of the deceased pending appointment of a regular administrator became an urgent necessity.

Upon the foregoing allegations, the court issued on July 17, 1965 an order appointing herein petitioner Teresita C. Yaptinchay special administratrix of the estate of the deceased Isidro Y. Yap-tinchay upon a P25,000-bond.

To the petition of Teresita C. Yaptinchay, an opposition was registered by Josefina Y. Yaptinchay, the alleged

legitimate wife, and Ernesto Y. Yaptinchay and other children, of the deceased Isidro Y. Yaptinchay, upon the ground that said Teresita C. Yap-tinchay, not being an heir of the decedent, had no right to institute the proceeding for the settlement of the latter's estate, much less to procure appointment as administratrix thereof; and that having admittedly cohabited with the deceased for a number of years said petitioner was not qualified to serve as administratrix for want of integrity. At the same time, oppositors counter-petitioned for the appointment of Virginia Y. Yaptinchay, daughter of the deceased, as special administratrix and of Josefina Y. Yaptinchay, the alleged surviving spouse, as regular administratrix.

To give oppositors an opportunity to be heard, the probate court, on July 19, 1965, set aside its order of July 17, 1965 appointing petitioner Teresita C. Yaptinchay special administratrix.

On July 30, 1965, after the parties were heard, the probate court granted counter-petitioners' prayer and named Virginia Y. Yaptinchay special administratrix upon a P50,000-bond.

On August 18, 1965, the special administratrix submitted a preliminary inventory of the assets of the estate of the deceased Isidro Y. Yaptinchay. Included amongst these was "[a] bungalow residential house with swimming pool, situated at Park corner Talisay Road, North Forbes Park, Makati, Rizal" adverted to at the start of this opinion.

It was after respondent Virginia Y. Yaptinchay had been appointed special administratrix that herein petitioner Teresita C. Yaptinchay made her second move. That was on August 14, 1965. This time, petitioner filed in another branch (Pasig Branch) of the Court of First Instance of Rizal an action for replevin and for liquidation of the partnership supposedly formed during the period of her cohabitation with Isidro Y. Yaptinchay and for damages. This case was docketed as Civil Case 8873.[1] Pending hearing on the question of the issuance of the writs of replevin and preliminary injunction prayed for, respondent judge Guillermo E. Torres issued an order of August 17, 1965 temporarily restraining defendants therein (private respondents here) and their agents from disposing any of the properties listed in the complaint and from interfering with plaintiff's (herein petitioner's) rights to, and possession over, amongst others, "the house now standing at North Forbes Park, Makati, Rizal."

On August 25, 1965, defendants (private respondents herein) resisted the action, opposed the issuance of the writs of replevin and preliminary injunction, mainly upon these propositions; (1) that exclusive jurisdiction over the settlement of the estate of the deceased Isidro Y. Yaptinchay was already vested in the Court of First Instance of Rizal, Pasay City Branch in the special proceedings heretofore mentioned (Special Proceedings No. 1944-P); (2) that the present liquidation case was filed to oust said probate court of jurisdiction over the properties enumerated in this, the second case (Civil Case 8873); and (3) that plaintiff was not entitled to the remedy of injunction prayed for, her alleged right sought to be protected thereby being doubtful and still in dispute.

Said defendants (private respondents before this Court) in turn prayed the court for a writ of preliminary injunction to direct plaintiff (petitioner here) and all others in her behalf to cease and desist from disturbing in any manner whatsoever defendant Virginia Y. Yaptinchay's possession amongst others of the North Forbes Park house and to order the removal from the premises of said North Forbes Park house of the guards, agents and employees installed therein by plaintiff; to enjoin plaintiff and her agents from entering the aforesaid house and any other real property registered in the name of Isidro Y. Yaptinchay and from interfering with or from disturbing the exercise by Virginia Y. Yaptinchay of her rights and powers of administration over the assets registered in the name of Isidro Y. Yaptinchay and/or in the latter's possession at the time of his death.

