

ANTONIO MA. CUI AND MERCEDES CUI DE RAMAS, PETITIONERS, VS. EDMUNDO S. PICCIO, AS JUDGE OF THE COURT OF FIRST INSTANCE OF CEBU, EUGENIO RODIL, SHERIFF EX-OFFICIO OF CEBU, AND VI...*G.R. No. L-5131. July 31, 1952*

Ponente: MONTEMAYOR, J.

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Don Mariano Cui, widower, as owner of lots Nos. 3212, 2313 and 2319 situated in the City of Cebu, with an area of 152 square meters, 144 square meters and 2,362 square meters, respectively, or a total extension of 2,658 square meters, on March 8, 1946, sold said three lots to three of his children named Rosario C. de Encarnacion, Mercedes C. de Ramas and Antonio Ma. Cui, pro indiviso for the sum of P64,000. Because Rosario C. de Encarnacion for lack of funds was unable to pay her corresponding share of the purchase price, the sale to her was cancelled and the one-third of the property corresponding to her was returned to the vendor. These three lots are commercial. The improvements thereon were destroyed during the last Pacific War so that at the time of the sale in 1946, there were no buildings or any other improvements on them. Because of the sale of these lots pro indiviso and because of the cancellation of the sale to one of the three original vendees, Don Mariano and his children Mercedes and Antonio became co-owners of the whole mass in equal portions. In the deed of sale vendor Don Mariano retained for himself the usufruct of the property in the following words:

"* * * do hereby sell, transfer, and convey to Messrs. Rosario C. de Encarnacion. Mercedes C. de Ramas and Antonio Ma. Cui, the above-mentioned parcel of land in equal parts, * * * and the further consideration, that I, shall enjoy the fruits and rents of the same, as long as my natural life shall last. Granting and conveying unto the said buyers the full right as owners to enjoy the constructive possession of the same, improve, construct and erect a building in the lot, or do whatever they believe to be proper and wise, as long as the same will not impair nor obstruct my right to enjoy the fruits and rents of the same * * *." (Italics ours.)

Subsequently, a building was erected on a portion of this mass facing Calderon street and was occupied by a Chinese businessman for which he paid Don Mariano P600 a month as rental. The date when the building was constructed and by whom do not appear in the record.

Sometime after the sale to Mercedes and Antonio the two applied to the Rehabilitation Finance Corporation (RFC) for a loan of P130,000 with which to construct a 12-door commercial building presumably on a portion of the entire parcel corresponding to their share. In order to facilitate the granting of the loan and inasmuch as only two of the three co-owners applied for the loan, Don Mariano on January 7, 1947, executed an authority to mortgage (Annex U) authorizing his two children co-owners to mortgage his share, the pertinent portion of said authority reading thus:

"That by virtue of these presents, I hereby agree, consent, permit, and authorize my said co-owners to mortgage, pledge my share so that they may be able to construct a house or building in the said property, provided however, that the rents of the said land shall not be impaired and will always be received by me." (Italic ours.)

The loan was eventually granted and was secured by a mortgage on the three lots in question, Don Mariano being included as one of the three mortgagors and signing the corresponding promissory note with his two co-owners. He did not, however, join in the construction of the 12-door commercial building as may be gathered from the "Convenio de Asignacion de Parte" (Annex V) wherein it was agreed among the three co-owners to assign to Don Mariano that one-third of the whole mass facing Calderon street and on which was erected the building already referred to as being occupied by a Chinese businessman and for which he was paying Don Mariano P600 a month rental. The area of this one-third portion was fixed at 900 square meters approximately one-third of the total area of these three lots. The pertinent portion of this Annex V reads as follows:

"Que como quiera que, la propiedad arriba descrita esta actualmente hipotecada a la Rehabilitation Finance Corporation para garantizar la construccion que mis condueños construyeron en la parte que les corresponde;

"Y que como quiera que, el Sr. Don Mariano Cui, uno de los condueños, no ha querido unirse a la construccion de dicho edificio, y desea que la parte que le corresponda sea la 1/3 que este dando frente a la Calle Calderon."
(Italic ours.)

The 12-door commercial building was eventually constructed and the builder-owners thereof Mercedes and Antonio received and continued to receive the rents thereof amounting to P4, 800 a month and paying therefrom the installments due for payment on the loan to the Rehabilitation Finance Corporation.

