

LOURDES CAMUS DE LOPEZ, ON HER BEHALF AND AS GUARDIAN AD LITEM OF THE MINORS, SALVADOR C. LOPEZ, JR., AND LUIS CARLOS LOPEZ, PETITIONERS, VS. HON. CIRILO G. MACEREN, JUDGE OF TH...*G.R. No. L-7424. August 31, 1954*

Ponente: CONCEPCION, J.

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Petitioner Lourdes Camus de Lopez, on her behalf and as guardian ad litem of her minor children, Salvador C. Lopez, Jr., and Luis Carlos Lopez, is the plaintiff in Civil Case No. 1035 of the Court of First Instance of Davao. Respondents Maria N. Vda. de Lopez, Enrique Lopez, Salvador Lopez, Jr., Leopoldo Lopez, Rodolfo Lopez and Flordeliz Lopez are the defendants in said case No. 1035, the purpose of which is to secure delivery of some property of the deceased Salvador Lopez, Sr., as alleged share of the petitioner, who claims to be his widow. She contends that, although his previous marriage with respondent Maria N. de Lopez, which was unknown to petitioner, had not been dissolved and was still subsisting, and acting in bad faith, and without advising petitioner of such first marriage, Salvador Lopez, Sr., wedded the latter in 1938, and, thereafter, lived as husband and wife with her; and that, as a consequence of said union, Salvador C. Lopez, Jr., and Luis Carlos Lopez were born in Manila on December 6, 1939, and November 25, 1940, respectively, and then christened as legitimate children of Salvador Lopez, Sr. and the petitioner, as set forth in their respective birth and baptismal certificates. After the filing of the answer of said respondents, as defendants in said Civil Case No. 1035, or on December 8, 1953, petitioner herein through her counsel filed a "notice for the taking" of her deposition and that of one Pilar Cristobal, at Room 202 of the Vasquez Building, 1865 Azcarraga Street, Manila, on January 18, 1954, at 2:00 p.m. Acting, however, upon an urgent motion of the defendants in said Civil Case No. 1035, respondent Hon. Cirilo C. Maceren, as Judge of First Instance of Davao, issued an order, dated January 11, 1954, prohibiting the taking of said deposition. Accordingly, petitioner instituted the present case for the purpose of annulling said order of January 11, 1954, and of having no restraint to the taking of the aforementioned deposition.

Petitioner maintains that respondent Judge committed a grave abuse of discretion in forbidding the taking of said deposition, she being entitled thereto as a matter of right, without leave of court, after the filing of the answer of the defendants in said Civil Case No. 1035, for section 1 of Rule 18 of the Rules of Court provides:

"Deposition pending action, when may be taken,—By leave of court after jurisdiction has been obtained over any defendant or over property which is the subject of the action, or without such leave after an answer has been served, the testimony of any person, whether a party or not, may be taken, at the instance of any party, by deposition upon oral examination or written interrogatories. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 29. Deposition shall be taken only in accordance with these rules. The deposition of a person confined in Prison may be taken only by leave of court on such terms as the court prescribes."

Under the other hand, respondents invoke, in their favor, section 16 of the same rule, reading:

"Orders for the protection of parties and deponents.—After notice is served for taking a deposition by oral

examination, upon motion seasonably made by any party or by the person to be examined and upon notice and for good cause shown, the court in which the action is pending may make an order that the deposition shall not be taken, or that it may be taken at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed the deposition shall be opened only by order of the court, or that secret processes, developments or research need not be disclosed, or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court; or the court may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression."

