

**FLOREÑA TINAGAN, PETITIONER, VS. HON. VALERIO V. ROVIRA,
JUDGE, COURT OF FIRST INSTANCE OF ILOILO; TAN CHUY HO,
ROSARIO GERALDE, ADELINA JUAN S. LOA AND ESTER H. JAMORA,
RESPOND...**

G.R. No. L-23555. January 29, 1968

Ponente: ANGELES, J.

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ANGELES, J.:

A petition for writs of certiorari, prohibition and mandamus, with preliminary injunction, to the Court of First Instance of Iloilo; on certiorari, to set aside the order, dated July 22, 1964, directing the administrator of the estate of Jaime Siason, deceased, to sell at public auction a "two storey building" included in the inventory of the property of the intestate to pay the claims of creditors; on prohibition, to restrain the enforcement of the aforesaid order; and, on mandamus, to order the respondent Judge to approve and certify the record on appeal submitted by the petitioner appealing from the aforesaid order of July 22, 1964.

The petition was given due course, and the respondents were required to answer; however, the writs of preliminary injunction was not granted.

The respondent Judge, in his own behalf, filed an answer, and the private respondents also filed a separate answer in their own behalf.

Culled from the allegations in the petition and the answer, and the annexes thereto, the following facts are not debated:

The petitioner and Jaime Siason had lived together as husband and wife without the benefit of marriage. They had four children. When Jaime Siason died, he was survived by the petitioner and their four children. (The record does now show that the deceased was ever married to another woman.) The property he had left was a two storey building constructed on the land of Ester H. Jamora. Upon the institution of the intestate proceedings of the estate of the deceased, Estelita Abucion was appointed administratrix. On March 21, 1964, the court approved the accounting submitted by the administratrix, but at the same time re-lived her of her position, and in her place, the court appointed Atty. Julio Albis and Floreña Tinagan co-administrators of the estate. Considering that the only property left by the deceased and which was under administration was the aforesaid two storey building, and none other, the record fails to disclose the reason and necessity for the appointment of two administrators of the estate, unless it could be for a reason, as discussed hereinafter, that Floreña Tinagan was claiming proprietary rights and interests or one-half of the building. Be that as it may, the fact is, however, that Albis and Tinagan both qualified for the position.

As stated in the order of July 22, 1964, the approved claims against the estate aggregates to P5,000.00, which fact, however, is disputed by Tina-gan, contending that the proceedings leading to their approval by the court were irregular and contrary to law.

The creditors of the estate whose claims allegedly had been approved by the court on July 9, 1964, filed a joint petition for the payment of their claims, contending that as the estate had no funds with which to pay their claims, it was necessary that the two storey buildings be sold at public auction, and with the proceeds therefrom to pay their claims.

Floreña Tinagan opposed the petition, contending that the alleged claims against the estate had not been approved by the court, and, granting that there was an order of approval, the proceedings leading to such approval, was irregular, as there was no notice to the interested parties; hence, the order is null and void. She further specifically alleged that "the one-half (1/2) undivided share of the building of strong materials consisting of two stories, belongs to her by reason of the fact that the said building was constructed thru the joint efforts, savings and industry of the herein administratrix with the late Jaime Siason."

After consideration by the court of the joint petition of the creditors and the opposition thereto, the court, on July 22, 1964, issued the disputed order. While it is stated in the order that the claims of the creditors against the estate had been approved by the court, that the estate had no funds with which to pay the said claims, and that the only income of the estate is that coming from the rental of the building at the rate of P175.00 a month which, on the other hand, is burdened with a charge for the support of Tinagan and her minor children with the deceased, however, the court failed to resolve the vital question posed by Tinagan, that one-half (1/2) of the building belongs to her. Nevertheless, in the answer of the respondent Judge to the instant petition, the following is alleged:

"That he Denies all the averments contained in Paragraph 27 of the Petition, the truth being that if Petitioner had ever any valid claim on the only property of the deceased Jaime Siason, Sr. which was advertised for sale at public auction to raise money to pay the creditors of the estate, said petitioner should have filed a bond "conditioned to pay the debts, expenses of administration, x x x within such time as the Court directs; and such bond shall be for the security of the creditors" in accordance with Section 3, Rule 89 of the Rules of Court, or that she should have filed a separate civil action in Court against Atty. Julio Albis, an Administrator of the Estate, in accordance with Section 1 of Rule 87 of the Rules of Court where the Court may issue an order enjoining the sale of the house. The claim of ownership by the petitioner of one-half (1/2) of the house without any lien whatsoever - free from taxes, free from paying rentals to the owner of the land where it stands, free from paying the owner of the materials used in the construction of the house, without defraying the costs of repair - cannot be validly heard and decided by the Court in an intestate proceeding but in a separate civil action."

