

**CONCEPCION ASETRE MOTOOMULL, PETITIONER, VS. HON.
ABUNDIO Z. ARRIETA, JUDGE OF THE COURT OF FIRST INSTANCE
OF MISAMIS ORIENTAL, AND PILAR ASETRE GARCIA,
RESPONDENTS.**

G.R. No. L-15972. May 31, 1963

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is a petition for certiorari to review respondent Judge's order of February 28, 1959, with a prayer that pending final determination of the proceeding respondent Judge be restrained from carrying out said order directing the appointment of a receiver of the property involved in Civil Case, No. 326 of the Court of First Instance of Oriental Misamis.

It appears that on February 26, 1949 the sisters Pilar Asetre Garcia, respondent herein, and Beatriz Asetre filed against their brother Fortunato Asetre and their sister Concepcion Asetre Motoomull, petitioner herein, an action to quit title to a parcel of coconut land of 114 hectares located at Kaliguran, Gingoog, Misamis Oriental, alleging that they were the owners thereof by virtue of a donation from the former owner, their father Pedro Asetre, and that after his death during the Japanese occupation the defendants illegally took possession and claimed ownership of the land, enjoyed all the products thereof, and in spite of repeated demand refused to vacate the property. The plaintiff prayed that they be declared owners of the property and the defendants ordered to vacate the same and pay damages. The defendants in their answer (Annex B) averred that defendant Fortunato Asetre was merely an "encargado" of his co-defendant Concepcion Asetre Motoomull, who owns the property because in 1919 Pedro Asetre, acting as her agent and using her money, bought for her several parcels of land in Gingoog, Misamis Oriental (which parcels now form one tract of 95 hectares), which he transferred to her in 1985 in consideration of P500.00 (Annex A to the answer); and that since 1919 she had been in continuous possession thereof, and therefore asked that the complaint be dismissed. On October 25, 1949 (1950) plaintiff Beatriz Asetre filed a "constancia" (Annex C) wherein she denied any interest in the property described in the complaint, alleging that the same belonged exclusively to Concepcion, and prayed that she be excluded as party-plaintiff in the case. On February 19, 1953 the court dismissed the complaint for failure of the plaintiffs to appear at the scheduled hearing (Annex D). Respondent Garcia filed several motions to set aside or reconsider the order of dismissal, which motions remained unresolved because of the transfer and/or retirement of the Judge presiding the court. Meanwhile, on February 15, 1958 she filed a petition for receivership (Annex E) on the ground that the property, which formerly consisted of 108 hectares, had been inexplicably reduced to only 54 hectares, and furthermore, the northern portion thereof was claimed and occupied by a certain Narciso T. Reyes with the consent of petitioner. On March 3, 1958 the court (Judge Vicente Abad Santos, presiding) declared that respondent Garcia's petition for receivership (dated March 1, 1958) could not be considered because her motions to set aside the order of dismissal had not been resolved, and thereupon set said motions for hearing (Annex F). On May 7, 1958 respondent Garcia filed another petition for receivership (Annex E-2) alleging as additional

ground that petitioner had fraudulently sold to her son, Johnny Motoomull, a portion of the land with an area of approximately 10 hectares, which the latter subsequently, mortgaged to the Philippine National Bank to guarantee a loan of P60,000.00, and that petitioner herself succeeded in getting a P10,000.00 loan from the same bank on the rest of the property as security, so that the property was in danger of being lost unless a receiver was appointed to guard and preserve it pending final dispositions of the case. In her opposition thereto (Annex E-3) petitioner denied that a third person was usurping the northern portion of the land, and denied also alleged sale of another portion to her son, claiming that the land sold to the latter was one she had purchased from Fortunato Asetre, who, in his affidavit attached to the opposition, affirmed this averment. The order of dismissal having been previously set aside (by Judge Abad Santos, Annex 4, respondent's answer), respondent Judge proceeded to consider the petition for receivership, which he had previously denied on August 28, 1958 (Annex G). Upon respondent Garcia's motion for reconsideration (Annex H) and after hearing, respondent Judge on February 28, 1959 set aside his order of August 28, 1958 and ordered that the litigated property (at that time in the possession of petitioner) be placed under receivership (Annex I). Her motion for reconsideration of this order having been denied (Annex K), petitioner filed an "urgent motion" (Annex L) wherein she asked that pursuant to Section 4, Rule 61 of the Rules of Court, the order for receivership be lifted under bond to be filed by her to answer for damages that might result to respondent. The court denied the motion; petitioner moved to reconsider, and after being turned down again filed the instant petition for certiorari.

The issue herein is whether or not respondent Judge acted in excess of jurisdiction or with grave abuse of discretion in ordering that the questioned property be placed under receivership and in denying petitioner's motion to lift the same upon her filing the requisite bond.

Litigated property may be ordered placed under receivership when it appears from the complaint or the answer, and such other proof as the court may require, that the party applying for the appointment of a receiver has an interest in the property which is the subject of the action, and that such property is in danger of being lost, removed or materially injured unless a receiver be appointed to guard and preserve it.[1] Wide latitude is given to courts in the appointment of receivers, but this discretion must not be exercised arbitrarily and sound reasons for receivership must appear of record.[2]

Respondent Judge based the order of receivership on the following considerations:

The evidence for the petitioners shows that the property in question was originally declared for taxation purposes in the name of the deceased Pedro Asetre, father of both parties - plaintiff and defendants - who died sometime during the Japanese occupation. The said property continue to be declared in the name of said Pedro Asetre up to the year 1957 when the defendant, Concepcion Asetre de Motoomull, caused the tax declaration thereof to be transferred in her name.

