

**MARCELO D. MENDIOLA, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, MAXIMO VITUG, PRAGMACIO VITUG, CONCORDIA KABILING AND MARIA FAJARDO, RESPONDENTS.**

*G.R. No. L-31705. July 27, 1981*

Ponente: GUERRERO, J.

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**GUERRERO, J.:**

This is a petition to review the decision of the Court of Appeals[1] in CA-G.R. No. 43149-R promulgated on January 10, 1970 setting aside the Orders of the Court of First Instance of Pampanga, Branch III.

Records show that this case originated in the Court of First Instance of Pampanga as Civil Case No. 3348 where a complaint was filed by Marcelo D. Mendiola as special administrator of the Intestate Estate of Donata Montemayor, against Pragmacio Vitug and Maximo Vitug, children of the late Donata Montemayor, and several others.

The Amended Complaint alleged inter alia, that during her lifetime, the deceased Donata Montemayor executed a Contract of Lease in favor of defendant Maximo Vitug and Pragmacio Vitug over a parcel of land for a five crop-year period; that through fraud, undue influence and without any consideration, said defendants affixed the thumbmark of Donata to an Extension of the aforesaid Contract of Lease for another five crop-year period; that through undue influence, deceit and fraud, defendant Pragmacio affixed the thumbmark of Donata, when the latter was already completely blind, mentally unsound and absolutely incompetent, to a General Power of Attorney in his favor; that pursuant to such General Power of Attorney, defendant Pragmacio executed a Contract of Lease in favor of his co-defendant Maximo over several parcels of land owned by Donata; that likewise acting as attorney-in-fact of Donata and for the purpose of circumventing the law, defendant Pragmacio executed Deeds of Absolute Sale in favor of his other co-defendants over real properties owned by Donata and thereafter bought some of these properties back in his name from said co-defendants. It was further alleged that defendants Maximo and Pragmacio never paid the rentals stipulated in the Contracts of Lease above-mentioned and have retained possession of the properties subject of the lease despite the expiration of the period provided for in the contracts. Complainant, therefore, prayed for the annulment of the General Power of Attorney, the Contracts of Lease and extension thereof and the Deeds of Absolute Sale mentioned in the Amended Complaint, including all subsequent documents and/or transactions arising and/or emanating from the said documents. It was also prayed that defendants be required to pay the accrued rentals up to the time they vacate the properties in question, and that defendant Pragmacio be ordered to render an accounting of all fruits, rentals, benefits and other amounts received as attorney-in-fact of the deceased Donata Montemayor.[2]

Defendants Maximo and Pragmacio, in their Answer, admitted that they gathered the produce of the lands in question on the strength of the lease contracts subject of the Amended Complaint, and alleged that they paid all the rentals due Donata Montemayor during her lifetime. They vigorously denied the allegation that Donata Montemayor was legally incompetent at the time she executed the contracts of lease and general power of

attorney in question, alleging that the deceased Donata during her lifetime was sued by her own children (other than answering defendants), namely Anunciacion, Salvador, Francisca (represented by her children), Jesus, Enrique, and Prudencia, in two civil cases, one filed in 1960 and the other in 1964; that as a consequence of said cases, properties of Donata were sold at public auction; that thereafter Donata caused the preparation of the General Power of Attorney in favor of defendant Pragmacio so that the latter could raise more than P100,000.00 to be used for the redemption of the properties sold at public auction, as well as the payment of attorney's fees, land taxes, registration fees and other incidental expenses; that Pragmacio sold properties of Donata pursuant to such General Power of Attorney with an agreement with the respective vendees that should Donata be financially able in the future, they would resell the properties to her, and if not, then to defendant Pragmacio; that the proceeds of the sale made by Pragmacio were used to effect the redemption of Donata's properties sold at public auction in the aforementioned civil cases and which amounts were in fact received by the children and grandchildren of Donata who had sue her.[3]

Before trial of Civil Case No. 3348, therein plaintiff Mendiola filed a verified Petition for the Appointment of a Receiver reiterating his interest in the ricelands and sugarcane lands subject matter of the action and alleging that the produce of said properties, valued at P70,000.00, more or less, annually, was about to be harvested and in danger of being lost, wasted, removed or materially injured. He therefore, prayed that a receiver be appointed to take possession of the properties and the products thereof, to guard and preserve the same pending final determination of the case.[4]