This provision explicitly vests in the court the power to "order that the deposition shall not be taken" and, this grant connotes the authority to exercise discretion in connection therewith (*National Bondholders Corp. vs McClintic*, 1 Fed. Rules Service, 388, 99 F. [2d] 595). It is well-settled, however, that the discretion conferred by law is not unlimited; that it must be exercised, not arbitrarily, capriciously or oppressively, but in a reasonable manner and in consonance with the spirit of the law, to the end that its purpose may be attained. Referring to the objective of section 16 of Rule 18 of the Rules of Court, former Chief Justice Moran has the following to say:

"The advisory committee of the United States Supreme Court said that this provision is intended to be one of the safeguards for the protection of the parties and deponents en account of the unrestricted right to discovery given by section 1 and 2 of this Rule. A party may take the deposition of a witness who knows nothing about the case, with the only purpose of annoying him or wasting the time of the other parties. In such case, the court may, on motion, order that the deposition shall not be taken. Or, a party may designate a distinct place for the taking of a deposition, and the adverse party may not have sufficient means to reach that place, because of poverty or otherwise, in which case the court, on motion, may order that the deposition be taken at another place, or that it be taken by written interrogatories. The party serving the notice may wish to inquire into matters the disclosure of which may be oppressive or embarrassing to the deponent, especially if the disclosure is to be made in the presence of third persons, or, the party serving the notice may attempt to inquire into matters which are absolutely private of the deponent, the disclosure of which may affect his interests and is not absolutely essential to the determination of the issues involved in the case. Under such circumstances, the court, on motion, may order 'that certain matter shall net be inquired into or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed the deposition shall be opened only by order of the court, or that secret processess, developments, or research need not be disclosed, or that the parties shall simultaneously file specific documents or informations enclosed in sealed envelopes to be opened as directed by the court.' In other words, this provision affords the adverse party, as well as the deponent, sufficient protection against abuses that may be committed by a party in the exercise of his unlimited right to discovery. As a writer said: 'Any discovery involves a prying into another person's affairs—a prying that is quite justified if it is to be a legitimate aid to litigation, but not justified if it is not to be such an aid.' For this reason, courts are given ample powers to forbid discovery which is intended not as an aid to litigation, but merely to annoy, embarrass or oppress either the deponent or the adverse party, or both," (Comments on the Rules of Court by Moran, Vol. I, pp. 435-6, 1952 ed.)

It is not claimed that the order complained of sought to avert any of the evils which said section 16 was meant to prevent or arrest. Moreover, petitioner was permitted to institute and maintain Civil Case No. 1035 as a pauper. As such, she can ill afford to meet the expenses to make, with her witnesses, the trip or trips from Manila to Davao, and to stay in said province for the time necessary for the hearing of the case, which might not take place on the first date set therefor. Hence, the order in question tended, in effect; to deprive her, not only of her right, under section 1 of Rule 18, to, take the deposition in question, but also, of the opportunity to prove her claim and, consequently, of the due process guaranteed by the Constitution. Upon the other hand, the records indicate that the

defendants in Civil case No. 1035—who are the widow of Salvador Lopez, Sr. and their legitimate children—must be well-off financially, for the estate of the deceased Salvador Lopez, Sr., which has already been partitioned among them, appears to be worth approximately half a million pesos. The main reason given in support of the contested order is that, if the deposition were taken, the court could not observe the behaviour of the deponents. The insufficiency of this circumstance to justify the interdiction of the taking of a deposition becomes apparent when we consider that, otherwise, no deposition could ever be taken, said objection or handicap being common to all depositions alike. In other words, the order of respondent Judge cannot be sustained without nullifying the right to take depositions, and, therefore, without, in effect repealing section 1 of Rule 18 of the Rules of Court, which, clearly, was not intended by the framers of section 16 of the same rule.

It is, consequently, clear that a grave abuse of discretion was committed by respondent Judge in issuing the aforesaid order of January 11, 1954, for which reason the same should be, as it is hereby annulled and set aside, with cost against the respondents, except the Hon. Cirilo C. Maceren.

So ordered.

Paras, C.J., Pablo, Bengzon, Padilla, Montemayor, Reyes, A. Jugo,, Bautista Angelo, Labrador and Reyes, J. B. L., JJ., concur.

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