Came the herein disputed order of June 15, 1966 issued in said Civil Case 8873, the pertinent portion of which reads:

"From the pleadings as well as the evidence already submitted and representations made to the court during the arguments, it appears that one of the properties in dispute is the property located at the corner of Park Road and

Talisay Street, North Forbes Park, Makati, Rizal which at the time of the death of the deceased Isidro Y. Yaptinchay was still under construction and it also appears that after his death said property was among the properties of the deceased placed under the administration of the special administratrix, the defendant Virginia Y. Yaptinchay. Information has been given that in the evening of August 14, 1965, the plaintiff was able to dispossess the special ad-ministratrix from the premises in question and that since then she had been in custody of said house.

While the Court is still considering the merits of the application and counter application for provi-sional relief, the Court believes that for the pro-tection of the properties and considering that the Forbes Park property is really under the respon-sibility of defendant Virginia Y. Yaptinchay, by virtue of her being appointed Special Administratrix of the estate of the deceased Isidro Yaptinchay, the Court denies the petition for the issuance of a writ of preliminary injunction of the plaintiff with respect to the Forbes Park property and the restraining order issued by this Court is lifted. The Court also orders the plaintiff to cease and desist from disturbing in any manner whatsoever the defendant Virginia Y. Yaptinchay in the possession of said property.

WHEREFORE, upon defendant's filing a bond in the amount of P10,000.00, let a writ of prelim-inary injunction issue requiring the plaintiff, her representatives and agents or other persons acting in her behalf to deliver the possession of the prop-erty located at the corner of Park Road and Talisay Street, North Forbes Park, Makati, Rizal to the Special Administratrix Virginia Y. Yaptinchay, and to refrain from disturbing or interfering in any manner whatsoever defendant's possession thereof."

Which, as aforestated, was amended by the court order of June 28, 1966, which in part recites:

"Considering that the present case treats principally with the liquidation of an alleged partnership between the plaintiff and the deceased Isidro Yaptinchay and considering further that said house in North Forbes Park is included among the properties in dispute, the Court hereby clarifies its Order of June 15, 1966 by enjoining the defendants and/or their duly authorized agents or representatives from selling, disposing or otherwise encumbering said property in any manner whatsoever pending the termination of this case."

Petitioner's motion to reconsider the June 15, 1966 order was overturned by respondent judge's order of August 8, 1966, which recites that:

"Considering that defendants, principally Virginia Y. Yaptinchay, took actual or physical possession of the said properties which were formerly held by the deceased Isidro Yaptinchay and the plaintiff, by virtue of her appointment and under her authority, as Special Adminis-tratrix of the estate of the deceased Isidro Yap-tinchay, the plaintiff's Motion for Reconsideration is hereby denied."[2]

The orders of June 15 and August 8, 1966 triggered the present proceedings in this Court.

1. Petitioner's stance before us is this: As she was occupying the Forbes Park property at the time of the death of Isidro Yaptinchay, grave abuse of discretion attended respondent judge's order issuing an injunctive writ transferring possession of said property to respondent Virginia Y. Yaptinchay.

A rule of long standing echoed and reechoed in jurisprudence is that injunction is not to be granted for the purpose of taking prop-erty out of possession and/or control of a party and placing it in that of another whose title thereto has not been clearly established.[3] With this as guidepost, petitioner would have been correct if she were lawfully in possession of the house in controversy when Civil Case 8873 (where the injunctive writ was issued) was commenced in the Pasig court, and if respondent special administratrix, to whom the possession thereof was transferred, were without right thereto. But the situation here is not as petitioner pictures it to be.

It is beyond debate that with the institution on July 13, 1965 of Special Proceedings 1944-P, properties belonging not only to the deceased Isidro Y. Yaptinchay but also to the conjugal partner-ship of said deceased and his legitimate wife, Josefina Y. Yaptinchay,[4] were brought under the jurisdiction of the probate court, properly to

be placed under administration.[5] One such property is the lot at North Forbes Park.[6]

With respect to the Forbes Park house, petitioner offers varying versions. In the verified petition before this Court, petitioner avers "that the construction of said North Forbes Park property was undertaken jointly by petitioner and the deceased, petitioner even contributing her own exclusive funds therefor." [7] This is a reproduction of an allegation in petitioner's June 27, 1966 alternative motion for reconsideration or for clarification/amendment of the herein controverted order of June 15, 1966 in Civil Case 8873.[8] And again, in the affidavit of Teresita C. Yaptinchay dated August 3, 1965, she spoke of the acquisition of properties, real and personal, in her own words, "through our joint efforts and capital, among which properties are those situated" in "North Forbes Park." [9] All of which contradict her averment in the amended complaint dated October 25, 1965 - also verified - in said Case 8873 to the effect that she "acquired through her own personal funds and efforts real properties such as x x x the house now standing at North Forbes Park, Makati, Rizal." [10]