Defendants opposed the Petition contending that the appointment of a receiver is superfluous and improper for the following reasons: (1) the plaintiff, as administrator of the estate of the deceased Donata Montemayor, was already in custodia legis of the properties left by said decedent; (2) plaintiff has no legal right before actual trial and final adjudication of the conflicting rights of the parties to take possession of the lands in question and the fruits thereof; (3) the action does not involve lands and their fruits but the annulment of a general power of attorney, deeds of sale and contracts of lease; the documents sought to be annulled are all duly notarized and registered, hence presumed to be valid; the mere allegation of fraud in the execution of the documents in question is not sufficient to overthrow the presumption of legality; (6) even if Donata Montemayor were alive, she had no legal right to ask for the recovery of the possession of her lands from the lessees and vendees by the appointment of a receiver; and (7) to grant the petition for appointment of a receiver would virtually amount to prejudging the case on the merits before the trial and judgment on the validity or nullity of the documents sought to be annulled.[5]

On January 14, 1969, the Court of First Instance ordered the appointment of a receiver to be recommended by the parties, provided that if they do not agree, the Court would appoint a person of its own choice.[6] Reconsideration of this Order sought by the defendants was denied by the Court in its Order dated March 24, 1969.[7]

Defendants then went to the Court of Appeals by way of a Petition for certiorari and prohibition challenging the aforementioned Orders of the Court of First Instance and praying that a writ of preliminary injunction be issued ex parte enjoining, prohibiting and restraining the enforcement of said Orders.[8]

Pending action by the appellate Court on the Petition, plaintiff Mendiola in the Court of First Instance filed a Manifestation praying that a receiver be appointed without prejudice to any restraining order that may be issued by the Court of Appeals.[9] Granting the prayer, the Court of First Instance by its Order dated June 19, 1969 appointed Estanislao Laxa, Municipal Treasurer of Lubao, Pampanga as receiver, after requiring the plaintiff to file a bond in the amount of P10,000.00 to answer for any damages which defendants may suffer by reason of such appointment.[10]

Meanwhile, pursuant to a Resolution of the Court of Appeals dated July 24, 1969,[11] the Acting Deputy Clerk of Court of said court issued a Restraining Order of even date requiring the respondents Court of First Instance Judge Honorio Romero and Marcelo D. Mendiola, or any person or persons acting in their behalf or stead, to "REFRAIN and DESIST from carrying out or enforcing the said orders of January 14, 1969 (Annex 1) and March 24, 1969 (Annex L), or from taking any further action in said case, during the pendency of this case, or until further order from this Court." [12] Upon petition of counsel for respondent Mendiola, the appellate Court clarified its Restraining Order by deleting the portion "or from taking any further action in said case" and allowing the Court of First Instance to hear the case on the merits to enable the parties to present their evidence.[13]

After the parties filed their respective pleadings and memoranda, the Court of Appeals rendered a decision finding the appointment of a receiver to be not in order and setting aside the Orders of the Court of First Instance complained of. Petitioner filed a Motion for Reconsideration but the same was denied, hence the present petition.

In his Brief, petitioner assigns the following errors:

1. The Court of Appeals erred when it held that the appointment of a receiver prior to the final determination by the lower Court of the status of the parties in relation to the crops, plants, trees and buildings constitutes abuse of discretion;
2. The Court of Appeals erred when it held that when the action is for annulment of deeds of sale, said action does not involve recovery of possession of the parcels of land affected by the contracts which are the subject of the annulment proceedings;
3. The Court of Appeals erred when it reversed the Order of the Court of First Instance of Pampanga appointing a receiver to take care of the harvest, produce and fruits of the lands subject matter of the various deeds of sale which are sought to be annulled.[14]

The pivotal issue raised by petitioner is whether or not the appointment of a receiver by the Court of First Instance on January 14, 1969 was in order.

Respondent Court correctly stated that the appointment of a receiver pendente lite is a matter principally addressed to and resting largely on the sound discretion of the court to which the application is made. This Tribunal has so held in a number of cases.[15] However, receivership being admittedly a harsh remedy, it should be granted with extreme caution.[16] Sound reasons for receivership must appear of record, and there should be a clear showing of a necessity therefor.[17] Before granting the remedy, the court is advised to consider the consequence or effects thereof in order to avoid irreparable injustice or injury to others who are entitled to as much consideration as those seeking it.[18]

The facts and circumstances attendant to each particular case of receivership determine the soundness of the exercise of discretion of the court.[19] We have gone over the record of the instant case and find that the Court of First Instance acted arbitrarily in granting the petition for the appointment of a receiver. We agree with respondent Court of Appeals that "there (was) no sufficient cause or reason to justify placing the lands in question under receivership." [20]

At the time the Court of First Instance issued the assailed Order dated January 14, 1969, the case had not yet gone to trial. Before said Court then were merely the pleadings so far filed by the parties - the Amended Complaint, Answer to Amended Complaint, Petition for Appointment of a Receiver, and Opposition to Petition for Receivership - and their respective annexes, on the basis of which the Court ordered that a receiver be appointed. It likewise appears that no hearing was held on the Petition for the appointment of a receiver or even on the main action itself.

