

LEONIDES CHUNACO, ET AL., PETITIONERS, VS. HON. PERFECTO QUICHO OF THE COURT OF FIRST INSTANCE OF ALBAY, ET AL., RESPONDENTS.

G.R. No. L-13774. January 30, 1959

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

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

Petition for certiorari with preliminary injunction seeking to annul an order of the Court of First Instance of Albay, dated March 31, 1958, appointing a receiver under its Civil Case No. 1808 for partition.

Ciriaco Chunaco died on February 1, 1955, leaving a sizeable estate mostly situated in the Bicol provinces. There being a last will and testament executed by the decedent during his lifetime, testamentary proceedings were instituted on February 19, 1955, docketed in Special Proceedings No. 435 of the Court of First Instance of Albay. While this case was pending, the heirs submitted with the court for its approval, an agreement signed by them, dated the 25th of October 1956, extra-judicially partitioning the properties involved therein, and asking that the said Special Proceedings No. 435 be dismissed. Acting thereon, the lower court, on December 4, 1956, confirmed the agreement and ordered the dismissal of the case.

The arrangement among the co-heirs as approved, provided among other matters, the following:

"(1) Socorro Paje Vda. de Chunaco, Felicidad Chunaco, Jorge Chunaco, Leonides Chunaco, Heracles Chunaco⁵ Charles Chunaco, Milagros Chunaco, Josefina Chunaco, Rosalinda Chunaco and Pericles Chunaco, hereinafter known as PAJE HEIRS, shall inherit and receive all the properties of the deceased Ciriaco Chunaco situated in the province of Albay;

(2) Ciriaco Chunaco, Jr. Estrella Chunaco and Tranquilina Chunaco, hereinafter known as PADUA HEIRS, shall inherit and receive all the properties of the deceased Ciriaco Chunaco situated in the province of Camarines Sur;

(3) The PADUA HEIRS shall pay to the PAJE HEIRS the sum of Thirty Thousand (P30,000.00) Pesos, x x x.

(4) The disposition made by the deceased Ciriaco Chunaco of his money in the National City Bank of New York xxx shall be respected.¹¹ (Annex "1", pp. 31-32)

Consequently, two co-ownerships were established, one among the so-called Paje Heirs and another among the Padua Heirs.

Civil Case No. 1808 is a petition instituted by Milagros Chunaco on August 20, 1957, seeking to have the properties owned in common by the Paje Heirs partitioned. Milagros was later joined in her petition by Felicidad Chunaco and both also prayed for the appointment of a receiver pendente lite, on the ground that the respondents therein (petitioners herein), as the managing co-owner were unwisely administering the properties to the detriment of the co-ownership.

In its order dated March 31, 1958, the lower court granted the petition for the appointment of a receiver and designated its acting deputy clerk of court to act as such, who later qualified to the office upon the posting and approval of his bond.

Upon petition for certiorari to this Court, we gave the same due course and issued a writ of preliminary injunction. This writ was later dissolved in a minute resolution of this Court, dated January 16, 1959, upon respondents' motion.

The petition proceeds upon the proposition that the order of receivership was improper because: (1) the properties involved were custodia legis; (2) that it does not appear that earnest efforts toward a compromise were made in accordance with Art. 222 of the Civil Code of the Philippines; (3) that the estate and inheritance taxes have not yet been paid; and (4) that there is no showing that the properties are in danger of being lost, removed or injured.

In connection with the first ground for certiorari the petition alleges;

"That in addition to said arguments, they also submit that respondent Judge has no jurisdiction to appoint a receiver over the properties in question for the same are still in custodia legis in Special Proceedings No. 435 of the CFI of Albay, Charles Chunaco, Special Administrator (cf. par. II, Complaint, Annex "A") (Petition, p. 7)

This allegation, however, turned out to be entirely false and baseless, because it appears from the records that Special Proceedings No. 435 of the Court of First Instance of Albay, was dismissed by an order of the Court of First Instance dated December 4, 1956, (Answer, Annex 2) and the special administrator's bond subsequently cancelled; whereas Civil Case No. 1808, wherein the receivership was ordered, was only begun on August 20, 1957. It is thus clear that the properties were not in custodia legis when receivership was ordered.

