

**DY CHUN, DY SUAT HONG, DY BEE, DY SEKO, TAN HO, JOSE KOO DY,
ADMINISTRATOR OF THE INTESTATE ESTATE OF NOLASCO
DYCOTHAY, “AGUSAN COMMERCIAL” EAST MINDANAO
LUMBER CO., HIAP BEE, A...**

G.R. No. L-25461. October 04, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Petition for certiorari, prohibition and mandamus with preliminary mandatory injunction to annul an order of respondent Hon. Jose M. Mendoza, as Judge of the Court of First Instance of Cebu, dismissing the appeal sought to be taken by petitioners herein from a decision and an order of said respondent in Civil Case No. R-7793 of said Court.

It appears that as administrator of the Intestate Estate of Hilarion Dydongco, deceased, the settlement of which is the subject matter of Special Proceedings No. 2205-R of the Court of First Instance of Cebu, its Clerk of Court, Vicente Miranda - hereinafter referred to as the Administrator - commenced Civil Case No. R-7793 of the same Court against most of the petitioners herein, namely, Dy Chun, Dy Suat Hong, Dy Bee, Dy Seko, Tan Ho, Nolasco Dycothay,[1] Agusan Commercial Company, New Agusan Commercial, East Mindanao Lumber Company, Hiap Bee and East Mindanao Lum-ber Company, Hiap Bee and East Mindanao Lumber Company, Inc.

In his amended complaint, Miranda alleged that prior to and at the time of his death in China sometime in 1941, Hilarion Dydongco, who resided in the Philippines since the beginning of the century, had, in Butuan, Agusan and Cebu City, well-developed and established business and commercial enterprises with substantial bank deposits and about 127 parcels of land or property; that Hilarion Dydongco went to China, in 1934, and, thereafter, became seriously ill; that, at that time, his children, Dy Chun and Dy Suat Hong[2] as well as Dy Siok Lee[3] and his proteges Dy Bee and Dy Seko were working as his Manager and/or employees in the aforementioned business establishments; that taking advantage of the absence and bad condition of the health of Hilarion Dydongco, particularly of his subsequent death, the defendants therein (petitioners herein) took over said business, including its assets, goods, merchandise, chattels, machinery, stock--in-trade, cash on hand and in banks, amounts receivable and other properties of the deceased, as well as his store known as "Dydongco Store", and its branches, and organized first, a fake partnership with the business name of "Agusan Commercial Company", and then the East Mindanao Lumber Co., which operated and did business with the capital, assets, stocks-in-trade, merchandise, funds and other pro-erty of said deceased; that with funds belonging to the latter, the de-fendants therein (petitioners herein) moreover purchased several parcels of land, on one of which a 20-door apartment building was constructed, with funds of the same nature, and let to Chinese tenants and other lessees; that the defendants therein (petitioners herein) had received and are receiving the rentals, earnings and profits derived from said business and property of the deceased; and that said de-fendants (petitioners herein) hold, manage and operate the aforemen-tioned business, properties and income in trust for the Intestate Estate of Hilarion

Dydongco, but have not rendered any accounting thereof.

The Administrator prayed, therefore, that judgment be rendered declaring that said business, assets, income and other property, are in the possession and under the management and control of said defendants (petitioners herein) as mere trustees thereof, and sentencing them to turn over and deliver the same to him, as Administrator of the Intestate Estate of Hilarion Dydongco, as well as to render accounts and to execute the corresponding deeds of conveyance, in addition to paying damages and the costs. After appropriate proceedings, said Court, presided over by respondent Judge, rendered a decision finding that most of the allegations of the Administrator had been duly proven and, accordingly, sentenced the defendants therein (petitioners herein):

"1. (To) Deliver all properties found by the Court (in the body of its decision) to belong to the estate of Hilarion Dydongco, to plaintiff as administrator of the Estate of Hilarion Dydongco;

"2. To render full, accurate and correct accounting of all the fruits and proceeds of the properties which each of the defendants had possessed and which has been found by this Court as properties belonging to the estate of Hilarion Dydongco, from 1935 until the present date;

"3. To render full, accurate and correct accounting of all the fruits, interest, profits and assets as well as properties acquired by the Agusan Commercial Company, New Agusan Commercial Company, East Minda-ao Lumber Company, East Mindanao Lumber Company, Inc., from 1935 up to the present date;

"4. To pay by way of exemplary damages, jointly and severally, the sum of P60,000.00 to Dy Sio Pong and Dy Suat Ngo;

"5. To pay to counsel for plaintiff, jointly and severally, the sum of P30,000.00 as attorney's fees, including the cost of this suit.