But herein private respondents vehemently dispute petitioner's claim of complete or even partial ownership of the house. They maintain that the construction of that house was undertaken by the deceased Isidro Y. Yaptinchay without her (petitioner's) intervention and that the deceased paid with his own personal funds all expenses incurred in connection with the construction thereof.[11]

It was only after hearing and considering the evidence adduced and the fact that after the death of Isidro Y. Yaptinchay the Forbes Park house "was among the properties of the deceased placed under the administration of" respondent Virginia Y. Yaptinchay, that respondent judge issued the injunction order of June 15, 1966 herein complained of. Worth repeating at this point is that respondent judge, in his order of August 8, 1966, declared that defendants (private respondents herein), "principally Virginia Y. Yaptinchay, took actual or physical possession", amongst others, of the North Forbes Park house - "by virtue of her appointment and under her authority, as Special Administratrix."

On this score, petitioner herein is not entitled to the injunction she prayed for below.

2. As well established is the rule that the grant or denial of an injunction rests upon the sound discretion of the court, in the exercise of which appellate courts will not interfere except in a clear case of abuse.[12]

A considerate and circumspect view of the facts and circumstances in this case obtaining will not permit us to tag the disputed order of June 15, 1966 with the vice of grave abuse of discretion. It is quite true that, in support of the allegation that the house in North Forbes Park was her exclusive property, petitioner presented proof in the form of loans that she had contracted during the period when said house was under construction. But evidence is wanting which would correlate such loans to the construction work. On the contrary, there is much to the documentary proof presented by petitioner herself which would tend to indicate that the loans she obtained from the Republic Bank were for purposes other than the construction of the North Forbes Park home. And this, we gather from pages 17 to 18 of petitioner's memorandum before this Court; and the affidavit of Teresita C. Yaptinchay, Annex A thereof, which states in its paragraph 4 that she obtained various loans from the Republic Bank "for her own exclusive account" and that the proceeds thereof "were also used by affiant both for her business and for the construction, completion and furnishing of the said house at North Forbes Park", and which cites her seven promissory notes in favor of Republic Bank, Appendices 1 to 7 of said affidavit. Not one of the promissory notes mentioned reveals use of the proceeds for the construction of the North Forbes Park house. On the contrary, there is Appendix 2, the promissory note for P54,000 which says that the purpose of the loan is for "Fishpond development"; Appendix 3 for P100,000 for the same purpose; Appendix 5 for P50,000, "To augment working capital in buying & selling of appliances & gift items"; and Appendix 7 for P1,090,000, "For Agricultural Development". In plain terms, the fact alone of petitioner's indebtedness to the Republic Bank does

not establish that said house was built with her own funds.

It is in the context just recited that the unsupported assertion that the North Forbes Park house is petitioner's exclusive property may not be permitted to override the prima facie presumption that that house, having been constructed on the lot of Isidro Y. Yaptin-chay (or of the conjugal partnership) at his instance, and during the existence of his marriage with respondent Josefina Y. Yaptinchay, is part of the estate that should be under the control of the special administratrix.

3. Nor can petitioner's claim of ownership presumably based on the provisions of Article 144 of the Civil Code be decisive. Said Article 144 says that: "When a man and a woman live together as husband and wife, but they are not married, or their marriage is void from the beginning, the property acquired by either or both of them through their work or industry or their wages and salaries shall be governed by the rules on co-ownership."

But stock must be taken of the fact that the creation of the civil relationship envisaged in Article 144 is circumscribed by conditions, the existence of which must first be shown before rights provided thereunder may be deemed to accrue.[13] One such condition is that there must be a clear showing that the petitioner had, during cohabitation, really contributed to the acquisition of the property involved. Until such right to co-ownership is duly established, petitioner's interests in the property in controversy cannot be considered the "present right" or title that would make available the protection or aid afforded by a writ of injunction.[14] For, the existence of a clear positive right especially calling for judicial protection is wanting. Injunction, indeed, is not to protect contingent or future rights;[15] nor is it a remedy to enforce an abstract right.[16]

At any rate, it would seem to us that the interests of the parties would be better safeguarded if the controverted North Forbes Park property be in the hands of the bonded administratrix in the intestate proceedings. For then, her acts would be subject to the control of the probate court.