On March 25, 1948, two other children of Don Mariano named Jesus and Jorge brought an action (Civil Case No. 599-R) in the Court of First Instance of Cebu for the purpose of annulling the deed of sale of the three lots in question on the ground that they belonged to the conjugal partnership of Don Mariano and his deceased wife Antonia Perales. Thereafter, plaintiffs Jesus and Jorge applied for the appointment of a receiver to take charge of the lots and of the rentals of the building. This petition was denied on November 8, 1948.

On March 19, 1949, Rosario C. de Encarnacion, that daughter of Don Mariano who was one of the original vendees, filed a petition to declare her father incompetent and to have a guardian appointed for his property, in Special Proceeding No. 481-R of the Court of First Instance of Cebu. In May 1949 the petition was granted and Don Mariano was declared incompetent and Victorino Reynes was appointed guardian of his property. Thereafter the complaint in Civil Case No. 599-R seeking to annul the deed of sale of the three lots in favor of Mercedes and Antonio was amended so as to include as plaintiffs not only the guardian Victorino Reynes but also all the other children of Don Mariano.

On June 15, 1949, guardian Victorino Reynes filed a motion in the guardianship proceedings seeking authority to collect the rentals from the three lots in question and asking the Court to order Antonio and Mercedes to deliver to him as guardian all the rentals they had previously collected from the 12-door commercial building, together with all the papers belonging to his ward. This motion was denied by Judge Piccio in his order of July 12, 1949. The guardian did not appeal from this order.

On May 22, 1951, Judge Saguin rendered a decision in Civil Case No. 599-R and found that the three lots in question were not conjugal property but belonged exclusively to Don Mariano and so upheld the sale of 2/3 of said lots to Antonio and Mercedes. The plaintiffs appealed to the Court of Appeals where the case is now pending.

On August 1, 1951, after the rendition of judgment in Civil Case No. 599-R upholding the sale, guardian Victorino Reynes again presented or filed a motion in the guardianship proceedings No. 481-R asking for the delivery of the rentals of the 12-door commercial building to him and for authority to collect future rentals thereon. On September 5, 1951, respondent Judge Piccio, the same Judge who had denied a similar motion about two years before, that is, on July 12, 1949, granted the motion in his order of the same date directing Antonio and Mercedes to deliver to the guardian the rentals of the building they had so far collected, at the same time

authorizing the guardian to collect future rentals. The motion to reconsider the order filed by Antonio and Mercedes was denied in an order dated October 1, 1951. The present petition for certiorari with preliminary injunction was filed in this Court for the purpose of annulling said order of September 5, 1951 and the order of October 1, 1951 denying the motion for reconsideration, on the ground that the trial court in the guardianship proceedings lacked jurisdiction to issue the order. To decide whether or not the respondent Judge had jurisdiction to issue the order of September 5, 1951 directing the petitioners herein to deliver to the guardian Victorino Reynes the rentals collected by them from the building and authorizing said guardian to collect future rentals, we must first determine the nature and status of said rentals in relation with the guardianship proceedings. Said determination requires an interpretation of Section 6, Rule 97 of the Rules of Court which reads as follows:

"SEC. 6. Proceedings when person suspected of embezzling or concealing property of ward.—Upon complaint of the guardian or ward, or of any person having an actual or prospective interest in the estate of the ward as creditor, heir, or otherwise, that anyone is suspected of having embezzled, concealed, or conveyed away any money, goods, or interest, or a written instrument, belonging to the ward or his estate, the court may cite the suspected person to appear for examination touching such money, goods, interest, or instrument, and make such orders as will secure the estate against such embezzlement, concealment, or conveyance."

Chief Justice Moran in his Comments on the Rules of Court, Vol. II, 3rd ed., pp. 478-479, says the following on this section:

"Substantially the same as sec. 573 of Act No. 190.