SO ORDERED."

Copy of this decision was, on July 30, 1965, served upon the defendants. On August 9, they filed their notice of appeal and appeal bond and the next day, they submitted their record on appeal. On August 16, 1965, they filed, however, a motion for reconsideration and new trial, which was denied on October 18, 1965. Copy of the order to this effect was served upon them on October 19. On October 26, they filed a notice to the effect that, on October 30, 1965, they would submit for consideration the record on appeal filed on August 10. On November 13, defendants filed additional pages to be attached to said record on appeal, whereas the administrator objected to the approval thereof, upon the ground that the decision was already final and executory. On November 29, respondent Judge issued an order declaring that "the defendants (petitioners herein) have not perfected their appeal on time" and that the aforementioned decision had, consequently, become final and executory.

A reconsideration of this order was denied on December 15, 1965, whereupon said defendants - petitioners herein - instituted the present original, action for certiorari, prohibition and mandamus, with a writ of preliminary mandatory injunction, against the administrator and respondent Judge, alleging that the latter had acted with grave abuse of discretion amounting to lack of jurisdiction in issuing said orders of November 29 and December 15, 1965, and praying, accordingly, that said orders be declared null and void, and that respondent Judge be directed to give due course to the afore mentioned appeal of petitioners herein as defendants in said case No. R-7793. Soon after the commencement of these proceedings, or on December 24, 1965, we issued a writ restraining respondents there-in, until January 4, 1966, from implementing, enforcing and executing the orders of respondent Judge dated November 29 and December 15, 1965. On January 18, 1966, said writ was incorporated into a writ of preliminary injunction, upon the posting and approval of a bond, filed by the petitioners, in the sum of P5,000.00.

The petition herein and the answer thereto filed by respondents discuss rather extensively the question whether or

not petitioners had perfected their appeal in the lower court within the reglementary period. We find it, however, unnecessary to pass upon said question, for the reason presently to be stated.

Although declaring that most of the properties involved in the litigation belong to the estate of Hilarion Dydongco, the decision of respondent Judge, dated July 30, 1965, moreover, required petitioners herein to render a "full, accurate and complete accounting of all the fruits and proceeds" of said properties. After analyzing previous rulings thereon, this Court declared, in *Fuentebella v. Carrascoso*[4] that a decision of such nature is interlocutory in character, because it does not dispose of the action in its entirety and leaves something to be done to complete the relief sought, and that, accordingly, it is not appealable, until after the adjudications necessary for the completion of said relief shall have been made. Indeed, the very counsel for petitioners herein now accept this view and concede that petitioners' appeal had been taken prematurely.

WHEREFORE, this case should be as it is hereby dismissed and the writ prayed for denied, with costs against petitioners herein. The writ of preliminary injunction issued in this case on January 18, 1966, is, accordingly, dissolved.

IT IS SO ORDERED.

Reyes, J.B.L., Makalintal, Sanchez, Castro, Angeles, Fernando, and Capistrano, JJ., concur.
Dizon and Zaldivar, JJ., did not take part.

[1] Who died later and was substituted by the Administrator of his estate, Jose Koe Dy.

[2] Both defendants in said case R-7793.

[3] Who died subsequently and is not a defendant in case No. R-7793.

[4] G.R. No. 48102, May 27, 1942. See, also, *Salazar v. Torres*, L-13711, May 25, 1960; *Zaldarriaga v. Enriquez*, L-13252, April 29, 1961; *Zaldarriaga v. Zaldarriaga*, L-13424, May 31, 1961.

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