Extant from the aforementioned pleadings and their respective annexes are the following undisputed facts: Private respondents are in material occupation of the properties sought to be placed under receivership. In addition to such physical possession, private respondents have Torrens certificates of title in their names and/or Deeds of Sale executed in their favor over some of the parcels of land. As to the properties not covered by such titles or contracts of sale, private respondents are lessees thereof under contracts of lease. All the documents in question appear on their face to have been fairly and regularly executed, signed in the presence of two witnesses, and duly notarized.

Private respondents, therefore, clearly have prima facie valid and legal claims to the properties subject of the documents sought to be annulled in the main action. The validity of such documents is presumed until proof to the contrary is adduced. This is in consonance with the well-known presumption of regularity and lawfulness of private and commercial transactions.[21] Such presumption is fortified by the fact that the documents are all notarized. "A rule of long standing which, through the years, has been adhered to is that a notarial document is evidence of the facts in clear, unequivocal manner therein expressed." [22] Moreover, being actual possessors of the lands covered by the documents sought to be annulled, private respondents are entitled to protection. Article 539 of the New Civil Code of the Philippines provides that "Every possessor has a right to be respected in his possession; and should he be disturbed therein he shall be protected in or restored to said possession by the means established by the laws and the Rules of Court." Furthermore, with respect to the lands already registered in the names of private respondents, the law is strongly in their favor. Pertinent portions of Section 38 of Act No. 496, otherwise known as the Land Registration Act, [23] state: "Every decree of registration shall bind the land, and quiet title thereto x x x. It shall be conclusive upon and against all persons x x x. Such decree shall not be opened by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding in any court for reversing judgments or decrees; subject, however, to the right of any person deprived of land or interest therein by decree of registration obtained by fraud to file in the competent Court of First Instance a petition for review within one year after entry of the decree, provided no innocent purchaser for value has acquired an interest."

For herein petitioner, on the other hand, there is nothing in the record to support his bare and self-serving allegations that there was fraud in the execution of the documents sought to be annulled. No evidence had been adduced thereon.

This is not to say that a hearing is an indispensable requirement for the appointment of a receiver. As petitioner correctly contends in his first assignment of error, courts may appoint receivers without prior presentation of evidence and solely on the basis of the averments of the pleadings. Rule 59 of the Revised Rules of Court allows the appointment of a receiver upon an ex parte application. [24] Nevertheless, such procedure is drastic and must be resorted to only in extreme cases and only where imperative necessity requires it, [25] more so if the purpose or effect of the receivership is to dispossess a party litigant of the property in litigation. [26] In other words, not in all instances is it within the discretion of a trial court to grant a petition for receivership without the benefit of hearing. Thus, in the case of *Leviste vs. Hon. Ramos, et al.*, [27] this Court upheld the denial by the lower court of the application for the appointment of a receiver stating that "(a)s the good faith or bad faith of the respondents is yet to be determined by the respondent court, the status of the parties in relation to the crops, plants, trees and buildings sown and erected thereon should not be disturbed until after the case shall have been fully decided." [28] And in *De los Reyes vs. Hon. Bayona, et al.*, [29] the order of the lower court appointing a receiver was set aside since by a transfer of possession of the properties in litigation from therein petitioner De los Reyes to a receiver, therein respondent Castro would be obtaining indirectly what she would not obtain directly, that is, deprive De los Reyes of the possession of the properties until the controversy between them is finally settled. [30] In the De los Reyes case, a document purporting to be a deed of sale with right of repurchase was in question. One of the

parties claimed that the deed did not express the true intention of the parties but was merely a mortgage to secure the payment of a loan.[31]

Thus, while as a general rule a reviewing court will not interfere with the trial court's exercise of discretion in receivership matters, such interference is called for where, as in the instant case, it is shown that the element of arbitrariness taints the actuation of the lower court.[32] As shown above, the particular facts and circumstances of the case at bar show that the Court of First Instance did not act with reasonable-ness, but in a capricious, arbitrary and whimsical manner.

