

HEIRS OF JUAN D. FRANCISCO, NAMELY: AMPARO, LOURDES, ROSAURO, HERMINIA, JUANITO AND EMILIANO, ALL SURNAMED FRANCISCO, PETITIONERS, VS. HON. CECILIA MUÑOZ-PALMA, JUDGE OF BRANCH...

G.R. No. L-28746. February 27, 1971

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This is a petition for mandamus, filed by the Heirs of Juan D. Francisco, to compel the respondent Judge of the Court of First Instance of Rizal to approve their appeal from the order of said court dated 14 September 1967, in Civil Case No. 3796.

Insofar as may be pertinent to the present proceeding, the facts of the case are as follows:

On 20 September 1955, Quintin San Miguel filed a complaint in the Court of First Instance of Rizal against Juan D. Francisco and Anacleto D. Francisco, praying for the liquidation of the partnership of Francisco, San Miguel & Co. (composed of himself and the defendants), for partition of the properties thereof, and for damages. After due proceedings, and upon the findings that the partnership was the actual owner of the "La Milagrosa Estate", composed of 2 lots with a total area of 510,904 square meters and covered by TCT No. 26774 in the name of Juan D. Francisco; that by common agreement each partner acquired for himself, by purchase, a 5-hectare lot, the lots to be taken from the estate; and that the cash contributions to the partnership were P2,484.23, by Juan D. Francisco, P1,631.12, by Quintin San Miguel, and P778.00, by Anacleto D. Francisco, the court rendered decision on 29 December 1958, the dispositive portion of which reads:

"PREMISES CONSIDERED, this Court hereby renders judgment in favor of the plaintiff, Quintin San Miguel, and declares the properties covered by Transfer Certificate of Title No. 26774 as common property of the partnership 'Francisco, San Miguel and Co.' and the five-hectare lot now possessed by Quintin San Miguel as the exclusive property of the latter and pursuant to this judgment, this Court orders the defendant, Juan D. Francisco, as manager of the 'Francisco, San Miguel and Co.':

"(1) To wind up and liquidate the affairs of the partnership within 30 days from finality of this Judgment;

"(2) To partition the properties covered by the above-mentioned Title between the partners in proportion to their respective interests in the partnership and submit to this Court the project of partition for its approval within the same period of time, provided, however, that the five-hectare lot now presently occupied and possessed by plaintiff, Quintin San Miguel, shall be excluded from said partition and the other five-hectare lots owned exclusively by the other partners; and

"(3) to indemnify the plaintiff by way of attorney's fees in the sum of P1,000.00, and to pay the costs."

Appealed to the Court of Appeals, the decision was affirmed on 14 November 1962, the appellate court

remanding the case to the court a quo for further proceedings.

On 27 February 1963, with the decision having become final and executory, Quintin San Miguel applied to the court for authority to wind up and liquidate the affairs of the partnership and effect a partition of the properties. The motion was opposed by Anacleto Francisco, who was thereupon appointed by the court as liquidator. As Anacleto Francisco failed to comply with the directive of the court within the prescribed period, San Miguel once more prayed the court for authority to effect the liquidation of the partnership. In its order of 31 July 1963, the court granted San Miguel's petition, and he was authorized to liquidate the partnership and to submit a Project of Partition in accordance with the decision in the case.

On 8 January 1964, San Miguel submitted for approval of the court the required Project of Partition and report. Under the plan, the "La Milagrosa Estate", after the 3 lots of 5 hectares each were removed therefrom, is to be divided into 9 lots, Lots 1, 2, and 3, with a total area of 171, 203 square meters, more or less, to be adjudicated to Quintin San Miguel; Lots 7, 8, and 9, with a total area of 230,891 square meters, to Juan D. Francisco;^[1] and Lots 4, 5 and 6, with a total area of 108,800 square meters, to Anacleto D. Francisco. It was also suggested that the expenses for the survey and subdivision of the property be divided among the partners.

