

**JOSEFINA B. EIJANSANTOS, FE. E MARQUEZ, MA. ASUNCION GAVINA
E. DELA PAZ, LUZ E. DELA CRUZ, CLARISSA E. MIRAS, CARMEN E.
VERAR, MIGUEL J. EIJANSANTOS, AND BENJAMIN J. EIJANSANTOS...**

Ponente: INTING, J.

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INTING, J.:

Under review in this APPEAL is the Order[1] dated January 28, 2004 of the Regional Trial Court, Branch 17, Zamboanga City in Special Civil Action No. 435 for “Partition” as well as of the Order[2] dated May 24, 2005 denying herein plaintiffs-appellants’ Motion for Reconsideration.

The facts of the case are as follows:

The appeal herein involves a parcel of land situated in Barangay Guiwan, Zamboanga City containing an area of Six Thousand Five Hundred Fifty Six (6,556) square meters and registered under Transfer Certificate of Title (TCT) No. 45,161[3] in the name of Felipa Eijansantos and defendant-appellee Erna Jewel Bacobo.

Felipa Eijansantos died without any debt or will. Alleging that they are her only legitimate and surviving heirs, plaintiffs-appellants executed an Extra-Judicial Settlement[4] and agreed to adjudicate among themselves, inter alia, the land subject of this case which belonged to the undivided share of deceased Felipa. Plaintiffs-appellants further allege that they had tried to contact Bacobo, who does not reside and is not found in the Philippines, but to no avail.

Consequently, on February 23, 1999, plaintiffs-appellants filed a petition[5] for partition before the RTC. Josefina Eijansantos, Ma. Asuncion dela Paz and Miguel Eijansantos, all residing in Zamboanga City as well as Fe Marquez, Clarissa Miras and Benjamin Eijansantos who were residing in Novaliches, Quezon City, named Paz Rivera as their attorney-in-fact by virtue of a special power of attorney[6]. Plaintiffs-appellants Luz dela Cruz and Carmen Verar, both residents of California, United States of America, also executed their special power of attorney[7] in favor of Paz Rivera. Considering that defendant-appellee does not reside in the Philippines and that the former could not be served with summons through personal or substituted service, plaintiff-appellants filed an ex-parte motion for service of summons by publication[8] which was granted[9] by the trial court. Despite due publication, defendant-appellee failed to file her opposition to the petition. Hence, plaintiffs-appellants filed a motion to declare defendant in default which was granted by the trial court. Plaintiffs-appellants were allowed to present their evidence ex-parte.

On January 28, 2004, the court a quo issued an Order dismissing the case, the dispositive portion of which provides:

WHEREFORE, the above-entitled case is ordered dismissed.

SO ORDERED.

The court a quo ratiocinated:

Xxx this Court finds that the document which is the Extrajudicial Settlement of Estate xxx and the basis of this petition, has not been participated in and/or signed by all the heirs of the late Felipa E. Eijansantos. Hence, the herein plaintiffs have not satisfactorily proven their interest over the property subject matter of this case.

Plaintiffs-appellants filed their motion for reconsideration[10] but the court a quo denied it in its Order dated May 24, 2005. The fallo reads:

WHEREFORE, premises considered, the Motion for Reconsideration dated February 9, 2004 is still denied for lack of merit. Accordingly, the case is dismissed. No costs.

SO ORDERED.

The court a quo ruled in this wise:

Xxx

Gleaned from the Motion for Reconsideration, it appears that the brothers and sisters of plaintiff Paz E. Rivera are either in the United States or Manila and Cebu. The Special Power of Attorney although duly authenticated by the Philippine Consulate General of the Philippines, City of Los Angeles, California, U.S.A., they are mere machine copies. The alleged xerox copies were only reproduced and/or lifted from one Leony Abduhalim of the Office of Register of Deeds, which are not the authenticated copies of the Consulate General of the Philippines. The authentication of the Philippine Consulate General of Los Angeles, California, are plain xerox or machine copies, more particularly the signature of Antonio S. Curameng, Consul General of the Republic of the Philippines. xxx

Aggrieved, plaintiffs-appellants filed the instant appeal raising the lone assignment of error[11]:

THE TRIAL COURT ERRED IN ITS FINDING THAT THE DOCUMENTS SUBMITTED BY PLAINTIFFS-APPELLANTS ARE MERE XEROX COPIES WITHOUT PROBATIVE VALUE.

On June 29, 2007, this Court issued a Resolution[12] directing plaintiffs-appellants to furnish defendant-appellee a copy of the Appellant's Brief. A Manifestation was filed by plaintiffs-appellants alleging that the whereabouts of defendant-appellee cannot be located, as a result of which an order of substituted service through publication in a newspaper of general circulation have been ordered by the court a quo. This Court issued another Resolution[13] dated February 23, 2009 directing plaintiffs-appellants to exert more effort to furnish defendant-appellee a copy of the Brief. The case was ordered archived to be revived upon proof that defendant-appellee had successfully been furnished a copy of the Brief. For failure to comply with the said directive, the appeal was dismissed through a Resolution[14] dated February 25, 2011. Plaintiffs-appellants filed a motion for reconsideration.