Finding no error in the disputed orders of respondent judge, the herein petition for certiorari is hereby dismissed, and the writ of preliminary mandatory injunction[17] issued by this Court is hereby dissolved and set aside.

Costs against petitioner.

SO ORDERED.

Reyes, Acting C.J., Dizon, Zaldivar, Fernando, and Capistrano, JJ., concur.

Concepcion, C.J., and Castro, J., on official leave.

Makalintal, Teehankee, and Barredo, JJ., took no part.

[1] Entitled "Teresita C. Yaptinchay, Plaintiff, versus Virginia Y. Yaptinchay, in her own behalf and in her capacity as Special Administratrix in the Intestate Estate of the deceased Isidro Y. Yaptinchay; and Jesus Monzon, Mary Yaptinchay Eligir, Antonio Yaptinchay, Ernesto Yaptinchay, Asuncion Yaptinchay, Josefina Y. Yaptinchay, Rosa Y. Monzon, Isabel Y. Valeriano, Remedios Y. Yaptinchay, Felicidad Y. Arguelles, Mary Doe and John Doe, Defendants." This complaint was amended on October 25, 1965 to include a claim over some other properties.

[2] Emphasis supplied.

[3] *Devesa vs. Arbes*, 13 Phil. 273, 278; *Evangelista vs. Pedrenos*, 27 Phil. 648, 650-651; *Asombra vs. Dorado*, 36 Phil. 883, 885--886; *Kabankalan Sugar Co. vs. Rubin*, 54 Phil. 645, 654; *Rodulfa vs. Alfonso*, 76 Phil. 225, 231; *Calo vs. Roldan*, 76 Phil. 445, 452; *Iman Sahim vs. Montejo* (June 29, 1963), 8 SCRA 333, 335; *Emilio vs. Bado* (April 25, 1968), 23 SCRA 183, 188-190.

- [4] See Certificado de Matrimonio dated September 6, 1920, Annex 1 of the Answer herein filed by respondents.
- [5] *Picardal vs. Lladas* (December 29, 1967), 21 SCRA 1483, 1491, citing *Roxas vs. Pecson*, 82 Phil. 407 and *Fernandez vs. Maravilla*, L-18799, March 31, 1964.
- [6] In a pleading filed in Special Proceedings 1944-P, petitioner her-self alleged that this Forbes Park lot was acquired by her and the deceased during the period of their cohabitation (Rollo p. 155), although she also states that title thereto is in the name of one Jose (or Erlinda) Oledan (Rollo, p. 15).
- [7] Emphasis supplied.
- [8] See Rollo, pp. 16, 79.
- [9] Rollo, p. 160; emphasis supplied.
- [10] See Rollo, pp. 26, 31.
- [11] See Verified Opposition, Motion to Dismiss, and Counter Petition for the Issuance of Preliminary Injunction dated August 25, 1965 filed by defendants in Civil Case 8873. Rollo, pp. 38-67.
- [12] *Rodulfa vs. Alfonso*, supra at p. 232; *Gregorio vs. Mencias* (September 29, 1962), 6 SCRA 114, 119.
- [13] See *Lesaca vs. Lesaca*, 91 Phil. 135, 140; *Aznar vs. Garcia*, 102 Phil. 1055, 1068.
- [14] *Bacolod-Murcia Milling Co, Inc. vs. Capitol Subdivision, Inc.* (July 26, 1966), 17 SCRA 731, 736-737; *Angela Estate, Inc. vs. CFI of Negros Occidental* (July 31, 1968), 24 SCRA 500, 509.
- [15] *Bacolod-Murcia Milling Co., Inc. vs. Capitol Subdivision, Inc.*, supra at p. 736.
- [16] *Id* at p. 737; *North Negros Sugar Co. vs. Hidalgo*, 63 Phil. 664, 671.
- [17] Rollo, pp. 176-177.

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