"This provision is similar to the procedure in the settlement of the estate of a deceased person and its purpose is merely to elicit information or secure evidence from the person suspected of having embezzled, concealed or conveyed away any personal property of the ward. In such proceeding the court has no authority to determine the right of property or to order delivery thereof. If after the examination the court finds sufficient evidence showing ownership on the part of the ward, it is the duty of the guardian to bring the proper action,"

Section 573 of Act 190 referred to above is now embodied in Rule 88, Section 6 of the Rules of Court, and under said rule, Moran has practically the same comment as that reproduced above. In other words, in his opinion neither in guardianship proceedings nor in administration proceedings may the court determine the ownership of property claimed by the guardian or administrator to belong to the ward or to the estate of the deceased, and order its delivery to them. We believe that the purpose of these two rules, Rule 97, Section 6 and Rule 88, Section 6 of the Rules of Court is merely to secure evidence from persons suspected of embezzling, concealing or conveying away any property of the ward or of the deceased so as to enable said guardian or administrator to institute the appropriate action to obtain the possession of and secure title to said property, all for the protection of the interests of the ward and the estate of the deceased.

Counsel for respondents invite our attention to several cases purporting to support the theory that the court in guardianship proceedings may actually order the delivery of the property of the ward found to be embezzled, concealed or conveyed. Out of the cases cited, the only one we find to have some relevancy is that of *Castillo vs. Bustamante*, 64 Phil., 839. In this case, the court made a distinction between the provisions of Sections 709 and 593 of the Code of Civil Procedure which now correspond to Section 6, Rule 88 and Section 6 of Rule 97 of the Rules of Court. This Court in that case said in effect that while in administration proceedings the court under section 709 may only question the person suspected of having embezzled, concealed or conveyed away property belonging to the estate, Section 593 of the same Code of Civil Procedure authorizes the Judge or the court to issue such orders as may be necessary to secure the estate against concealment, embezzlement and conveyance, and this distinction is now given emphasis by respondents counsel. The way we interpret section 573 of the Code of Civil Procedure as now embodied in Rule 97, Section 6 of the Rules of Court in the light of the ruling laid down in the

case of *Castillo vs. Bustamante*, supra, is that the Court may issue an order directing the delivery or return of any property embezzled, concealed or conveyed which belongs to a ward, where the right or title of said ward is clear and indisputable. Such was the case of *Castillo vs. Bustamante* where husband and wife, parties in a litigation, arrived at a compromise whereby they donated their conjugal property to their only child and this donation was duly accepted. This compromise was approved by the court and embodied in the decision and the parties were directed to comply with the terms of the compromise. Later, the husband refused to deliver the property donated. This court affirmed the order of the trial court requiring the husband to deliver said property to the guardian of the minor child because the title of the ward to the property based on the donation "had the authority of *res judicata*." We believe, however, that where title to any property said to be embezzled, concealed or conveyed is in question as in the present case, the determination of said title or right whether in favor of the ward or in favor of the person said to have embezzled, concealed or conveyed the property must be determined in a separate ordinary action and not in guardianship proceedings. Incidentally it may be here stated that about a month after the filing of the present case of certiorari, or rather on November 1, 1951, guardian Victorino Reynes filed an ordinary action, Civil Case No. R-1720, in the Court of First Instance of Cebu against Antonio and Mercedes to recover all the rentals of the 12-door building collected by them (Annex A-3).

In the present case, is the right of the ward, Don Mariano, to the rentals of the 12-door building, clear and indisputable? The answer is definitely in the negative. Without any attempt or desire to determine the right or lack of right of the ward to said rentals and prejudge the civil action No. R-1720 brought by the guardian in the Court of First Instance of Cebu to recover said rentals, on the basis only of the documents involved or presented in this certiorari proceedings and without any additional evidence, there are reasons to believe that the scales of title instead of favoring the ward, incline more in favor of and point to the owners of the building. We need not state those reasons here.

In conclusion, we hold that the respondent Judge had no jurisdiction to issue his order of September 5, 1951, in the guardianship proceedings requiring the petitioners to deliver the rentals collected by them to the guardian and authorizing the latter to collect rentals in the future, for the reason that the jurisdiction of the court in guardianship proceedings, ordinarily, is to cite persons suspected of having embezzled, concealed or conveyed property belonging to the ward for the purpose of obtaining information which may be used in an action later to be instituted by the guardian to protect the right of the ward; and that only in extreme cases, where property clearly belongs to the ward or where his title thereto has already been judicially decided, may the court direct its delivery to the guardian.

In view of the foregoing, the petition is granted and the order of respondent Judge of September 5, 1951, and his order of October 1, 1951, are hereby set aside. The writ of preliminary injunction is hereby made permanent. The respondent-guardian, Victorino Reynes, will pay the costs.

Paras, C. J., Pablo, Bengzon, Tuason, Bautista Angelo, and Labrador, JJ., concur.

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