

**GASPAR M. LLAMAS AND ENCARNACION R. LLAMAS, PETITIONERS,
VS. HON. SEGUNDO S. MOSCOSO, AS JUDGE OF THE COURT OF FIRST
INSTANCE OF LEYTE, RUFO RAGA, AS ACTING PROVINCIAL SHERIFF
O...***G.R. No. L-6924. August 31, 1954*

Ponente: REYES, A., J.

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The petitioners in this case were adjudged in contempt of court in an intestate proceeding in the Court of First Instance of Leyte for allegedly interfering with the possession of property in custodia legis. They sought to appeal from the judgment, but as the appeal was denied and the judgment ordered executed they have come to this Court with a petition for certiorari to have the judgment and order of execution annulled, with an alternative prayer for a writ of mandamus to compel the trial judge to allow their appeal.

Petitioners are husband and wife. The wife is one of the children of the deceased Manuela Dioso whose estate is the subject of an intestate proceeding in the court below. Appointed administrator in said proceeding is the respondent Ciriaco Enriquez, surviving spouse of the deceased, and included in the estate under administration are certain lots belonging to the conjugal partnership, among them lot 57 of the Cadastral Survey of Tacloban and another lot contiguous thereto bearing number 143-A-2-A-4.

Pending final settlement of the estate the heirs presented a project of partial partition, allocating said lot 57 to Encarnacion R. Llamas and the other conjugal lots to the other heirs, including Ciriaco Enriquez, with the proviso that "the heirs shall continue occupying the premises of the estate they are presently using until the termination of these proceedings." The project was approved by the Court in its order dated July 19, 1948, to take effect on the first of the following month.

At that time petitioners and respondent were in good terms. But some relations between them became strained when respondent remarried despite the objection of his daughter Encarnacion, one of the petitioners, and when in 1951 respondent sought authority from the court to construct for himself a house on lot 143-A-2-A-4, his motion was opposed by petitioners with the result that it was denied by the court. Respondent retaliated by asking the court to oust Gaspar Llamas from the lot in question and declare him in contempt for using it without the permission of the administrator. The motion was not acted upon due probably to the transfer of the case to another branch of the court presided by the herein respondent Judge Segundo S. Moscoso. But on September 5, 1951, the respondent Enriquez filed another motion praying that Gaspar Llamas be declared in contempt of court for allegedly invading the lot in question some time before the end of the proceeding month and constructing a building thereon without authority from the administrator and the court. The motion was opposed by herein petitioners and another heir who made common cause with them, the opposition being supported with affidavits to the effect that Encarnacion H. Llamas had been in possession of said lot since 1947. After receiving evidence in the case, the court, on February 25, 1952, rendered an order declaring the petitioners in contempt of court "for

interfering with respondent administrator's possession of the property under administration and sentencing them both to 2 months imprisonment and a fine of P500 each and also to render an accounting of their occupancy of the lot.

The sentence was read to Llamas and his wife on March 24, and it would appear that, immediately after the reading of the sentence, the spouses, who were not then assisted by counsel, verbally announced in open court and in the presence of opposing counsel that they were appealing therefrom, and for that purpose were asking the Judge to fix the amount of the appeal bond. This the court did on the same day, and also on that same day the spouses filed the bond, which was forthwith approved by the court. It appears from the terms of the bond, as approved by the court, that the same was authorized in view of the fact that the spouses had appealed from the sentence for contempt and had been granted provisional liberty during the pendency of the appeal.

It would appear that all this transpired in the absence of petitioners' counsel, who was then in Manila. Eighteen days later, that is, on April 11, counsel filed a written notice of appeal and mailed a copy thereof to opposing counsel. But contending that the appeal had been filed out of time, Ciriaco Enriquez on April 28 asked for the execution of the sentence for contempt, and accepting this contention the court on July 25 disapproved the appeal and on July 29 ordered the execution of the contempt order of February 25. Petitioners now contend that the orders of February 25, July 25 and July 29 are void for having been rendered without jurisdiction and with grave abuse of discretion. They therefore ask that those orders be annulled, and if that be not feasible through certiorari, that their appeal be given due course.

Going over the record we find that under the terms of the order approving the partial partition, the heirs were expressly authorized to continue occupying the different portions of the estate respectively used by them until the administration proceedings had been terminated and a complete partition approved. It may be inferred from the order of February 25, 1953, declaring petitioner guilty of contempt, that when the partial partition was approved on July 19, 1948, they were already occupying lot No. 143-A-2-A-4. Such being the case, it is hard to understand why the court declared them in contempt of court for occupying the said lot without the permission of the court. On its face, the said order of February 25 would appear to be arbitrary and some members of this Court are inclined to view the order as a gross abuse of judicial power, which may be corrected by certiorari. The majority, however, are for going into the evidence and for that purpose are in favor of giving course to the appeal so that the evidence may be examined and on the basis thereof the question of whether the said order of February 25 was justified or not may be properly determined.

Technically speaking, appellants' written notice of appeal was three days late, for it was filed 18 days after the sentence for contempt was read to them. It should be noticed, however, that the filing of the said written notice was a mere formality for it would appear that appellants had on the very-day of the reading of the sentence announced in open court and in the presence of opposing counsel their intention to appeal, and filed the appeal bond fixed by the court. The bond was forthwith approved by the Judge who understood that the appeal had already been perfected. And the petition alleges that petitioners—who were not assisted by counsel at the time—were given to, understand that they could perfect the appeal by the filing of the bond. Considering, that, as alleged in the petition, which is under oath the delay of three days in the filing of the written notice of appeal was in a way due to the fact that counsel, who was in Manila at the time of the reading of the sentence in the court of First Instance of Leyte, did not actually get a copy of the sentence mailed to him by the clerk of court until April 11, when he immediately filed the said notice of appeal, we feel that equity demands that petitioners' appeal be given due course. After all, under section 5 of Rule 118, the appellate court may in its discretion entertain, an appeal notwithstanding failure to give written notice if the interests of justice so require.

In view of the foregoing, the prayer for a writ of mandamus is granted and the trial court ordered to give due

course to the appeal. Without costs.

Paras, C.J., Padilla, Montemayor, Jugo, Labrador, Concepcion, and Reyes, J. B. L., JJ., concur

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