WHEREFORE, the petition is hereby denied and the decision of the respondent Court of Appeals sought to be reviewed is affirmed. Without pronouncement as to costs.

**SO ORDERED.**

Teehankee, (Chairman), Makasiar, Fernandez, and Melencio-Herrera, JJ., concur.

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[1] Special Fifth Division, Mendoza, J., ponente, Lucero and Perez, JJ., concurring.

[2] C. A. Rollo, pp. 61-72.

[3] C.A. Rollo, pp. 93-106.

[4] Ibid., pp. 107-109.

[5] Ibid., pp. 110-117.

[6] Ibid., pp. 118-123.

[7] Ibid., pp. 137-140.

[8] Ibid., pp. 1-15.

[9] Ibid., pp. 146-147.

[10] Ibid., pp. 173-174.

[11] Ibid., p. 152.

[12] Ibid., p. 153.

[13] Ibid., p. 184.

[14] Brief for Petitioner-Appellant, pp. 10-11.

[15] Mendoza vs. Arellano, 36 Phil. 59, 63-64; Teal Motor Co. vs. Manila CFI, et al., 51 Phil. 549, 560-561; Sabado vs. Cristina Gonzales, Inc., 53 Phil. 770, 778-779; Sanson vs. Barrios, 63 Phil. 198, 202; Sanson vs. Araneta, 64 Phil. 549, 553; Lacson vs. Hodges, 80 Phil. 415; Go Tecson vs. Macadaeg, 88 Phil. 605, 607; Medel vs. Hon. Aquino, et al., 92 Phil. 895, 898; Ralla vs. Hon. Alcasid et al., 6 SCRA 311, 314; Alcantara vs. Hon. Abbas, et al., 9 SCRA 54, 58; Duque, et al. vs. CFI Manila, et al., 13 SCRA 420, 423; Chase vs. CFI Manila, et al., 18 SCRA 602, 605; Surigao Development Bank, et al. vs. Hon. Buslon et al., 48 SCRA 308, 322.

[16] Ysasi vs. Hon. Fernandez, et al., 23 SCRA 1079, 1084, citing Velasco vs. Go Chiuco, 28 Phil. 39, 41; Tuason vs. Concepcion, 54 Phil. 408, 419, and Claudio vs. Zandueta, 64 Phil. 812, 818.

[17] Motoomull vs. Hon. Arrieta, et al., 8 SCRA 172, 176; Arce vs. Sundiam, 70 SCRA 44, 52-54.

[18] Velasco vs. Go Chiuco, *supra*; Claudio vs. Zandueta, *supra*.

[19] 53 C.J., pp. 35-36, cited in Ralla vs. Hon. Alcasid, et al., *supra*.

[20] C.A. Decision, p. 5; Rollo, p. 22.

[21] Section 5, paragraphs p and q, Rule 131, Revised Rules of Court.

[22] Yturralde vs. Azurin, et al., L-22158, May 30, 1969, 28 SCRA 407, 417.

[23] This provision is reproduced substantially in Section 31, last paragraph, and Section 32 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree.

[24] Section 3 thereof provides: "If a receiver be appointed upon an ex parte application, the court, before making the order, may require the person applying for such appointment to file a bond executed to the party against whom the application is presented in an amount to be fixed by the court, to the effect that the applicant will pay such party all damages he may sustain by reason of the appointment of such receiver in case the applicant shall have procured such appointment without sufficient cause; and the court may, in its discretion, at any time after the appointment, require an additional bond as further security for such damages." See also Medel and Jojuco vs. Hon. de Aquino, et al., 92 Phil. 895, 897.

[25] Arce vs. Sundiam, *supra*, p. 52

[26] See also Mendoza vs. Arellano, *supra*, p. 64; Diaz and Elechicon vs. Hon. Nietes, et al., 110 Phil. 606, 610.

[27] L-14769, November 29, 1960, 110 Phil. 190.

[28] *Ibid.*, p. 193.

[29] L-13832, March 29, 1960, 107 Phil. 447.

[30] *Ibid.*, p. 454.

[31] *Ibid.*, p. 451.

[32] Alcantara vs. Hon. Abbas, et al., L-14890, Sept. 30, 1963, 9 SCRA 54, 58; Duque, et al. vs. CFI Manila, et al., L-18359, March 26, 1965, 13 SCRA 420, 423, and cases cited therein.

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