"It also appears that the property has been mortgaged by said Concepcion Asetre de Motoomull in favor of the Philippine National Bank in the year 1957 to secure a loan of Ten Thousand Pesos (P10,000.00) which has already become due and has not been paid, notwithstanding that defendant, Concepcion Asetre de Motoomull, is up to this time in possession of the property and has been gathering its products which are more than sufficient to meet the aforesaid obligation. According to the evidence of the plaintiff which has been contradicted, portions of the land in litigation are occupied by third-parties who now claim certain real rights over the same, and who have been tolerated by the defendant, Concepcion Asetre de Motoomull, or acting in connivance with her. The plaintiffs have also established by satisfactory evidence that the defendant Concepcion Asetre de Motoomull has conveyed a portion of the land in question to one of her sons who had also mortgaged the same to the Philippine National Bank to secure a loan which is also long overdue. The proofs adduced by the plaintiff further show that the original area of One Hundred Eight (108) hectares, more or less, which was formerly declared in the name of the late Pedro Asetre, only fifty-four (54) hectares remain

in the possession of the defendant, Concepcion Asetre de Motoomull. The foregoing facts show that some if not all, the properties in litigation may be lost pending the final determination of this case, unless the Court adopts the proper safeguards to prevent the same."

We are not prepared to say, on the basis of the record before us and the arguments of the parties relating to the instant petition, that respondent court gravely abused its discretion in Issuing the order complained of Respondent Pilar Asetre's interest in the property is shown by photostats of the deed of donation (with its English translation) which, according to her, were presented at the pre-trial of the case and examined by the court and by petitioner's counsel. On its face the deed of donation is evidence of said respondent's right to at least a portion of the property.

It should be remembered that we are not here reviewing the evidence submitted to respondent court or the findings of fact it arrived at on the strength of such evidence in justification of the appointment of a receiver. Our task is simply to determine whether respondent court acted with reasonableness, that is, in the due exercise of judgment under the circumstances, or in a capricious, arbitrary or whimsical manner.[3] The parties dispute ownership of the property-petitioner relies on a deed of transfer executed by the deceased Pedro Asetre in 1935, purporting to show he had bought said property for her and with her own money; respondent invokes the deed of donation already referred to, executed in 1938. It is neither timely nor necessary at this stage to decide between these two claims. What respondent court did, and did properly, was to find that Pilar Asetre has an interest which should be protected, pendente lite, from the danger of irreparable damage or loss. And the presence of such danger has been established prima facie by the fact that on the face of the documentary evidence presented the area of the land in litigation has been reduced, during the possession of petitioner, from some 108 to only 54 hectares; by the claims of other persons to certain portions thereof; and by the fact, also documented, that the land has been mortgaged to the Philippine National Bank but that the mortgage loans have remained unpaid notwithstanding the considerable income derived by petitioner from the produce of said land, thus giving rise to the risk of foreclosure.

The offer by petitioner to file a bond to answer for such damage as respondent Pilar Asetre may suffer has been turned down by the court. Again there was no grave abuse of discretion there. Damages, aside from being difficult to prove, particularly with respect to the crops produced by the land during petitioner's continued possession thereof, cannot satisfactorily compensate for the loss of the land itself should the mortgages on it be foreclosed. On this point the case of *Lacson vs. Hodges*,[4] relied upon by petitioner, is not decisive. There the defendant, who was being sued for recovery of a mortgage debt, obtained a decree lifting the receivership of the mortgaged property upon filing a bond, because the amount of the obligation sued upon was fixed and definite, for which the bond could very well answer, and because the mortgaged property sought to be placed under receivership was a building which was in no danger of being lost, but only of deterioration. Here, on the other hand, a bond cannot adequately guard against the danger of loss.

WHEREFORE, the writ prayed for is denied, with costs against petitioner.

Bengzon, C.J. Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Paredes, Dizon, and Regala, JJ., concur.

[1] Sec. 1, par. b, Rule 61 of the Rules of Court.

[2] *Tuason vs. Concepcion*, 54 Phil. 408.

[3] The appointment of receivers for the conservation of the property in litigation rests largely in the discretion of the court. This discretion must, of course, be sound and cannot be exercised arbitrarily, and the remedy being an

equitable one, it can only be resorted to in cases where there is no other adequate remedy. But in the absence of clear abuse of such discretion the higher courts will not interfere in any manner (*High on Receivers*, 4th ed., par. 7). And, as we have already indicated, a writ of certiorari will not issue unless the abuse of discretion is so gross, or the irregularity in the proceedings so fundamental, as to directly or indirectly affect the jurisdiction of the court below. *Sabado vs. Cristina Gonzales, Inc.*, 53 Phil. 770.

Certiorari will not lie where the irregularities alleged to have been committed in the appointment of a receiver do not go to the jurisdiction of the appointing court. (*Marquez and Jurado vs. Revilla*, 43 Phil. 274). *Muñoz vs. Locsin*, 63 Phil. 811.

The receivership here in question may possibly prove of little efficacy, but certiorari goes to the jurisdiction and will not lie to correct mere errors of judgment on the part of the lower tribunals (*Berbari vs. Imperial and Chicote*, 43 Phil. 22, 225). *Alvarez vs. Vera*, 64 Phil. 768.

The power to appoint a receiver pendente lite is discretionary with the judge of the court of first instance; and once the discretion is exercised, the appellate court will not interfere, except in a clear case of abuse thereof, or an extralimitation of jurisdiction. *Go Tecson vs. Macadaeg*, 88 Phil. 604.

[4]80 Phil. 216 .

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