

MERCEDES U. DE GUZMAN, REPRESENTED BY HER ATTORNEY-IN-FACT FELICITACION G. ROXAS AND THE HEIRS OF FRANCISCO P. DE GUZMAN, SR., REPRESENTED BY FELICITACION G. ROXAS (DAUGHTER), P...

G.R. No. L-44446. November 29, 1976

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This petition seeks the annulment of the resolution of the respondent Court of Appeals dated May 10, 1976 dismissing the appeal and remanding the case to the trial court for further proceedings on partition under Rule 69 of the Revised Rules of Court, as well as the orders dated June 9, 1976 and July 21, 1976, denying the two motions for the reconsideration of the aforesaid order of May 10, 1976.

After the private respondents submitted their comment, the COURT resolved to treat the petition as a special civil action and considered the same as submitted for decision.

The allegations of the petition are not disputed by the private respondents who were made merely nominal parties because they also challenge the questioned resolutions of the respondent Court of Appeals. As a matter of fact, in their brief comment filed on October 12, 1976, private respondents join petitioners in asking for the setting aside of the disputed orders of the respondent Court of Appeals, invoking the recent case of *Miranda versus Court of Appeals* (L-33007, June 18, 1976) [p. 57, rec.].

The petition alleges that on June 8, 1973, herein private respondents Antonio M. Austria, Roman M. Umali and Juliana U. Trinidad, as plaintiffs, filed in the Court of First Instance of Batangas an action for partition of real estate with accounting of the earnings of an agricultural land containing an area of about 3.2 hectares.

Herein petitioners filed their answers claiming sole ownership of the property, invoking prescription, laches and estoppel as special defenses.

After both parties presented their evidence, the trial court rendered a decision on December 11, 1974, the dispositive part of which reads:

"WHEREFORE, finding the claim of the plaintiffs to be meritorious, judgment is hereby rendered, ordering the immediate partition of the property in equal shares among the three (3) plaintiffs and defendant Mercedes U. de Guzman. Defendants are likewise ordered to render an accounting of the income derived from said property from March, 1971, up to the time partition is effected pursuant hereto, provided that defendants are to be reimbursed for the sum of P450.00, the amount expended for the repurchase of plaintiffs' three (3/4) fourth shares therein" (p. 3, rec.).

Before herein petitioners could file a notice of appeal, private respondents filed a motion for execution with respect to the income of the property in litigation, which motion for execution was granted pending appeal.

After the case was elevated to the respondent Court of Appeals and the parties had filed their respective briefs, the respondent Court of Appeals, in a resolution dated March 11, 1976, directed herein petitioners to show cause why their appeal should not be dismissed in view of the fact that the decision of the trial court is only interlocutory under Section 2 in connection with Sections 7 and 8 of Rule 69 of the Revised Rules of Court.

On April 7, 1976, petitioners filed their compliance contending that the judgment appealed from is a final and definitive decision and that the respondent Court of Appeals can proceed to resolve the appeal on the merits.

Despite such argument, respondent Court of Appeals issued the questioned resolutions.

WE have to set aside the challenged orders in the light of the doctrine laid down in the recent case of *Miranda versus Court of Appeals, et al* (L-33007, June 18, 1976), which expressly and categorically abandons the doctrine of *Fuentebella versus Carrascoso* (G.R. No. 48102, May 27, 1942). Thus, as set forth by Mr. Justice Teehankee, WE as enunciated in the *Miranda* case:

"x x x. For the guidance of the bench and bar, the Court declares as abandoned the doctrine of *Fuentebella vs. Carrascoso* and adopts the opposite rule that judgments for recovery with accounting are final and appealable (without need of awaiting the accounting) and would become final and executory within the reglementary period (page 1, Decision).

" - that accordingly, the contrary ruling in *Fuentebella vs. Carrascoso* which expressly reversed the *Heacock* case and a line of similar decisions and ruled that such decision for recovery of property with accounting 'is not final but merely interlocutory and therefore not appealable' and subsequent cases adhering to the same must now be in turn abandoned and set aside (page 28, Decision).

" - that the Court considers the better rule to be that stated in *H.E. Heacock Co. vs. American Trading Co.*, to wit, that where the primary purpose of a case is to ascertain and determine who between plaintiff and defendant is the true owner and entitled to the exclusive use of the disputed property, 'judgment ... rendered by the lower court (is) a judgment on the merits as to those questions, and (that) the order of the court for an account-ing was based upon, and is incidental to the judgment on the merits. That is to say, that the judgment ... (is) a final judgment ... that in this kind of a case an accounting is a mere incident to the judgment; that an appeal lies from the rendition of the judgment as rendered...' (as is widely held by a great number of judges and members of the bar, as shown by the cases so decided and filed and still pending with the Court) for the fundamental reasons therein stated that 'this is more in harmony with the administration of justice and the spirit and intent of the (Rules). If on appeal the judgment of the lower court is affirmed, it would not in the least work an injustice to any of the legal rights of (appellee). On the other hand, if for any reason this Court should reverse the judgment of the lower court, the accounting would be a waste of time and money, and might work a material injury to the (appellant);' (page 28, Decision).

"x x x. In partition cases, it must be further borne in mind that Rule 69, section 1 refers to 'a person having the right to compel the partition of real estate', so that the general rule of partition that an appeal will not lie until the partition or distribution proceedings are terminated will not apply where appellant claims exclusive ownership of the whole property and denies the adverse party's right to any partition, as was the ruling in *Villanueva vs. Capistrano* and *Africa vs. Africa*, supra, *Fuentebella's* express reversal of these cases must likewise be deemed now also abandoned in view of the Court's expressed preference for the rationale of the *Heacock* case (page 29, Decision)." [pp. 13 & 14, rec.].

WHEREFORE , THE ORDERS DATED MAY 10, 1976, JUNE 9, 1976 AND JULY 21, 1976 ARE HEREBY SET ASIDE AND THE RESPONDENT COURT OF APPEALS IS HEREBY DIRECTED TO DECIDE THE APPEAL ON THE MERITS. NO COSTS.

SO ORDERED.

Teehankee, (Chairman), Muñoz Palma, Concepcion, Jr., and Martin, JJ., concur.

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