The approval of the Project of Partition was opposed by the heirs of Juan D. Francisco for several reasons: that the division of the only property of the partnership was not in accordance with the proportionate investments of the partners and with their agreement; that in his liquidation report San Miguel failed to consider the amount of P1,555.93, advanced by the deceased Juan D. Francisco for payment of taxes on the land from 1943 to 1962, as part of the latter's contribution to the partnership, contrary to the directive of the court; that he did not properly segregate the 5-hectare lots belonging to each partner; that the sharing proportion used was erroneous; that the division of the property was defective in that, while Juan D. Francisco apparently was given a larger share, Lot No. 9 allocated to him contained part of the provincial road with an area of 11,669 square meters which was not disclosed in the plan; and that, since plan (LRC) PCS-2810 (Exhibit "B") is erroneous, because it did not indicate the provincial road traversing Lot 9; and that the total area of said road as appearing in the plan is smaller than the actual area thereof if plotted against the map duly approved by the Bureau of Lands in 1935, so that the plan is worthless and the heirs of Juan D. Francisco should not be required to share in the expenses for its preparation.

In its order of 14 September 1967, the court, taking into account the respective shares and interests of the partners in the property, and the physical condition of the lots already occupied by them, declared the adjudication made in the proposed partition plan fair and just. Thus, said project of partition was approved, and the Register of Deeds of Rizal was ordered to cancel TCT No. 26774 in the name of Juan D. Francisco, and upon payment of the corresponding fees, to issue separate titles to Quintin San Miguel, for Lots 1, 2 and 3 of plan (LRC) PCS-2810; to Anacleto D. Francisco, for Lots 4, 5 and 6; and to the heirs of Juan D. Francisco, for Lots 7, 8, and 9. The expenses for the survey and subdivision of the property were apportioned among the partners in this manner: Juan D. Francisco, to pay P930.00; Quintin San Miguel, P640.00, and Anacleto Francisco P300.00. The heirs of Juan D. Francisco were also directed to clear TCT No. 26774 of any mortgage or encumbrance thereon in 10 days from the finality of the order.

On 12 October 1967, the heirs of Juan D. Francisco filed their appeal bond and notice to appeal from said order. By order of 8 February 1968, however, the appeal was disapproved by the court on the ground that the partition being in accordance with the terms of the decision, an appeal therefrom would be frivolous. When their motion for reconsideration of this order was denied, the heirs of Juan D. Francisco instituted the present action.

Clearly, the sole issue in this case is whether or not the respondent judge was correct in disallowing the appeal from the order approving the project of partition, which in turn would call for the determination of whether such

an appeal is frivolous or not.

It may be well to remember, in this connection, that the fact that the decision in this case has long become final and executor and that the order in dispute was issued merely in execution thereof, does not necessarily imply the non-existence of an appeal therefrom. For while it is true that, as a general rule, an order of execution of a final judgment is not appealable, it is also recognized that the rule is subject to two exceptions, viz., (1) when the order of execution varies or tends to vary the tenor of the judgment, and (2) when the terms of the judgment are not clear enough that there remains room for interpretation thereof by the trial court. In such instances, appeal is to be allowed to the party who may feel aggrieved by the order of execution thus issued.[2]

It may be noted that the decision of 29 December 1958 found that the "La Milagrosa Estate" belongs to the partnership composed of Juan D. Francisco, Quintin San Miguel, and Anacleto D. Francisco; that the respective contributions of the parties, as recapitulated by them in 1947, were placed at P2,484.23, for Juan D. Francisco, P1,631.12, for Quintin San Miguel, and P778.00 for Anacleto D. Francisco; that the parties each acquired a 5-hectare lot from the partnership property; wherefore, the court below directed Juan D. Francisco, and later, Quintin San Miguel, (a) to wind up and liquidate the affairs of the partnership, and (b) to partition the "La Milagrosa Estate" among the partners, in the proportion of their interests in the partnership. It can be seen that the decision left a number of things still to be done, any of which would involve the use of discretion. For example, it would be necessary to determine what properties would be included in the liquidation of the partnership; what contributions or expenditures made for the estate may be considered for purposes of determining the interests of the parties therein; and how the properties of the partnership would be divided. These gaps in the decision gave rise to the present controversy. For, confronted with the project of partition submitted by respondent San Miguel, herein petitioners at once apprised the court below of their objections thereto, as heretofore recited, raise not just trivial matters but genuine issues that the court below would have to determine and pass upon, the process requiring its exercise of discretion and judgment. Thus, when the said court approved the proposed project of partition, over the objections of therein defendants that the partition was not in accordance with the final decision in the case, that order becomes subject to review, and whatever error may have been committed in arriving thereat is correctible by appeal.[3]