Petitioners next allege that no earnest efforts toward a compromise have yet been made, as required by the provisions of Art. 222 of the Civil Code of the Philippines,[1] hence, the institution of the action for partition and the consequent appointment of a receiver were not in order. Not only does the contrary appear in the pleadings submitted, but petitioners' contention is belied by the very order appealed from:

"The Court, through Honorable Mateo L. Alcasid, presiding Judge in Branch II hereof, had diligently and searchingly explored all possibilities of amicable settlement among the parties in this case. But, somehow or another, the idea of amicable settlement has not yet been realized. This primordial and noble aim, commenced by Judge Alcasid to have this case settled among the parties, who, after all, are brothers and sisters of full blood, is the guiding inspiration in the resolution of the petition for the appointment of a receiver. In conjunction therewith, another guidepost, upon which the Court bases the exercise of its conscience and sound discretion, is to remove friction, bickerings and animosity existing among the parties." (Order of March 31, 1958, Civil Case No. 1808)

We find no sufficient reason to disbelieve the lower court.

It is also argued that an indispensable party in the person of Socorro Paje Vda. de Chunaco, mother of the parties herein, has been omitted in the complaint for partition, and that, therefore, the court abused its discretion in appointing a receiver without ordering her inclusion. This, however, may be explained from the fact that a waiver was made by her in favor of all the other Paje heirs -

(8) Socorro Paje Vda. de Chunaco and Fermina Padua waive and renounce any and all other right, interest, participation and/or claim of any nature whatsoever over all the properties referred to in paragraphs 1 and 2 hereof." (Agreement of October 25, 1956, supra)

which will have to be taken on its face value until the contrary is established.

It appears that the estate and inheritance taxes have not to date been paid, and this fact, according to the

petitioners is sufficient to bar a petition for partition among the co-owners. Nowhere do we find any such requirement under Rule 71 of the Rules of Court. It is true that section 103 of the Internal Revenue Code makes payment of the estate tax a prerequisite to the delivery of the distributive shares of the co-heirs; but before such delivery can be made, there must first be a decree of partition allocating definite property to each heir; and there can be no decree unless an amicable partition is first had or an action for partition is filed and maintained.

Petitioners further aver that in ordering the receivership the court stated;

"On the basis of the law, the court has taken into consideration the possibility gathered from all the pleadings that the properties or funds in the possession of the male defendants are in danger of being lost, removed, or materially injured unless a receiver is appointed to guard and preserve them, and that, under the circumstances and atmosphere obtaining herein, it indubitably appears that the appointment of a receiver is the most convenient and feasible means of preserving, administering, and disposing of the properties in dispute." (Order of March 31, 1958, Civil Case No. 1808)

and they argue that a mere "possibility" that the properties should be lost or injured can not justify a receivership. It would appear, however, that the trial judge used the word "possibility" in the sense of "probability" for the record reveals that the "Mayon" distillery belonging to the coheirs and managed by petitioner has not only incurred losses in operation during the years 1956- 1957, but is facing an assessment of P22,144.70 as penalty for unlawful removal of distilled spirits; and moreover, petitioners who are the managing co-owners, admit having disposed of a Dodge Cargo truck belonging to the community in December 1957 (Memorandum, p. 16) without respondents' approval, when the law expressly requires the consent of all the co-owners for the alteration (and a priori for the alienation) of things owned in common (Art. 491, new Civil Code).

While in a partition proceeding it is generally unnecessary for the court to appoint a receiver, however, (as held in the case of Tuason vs. Concepcion, 54 Phil. 408) where the relations among the co-owners are strained, and no satisfactory arrangement for administration can be accomplished, the appointment of a receiver is not in abuse of discretion.

This ruling has been confirmed by Art. 492, par. 3, of the new Civil Code authorizing the appointment of an administrator (which term would include a receiver) in cases where the action of the majority co-owners results in serious prejudice to the minority.

"Should there be no majority, or should the resolution of the majority be seriously prejudicial to those interested in the property owned in common, the court, at the instance of an interested party, shall order such measures as it may deem proper, including the appointment of an administrator.

In view of the facts appearing on record we find no abuse of discretion in the order complained of, and it is well established that only such abuse would warrant interference by an appellate court with an order granting receivership (see 68 C. J. S., sec. 87, p. 133; Garcia v. Flores, et al., L-12392, June 28, 1957; Valiente v. Court of First Instance of Tarlac, 80 Phil. 413).

WHEREFORE, the petition is hereby dismissed. Costs against petitioners.

So Ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, and Endencia, JJ., concur.

[1]Art. 222. No suit shall be filed or maintained between members of the same family unless it should appear that earnest efforts toward a compromise have been made, but that the same have failed, subject to the limitation in

article 2035.

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