In a Resolution[15] dated January 11, 2012, this Court found the service of summons by publication to be in accordance with Section 15, Rule 14 of the Rules of Court. The appeal was reinstated and plaintiffs-appellants were directed to nevertheless send, through registered mail, a copy of Appellant's Brief to defendant-appellee's last known address in Florida, USA. With the non-filing of defendant-appellee's Brief, this Court deemed it as a waiver on the part of the defendant-appellee to file one, and submitted the instant case for decision.

Our Ruling

The appeal is impressed with merit.

Plaintiffs-appellants contend that the original copy of the special power of attorney executed in the USA was submitted with the Local Civil Registrar of Zamboanga City at the time when the extrajudicial settlement for the estate of the deceased Felipa E. Eijansantos was submitted for registration. As a matter of consequence, the xerox

certified true copy issued by the Office of the Register of Deeds which is offered in evidence before the trial court is sufficient compliance as far as authenticity is concerned being impressed as public document.

The contention is meritorious.

Section 19 of Rule 132 of the Rules of Court provides:

Section 19. Classes of Documents. — For the purpose of their presentation evidence, documents are either public or private.

Public documents are:

(a)

The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;

(b)

Documents acknowledge before a notary public except last wills and testaments; and

(c)

Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private.

Corollarily, Section 24 of the same Rule provides:

Section 24. Proof of official record. — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office. (25a)

As explained by the case of *Lopez v. Court of Appeals*[16]:

From the foregoing provision, when the special power of attorney is executed and acknowledged before a notary public or other competent official in a foreign country, it cannot be admitted in evidence unless it is certified as such in accordance with the foregoing provision of the rules by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept of said public document and authenticated by the seal of his office. A city judge-notary who notarized the document, as in this case, cannot issue such certification.

In the case at bar, the special power of attorney involved was executed and acknowledged before a Notary Public of Los Angeles, California, USA. Furthermore, the same was duly certified by the Consul of the Philippines stationed in the USA, as required by Section 24 of the Rules of Court.

The issue thus remaining is whether or not the court a quo properly ruled that the subject special powers of attorney are inadmissible as what were presented were allegedly mere “xerox copies, which were only reproduced

and/or lifted from one Leony Abduhalim of the Office of Register of Deeds, and not the authenticated copies of the Consulate General of the Philippines”.

It is worth noting that as plaintiffs-appellants have explained, the original copies of the special powers of attorney executed in the USA were submitted to the Local Civil Registrar of Zamboanga City at the time when the extrajudicial settlement for the estate of the deceased Felipa E. Eijansantos was submitted for registration, hence, what were presented before the court a quo were certified xerox copies only. Moreover, the copies presented have already been certified to as “certified xerox copy” by no less than the Records Officer of the Land Registration Authority of Zamboanga City. As such, these documents are in effect considered as certified true copies of the original documents filed and kept in the Register of Deeds of Zamboanga City and are, therefore, admissible as evidence.

Furthermore, it is also noteworthy that plaintiffs-appellants have already agreed among themselves the partition of the land owned by their predecessor-in-interest Felipa Eijansantos as evidenced by the Extrajudicial Settlement executed by them. In fact, as aptly observed by plaintiffs-appellants, the main purpose of the petition is merely to cause the partition of the subject property wherein defendant-appellee is also a co-owner, upon which when the partition is effected the equal share belonging to the co-owner Felipa will be delineated from the share of defendant-appellee. No other person have claimed to be an heir of Felipa nor have objected to the settlement or filed any adverse claim thereto. As such, there was no basis for the court a quo when it ruled in its Order that “the Extrajudicial Settlement of Estate xxx and the basis of this petition, has not been participated in and/or signed by all the heirs of the late Felipa E. Eijansantos”. Neither did the court a quo give any name of particular persons who allegedly might not have participated in the settlement.

WHEREFORE, the appeal is hereby GRANTED. The Orders dated January 28, 2004 and May 24, 2005 of the Regional Trial Court, Branch 17, Zamboanga City in Special Civil Action No. 435 is REVERSED and SET ASIDE. The instant case is hereby REINSTATED and REMANDED to the trial court for further proceedings with dispatch.

SO ORDERED.

Camello (Chairperson) and Lopez, JJ., concur.

[1] Records, pp. 113, penned by Hon. Judge Tibing A. Asaali

[2] Records, pp. 132-133

[3] Records, p. 6

[4] Records, pp. 91-93

[5] Records, pp. 1-3

[6] Rollo, pp. 33-36

[7] Rollo, pp. 29-32

[8] Records, pp. 12-13

[9] Records, p. 14

[10] Records, pp. 115-117

[11] Rollo, p. 21

[12] Rollo, pp. 45-46

[13] Rollo, pp. 54-55

[14] Rollo, pp. 65-67

[15] Rollo, pp. 74-81

[16] G.R. No. 77008, December 29, 1987, cited by *Medina v. Natividad*, G.R. No. 177505, November 27, 2008

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