The private respondents also raise the question of jurisdiction of this Court over the present action. It is pointed out that at the instance of petitioners, the main decision in the case was previously appealed to, and affirmed by, the Court of Appeals in 1962, implying that the matter involved in this action should have been brought to that tribunal. While the allegation may have some basis, it is equally true that the petition here, filed on 7 March 1968, contains a statement (footnote, page 1) to the effect that the properties involved in the case, consisting of 510,000 square meters of land in Antipolo, Rizal, are now valued at P1.50 per square meter, or a total of P766,356.00. Considering the location and nature of the properties as they appear in the records, i.e., that they are elevated areas located along the provincial road, next to an existing subdivision, they consist of irrigated ricefields and rolling orchards, the source of water is inside the property making the place suitable for resort purposes,[4] and taking judicial notice of the upward trend of the price of real properties, the valuation of the Estate at P1.50 per square meter in 1968 can not be considered exorbitant or arbitrary. For the rule is that, where the jurisdiction of a court is dependent upon the amount, such amount shall be determined by the facts existing at the time when the jurisdiction of the court is invoked, which is reckoned to be upon the filing of the complaint or petition in case of an original action or, in an appeal, when the appellate tribunal acquires jurisdiction over the case.[5] Besides, the statement about the market value of the properties was verified under oath by Rosauo Francisco[6], one of the petitioners, and recourse against any perjurious declaration, if warranted, may be made in a proper proceeding. For purposes of this petition, however, the aforesaid verification suffices as substantial compliance with the Rules then in force.[7]

Neither would the allegation that the record on appeal did not incorporate Annex "B" of respondent San Miguel's Report and Plan of Subdivision, or that it included therein a letter of one of herein petitioners to the trial judge, which allegedly is not a pleading, or that the record on appeal is fraught with errors, justify the orders disapproving the appeal itself. The annex mentioned by respondents (plan of subdivision), having been admitted as an exhibit,[8] can be incorporated in the record on appeal merely by referring to the exhibit number or letter by which it was identified during the hearing,[9] as herein petitioners had actually done.[10] As regard the inclusion in the record of a letter that has no place therein, and the existence of clerical errors in the record on appeal, they can not be treated as such serious infractions of the Rules as to deprive appellants of their right to elevate their cause to the appellate tribunal. If at all, the matters would properly draw an apposite order from the trial court, after hearing, for amendment or correction of the record on appeal,[11] but certainly not for the total disallowance of the appeal; unless, of course, it can be shown (which respondents have not done in this case) that such errors or deficiencies were purposely sought to delay the early termination of the proceedings.

FOR THE FOREGOING CONSIDERATIONS, the order of the lower court of 8 February 1968 is hereby set aside, and the writ prayed for is granted, ordering the judge presiding over the sala to which Civil Case 3796 of the Court of First Instance of Rizal is assigned to allow the appeal interposed in said case. No pronouncement as to costs.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] Juan D. Francisco, who had died in the meantime, was substituted in the proceeding by his heirs.

[2] Castro vs. Surtida, 87 Phil. 166; Manaois Salonga vs. Natividad, 107 Phil. 268; Corpus vs. Alikpala, L-23707, 17 January 1968, 22 SCRA 104.

[3] Cotton vs. Almeda-Lopez, L-14113, 19 September 1961, 3 SCRA 51.

[4] Annex "N", pages 220-235, Record.

[5] Macondray & Co. vs. Yangtze Insurance Association, 51 Phil. 789, 794.

[6] Petition, page 21.

[7] Section 17, paragraph 3, sub-paragraph (5), Judiciary Act, as amended by Republic Act 2613.

[8] Exhibit "B" - Liquidators.

[9] Section 6, Rule 41.

[10] Record on Appeal, page 58.

[11] Section 7, Rule 41.

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