

RUFINA DEL ROSARIO VDA. DE ROSARIO, (NOW SUBSTITUTED BY ELINO DEL ROSARIO) AS SPECIAL ADMINISTRATOR OF THE ESTATE OF GLICERIA A. DEL ROSARIO IN SP. PROC. 62618, COURT OF FIRST I...*G.R. No. L-36514. December 19, 1974*

Ponente: BARREDO, J.

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Petition for certiorari praying that the Court set aside the order of respondent Court of First Instance of Manila, Branch VI, dated November 25, 1972, denying the motion of petitioner asking that private respondent Estate of Alfonso Precilla be required to post a guarantee bond for the sum of P344,000.00 and to deposit the ensuing monthly rental of P4,000.00 a month", allegedly the income from properties which petitioner is seeking to recover from said respondent in the action now pending in respondent court, Civil Case No. 82569.

Said Civil Case No. 82569 is an offshoot of Special Proceedings No. 62618, also of the Court of First Instance of Manila, but pending in another branch, Branch V, thereof, for the settlement of the Estate of Dona Gliceria A. del Rosario. There, the probate court allowed probate of the will of the decedent and appointed herein private respondent Consuelo Gonzales Vda. de Precilla as administratrix of her estate. This decision was appealed to this Court, and in Our decision dated April 30, 1970 in G.R. No. L-26615, We reversed the order of probate, and apart from removing Mrs. Precilla as administratrix, We appointed herein petitioner as special administratrix^[1] for the sole purpose of filing an action against respondent Estate of Alfonso Precilla to recover certain properties of Dona Gliceria which are claimed to have been fraudulently transferred to Mr. and Mrs. Precilla during the lifetimes of both Dona Gliceria and Alfonso Precilla. Subsequently, however, in Our resolution of August 18, 1972, We set aside this decision insofar as it reversed the order of probate of the trial court and ordered a new trial for the reception of further evidence regarding the testamentary capacity of Dona Gliceria.

In the meantime, aforementioned Civil Case No. 82569 was filed, and on November 22, 1971, plaintiff therein asked for the appointment of a receiver of the properties sought to be recovered. Respondent court denied the petition, and when a review of the denial was sought in this Court, We issued the following resolution:

"L-35082 (Rufina del Rosario Vda. de Rosario, etc. vs. Court of Appeals, Special Seventh Division, et al.). - Upon consideration of the allegations in the petition as well as of the motion to dismiss filed by respondent, the Court resolved to DISMISS the petition, since there are other remedies less harsh than receivership by which the rights of the petitioner may be amply protected, such as attachment, if grounds therefore should be shown to exist, or the filing of a bond by respondent to guarantee the reimbursement, in the event the questioned deeds of sale are annulled, of whatever rentals she might have collected in the meantime." (P. 94, Record)

Relying on this resolution, on November 14, 1972, petitioner filed with respondent court a "motion to order the defendants to post bond for rentals already received and to deposit the rentals to be received from the properties in litigation based on the resolution of the Supreme Court in G.R. No. L-35082, July 3, 1972." Under date of

November 15, 1972, private respondent opposed the motion on the following grounds:

- "1. That the motion has no basis and is devoid of any valid ground because the defendants, before the filing of the suit in this case, which, by way, had already prescribed, having been filed more than ten years after the execution of the questioned sale, were possessors in good faith of the three properties involved herein. As such, they are not accountable for the rentals (Art. 544, New Civil Code).
2. That, to grant plaintiff's motion, would be an unwarranted prejudgment of the case in his favor.
3. That the defendants have good and valid defenses to the action, as set forth in their amended answer.
4. That the principal defendant, Consuelo S. Gonzales-Precilla, 128 Blumentritt, San Juan, Rizal, is very solvent and would be able to satisfy any judgment against her.
5. That the Supreme Court in *Precilla vs. Narciso*, L-27200, and in *Garcia vs. Vasquez*, L--26615, April 30, 1970, clarified that Mrs. Precilla's removal as Special Administratrix 'does not involve or affect at all the title, or possession of, the properties' sought to be recovered in the instant case (32 SCRA 489, 506)." (Pars. 1 to 5, Annex C of Petition.)

On November 25, 1972, respondent court issued the now impugned order of denial reading thus:

"Acting on the motion dated November 13, 1972, filed by counsel for the plaintiff praying that defendants post a guarantee bond and deposit the monthly rentals of the properties under litigation and the Opposition thereto, filed by counsel for the defendants:

Considering the allegation and arguments of the parties in the said pleadings, the Court hereby resolves to deny as it is hereby DENIED, the aforesaid motion.

SO ORDERED. Manila, Philippines, November 25, 1972.

(SGD.) JOSE B. JIMENEZ

Judge."

(Annex D, Petition)

Main ground of the instant petition for certiorari is that respondent court committed grave abuse of discretion in denying petitioner's motion because in doing so, it disregarded or acted contrary to the above-quoted resolution of this Court of July 3, 1972.

We do not agree. Petitioner's seeming impression of the import of Our resolution is not correct. While the resolution does mention remedies other than receivership which could be open to petitioner, it did not in any way intend to thereby preempt the trial court's authority and prerogatives to act upon whatever petition she may elect to file. To point out what remedies are possible under given premises is not to direct that one who avails of them must necessarily be made to prevail. Whether or not the corresponding petition should be granted is always a matter addressed to the sound judgment or discretion of the trial court according to the actual circumstances before it. Our resolution of July 3, 1972 did not predetermine petitioner's right to the remedies therein mentioned for the obvious reason that not all the relevant facts were properly before Us.

More importantly, in the light of the grounds of opposition stated by respondent to petitioner's motion in question, it cannot be said that His Honor's order of denial is in any sense whimsical, capricious or arbitrary. While We are not unaware of the circumstances referred to in Our decision in G.R. No. L--26615 anent the execution of the deed of conveyance of the properties herein involved and relied upon by herein respondent estate, which could

justify the filing of the action for its annulment, it must be made clear again that We did not make any definite finding of fraud which would preclude the trial court from making any contrary conclusion from all the evidence to be presented before it. Indeed, in the decision itself, We said that the removal of Mrs. Precilla as administratrix "does not involve or affect at all the title or possession of the properties" sought to be recovered by petitioner (32 SCRA at p. 506). Besides, it is to be considered in this connection that the particular finding in Our decision regarding the alleged defective eyesight of Dona Gliceria at the time of the execution of the impugned documents her will and the deed of conveyance in controversy, has been weakened pro tanto by Our subsequent resolution setting aside the portion of said decision reversing the order of probate. As things stand now, petitioner has yet to overcome the presumption that the title of respondent estate over the properties in question was secured validly and regularly, and until the trial court has had an opportunity to make a finding favorable to petitioner's adverse contention in this respect, it would be unfair and irregular to deprive respondents of the enjoyment of said properties. Moreover, the final outcome of the probate case may yet affect adversely the right of petitioner to prosecute the action against respondents. And there being no showing that respondent's claim in her opposition aforequoted that Mrs. Precilla "is very solvent and would be able to satisfy any judgment against her" has been proven to the respondent court to be groundless, We cannot see any improvidence in the said court's appraisal of the equities between the parties.

WHEREFORE, the petition is dismissed with costs against petitioner.

Makalintal, C.J., Fernando, Antonio, and Fernandez, JJ., concur.

Aquino, J., took no part.

[1] Petitioner subsequently died and has been duly substituted by Elino del Rosario.

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