A reconsideration of the order filed by Tinagan having been denied, she perfected an appeal from the order and submitted in due time a record on appeal and appeal bond of P120.00.

On July 29, 1964, the court disapproved the record on appeal. The order reads as follows:

"Considering that this case is under the joint administration of Julio Albis and Floreña Tinagan, the record on appeal filed by counsel, Atty. German M. Lopez, for Floreña Tinagan, is disapproved. It is suggested that the joint administrators should be consulted in all proceedings affecting this case."

A perusal of the foregoing order would seem to suggest that the record on appeal was disapproved because the co-administrator Julio Albis has not given his conformity thereto, but not that the record on appeal was either incomplete, defective or filed out of time. The subsequent order dated September 7, 1964, denying the reconsideration of the disallowance of the record on appeal, confirms the foregoing pronouncement. The order reads as follows:

"ORDER

This refers to the motion for reconsideration filed by Atty. German Lopez, as counsel of Floreña Tinagan, which the court only received on September 2, 1964.

Before this court ordered the sale of the property, Atty. Lopez was asked by the creditors and by the Court as to how he could pay the accounts of the estate, which have been approved by the Court and his plan of meeting the obligations of the estate. Atty. Lopez informed the court that the accounts shall be paid out of the income of the estate. It has been established that the income of the estate is very much less than the monthly allowances given to the minor children, for the rental of the lot, etc. The only property of the estate is the house which in due time may lose its value. Hence, the order of this court to sell the property for the best interest of the creditors and the estate.

The court finds that all the actuations of Atty. Lopez have been done without consulting the co-administrator of the estate who has an equal say as regards the administration of the estate.

Considering that the creditors in this proceedings should first be fully paid of their claims before anything can be distributed to the heirs, and considering further that the actuations of Atty. German Lopez is not sanctioned by Atty. Julio Albis, a co-administrator of the estate, the motion for reconsideration filed by Atty. German Lopez is denied.

SO ORDERED.

Iloilo City, September 7, 1964.

(Sgd.) VALERIO V. ROVIRA"

Judge

In the meantime, on September 3, 1964, in compliance with the orders of July 22, 1964 and August 8, 1964, the deputy clerk of court sold at public auction the aforementioned two storey building for the sum of P7,500.00 (its appraised value was P10,450.00) to the Iloilo Chinese Commercial High School, the highest bidder at the auction sale, and a certificate of sale was issued on the same date by the deputy clerk of court in favor of the Iloilo Chinese Commercial High School. (Vide, Exhibit V, p. 81, Rollo)

The foregoing facts clearly demonstrate that the writs of certiorari and prohibition have to be denied for the reason that the issue or issues posed upon the facts in relation to the order of July 22, 1964, have become functus officio, inasmuch as the sale of the property in question had become a consummated transaction and constructive title to the property has been vested unto the vendee - the Iloilo Chinese Commercial High School, and the petitioner has already perfected an appeal from the order of July 22, 1964, which is the appropriate remedy.

"Orders in administration cases, as relate, for instance to inventories, claims against the estate, and the sale of the property of decedent, are appealable." [See C. J. 569, 570, and notes; Reyes v. Ciria (1913), 24 Phil. 127; Molera v. Molera, 40 Phil. 566.]

"To assail the order of probate court to sell the property of a ward, appeal and not certiorari or mandamus is the proper remedy." [86 Phil. 499]

"An order for a license to sell real estate in administration proceedings, ordinarily, is in the nature of a judgment upon the issues involved and an appeal may be taken therefrom as in the case of any other judgment." [Santos v. Roman Catholic Bishop of Nueva Caceres, 45 Phil. 895.]

With respect to the record on appeal, it appearing that the disapproval of the record on appeal was based not on legal grounds, there being no showing that it was disallowed because it was defective, or filed out of time, or not

in conformity with the re-quirements of the Rules, the lower court is hereby directed to set for hearing anew the record on appeal and appeal bond, and thereupon to take such action and to issue such orders in relation thereto as the circumstances would warrant.

Accordingly, the writs of certiorari and prohibition are denied; and the writ of mandamus is granted. With costs against the private respondents.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Castro, and Fernando, JJ., concur.

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