

**SPOUSES CAMILO ROSELLO AND DOROTEA ROSELLO,
PETITIONERS, VS. THE HON. COURT OF APPEALS, HON. NUMERIANO
G. ESTENZO, JESUS LAURENTE AND CALIXTRA YAP, RESPONDENTS.**

G.R. No. L-46274. December 14, 1988

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

These two (2) consolidated cases relate to the intestate estate proceedings of the estate of the late Joaquin Ortega, who died on May 22, 1948. Both appeals by certiorari, G.R. No. L-46274 seeks to reverse and set aside the decision and resolution dated March 2 and May 12, 1977, respectively, of the Court of Appeals[1] in CA-G.R. No. SP-05929-R, entitled "Spouses Camilo and Dorotea Rosello versus Hon. Numeriano G. Estenzo, Presiding Judge, CFI of Leyte, Branch V (Ormoc City), Jesus Laurente in his capacity as Administrator of the Intestate Estate of Joaquin Ortega and Calixtra Yap"; while G.R. No. L-46549 seeks to reverse and set aside (a) a portion of the decision[2] dated March 17, 1977 of the Court of Appeals in CA-G.R. No. 05882-SP, entitled "Spouses Camilo Rosello and Dorotea Rosello, Gaudencia Hoyla and Patricia Villasan versus Hon. Numeriano G. Estenzo, Presiding Judge, CFI of Leyte, Branch V (Ormoc Branch), and Calixtra Yap" and (b) the resolution dated July 6, 1977, which denied petitioners' motion for reconsideration.

I

The antecedent facts in G.R. No. L-46274 are as follows:

On December 21, 1957, the then Court of First Instance (CFI) of Leyte,[3] Branch V, Ormoc City, rendered judgment in its Civil Case No. R-399, declaring as null and void the sale at public auction of six (6) parcels of land belonging to the intestate estate of Joaquin Ortega in favor of herein petitioner Camilo Rosello. The latter was ordered, among others, to vacate said parcels of land and to deliver possession thereof to the estate through its administrator.

Petitioner Rosello appealed the decision to the Court of Appeals (CA-G.R. No. 25242-R), but the same was affirmed[4] on October 13, 1972, with the sole modification as to the award of damages and attorney's fees. The decision became final on November 7, 1972.

Meanwhile, in October 1972, Civil Case No. 1184-0, a complaint for quieting of title to and reconveyance of parcels of land located at Sta. Cruz, Isabel, Leyte, was filed before the same CFI of Leyte, Branch V by Calixtra Yap and her children by Joaquin Ortega against the Estate and others.[5] The complaint was amended twice to finally comprise the entire estate of Joaquin Ortega, already adjudicated to Emilia Ybañez and her children on November 24, 1962 in Special Proceedings No. 441-R.[6]

On the basis of the pendency of said Civil Case No. 1184-0, Calixtra Yap opposed on April 25, 1973 the motion filed by the heirs of the late Joaquin Ortega for execution of the final judgment in Civil Case No. R-399. Said opposition notwithstanding, the lower court issued on April 28, 1973 a writ of execution in the latter case, commanding the sheriff to place then administrator of the estate Jesus Laurente in possession of the disputed

lands. The sheriff enforced and accomplished said writ of execution, locating and identifying the said six (6) parcels of land for two (2) days in the presence of the parties and the adjoining owners mentioned in the tax declarations of said lots.

The Sheriff's Return of Service dated June 27, 1973 certified that five (5) parcels of land, designated as Parcels Nos. 1, 3, 4, 5 and 6, were turned over and delivered to the Ortega Estate. Parcel No. 2 was not turned over because the same has never been in the possession of Camilo Rosello, but is owned and possessed by the spouses Herminigildo Mendoza and Josefina Villarmino under OCT No. 2151.[7]

On June 4, 1973, Calixtra Yap instituted in the same CFI of Leyte, Branch V, Ormoc City another action, docketed as Civil Case No. 1224-0, this time against the spouses Camilo and Dorotea Rosello for the annulment and/or reformation of a deed of sale over a parcel of land containing an area of 45 hectares located in Barrio Cangag, Isabel, Leyte, claiming that what she sold to the spouses Rosellos was only a five-hectare portion thereof and not the entire 45 hectares as stated in said deed of sale. Petitioners Gaudencia Hoyla and Patricia Villasan in G.R. No. L-46549 were named additional defendants through subsequent amendments to the complaint.

On July 6 - 14, 1973, on orders of the lower court, a survey of the lots involved in Civil Case No. 1184-0 was conducted by Geodetic Engineer Venancio Besavilla. However, at the hearing set for the survey's approval, the parties sought to include therein three (3) adjacent parcels of land in the name of Camilo Rosello, which were allegedly included in the judgment in favor of the Ortega Estate in Civil Case No. R-399. In view of said motion, the trial judge issued on August 15, 1973 an order in all the related cases pending in his sala involving the Rosellos, Calixtra Yap and the Estate, directing Engineer Besavilla to resurvey the three (3) lots sought to be included in Civil Case No. 1184-0, the parcel of land not turned over to the estate in Civil Case No. R-399 and the parcels of land involved in Civil Case. No. 1224-0.

In due course, Engineer Besavilla submitted his Report and Survey Plan, which was approved by the lower court on October 6, 1973 over the opposition of petitioners Rosellos.

On the same day, October 6, 1973, the administrator filed before the trial court a motion for the issuance of an Alias Writ of Execution in Civil Case No. R-399, alleging that while on April 29, 1973, he was placed in possession of certain parcels of land pursuant to the writ of execution in said Civil Case No. R-399, the ocular inspection conducted by the Commissioner of the Court (Engineer Besavilla) had revealed that not all of the parcels of land and improvements thereon due the Estate were turned over to him, particularly:

"a) the southern portion of Lot No. 1, with an area of 475,898 square meters, more or less, under Tax Dec. No. 7184 and under Revised Tax Dec. No. 3262;

"b) Lot No. 7, with an area of 159,439 square meters, more or less;

"c) Lot No. 4, with an area of 162,245 square meters, more or less, under Tax Dec. No. 4933, Revised under Tax Dec. 3263;

"d) Lot No. 5, with an area of 10,284 square meters, under same Tax Declaration as stated in preceding paragraph;

"e) Lot No. 6, containing an area of 87,845 square meters, more or less; and

"f) Lot No. 8, containing an area of 867,705 square meters, more or less, covered by Tax Dec. No. 2453, revised by Tax Dec. No. 4252"[8]

This motion was subsequently amended to exclude Lots Nos. 5, 6 and 8.

As a countermove, petitioners Rosellos filed before the Court of Appeals a petition for injunction to enjoin the

lower court from issuing an alias writ of execution, to declare the Commissioner's Report and Survey Plan null and without force and effect and to compel respondent judge to hold or conduct a separate trial in Civil Case No. 1224-0 (CA-G.R. No. SP-02516-R). Finding the joint hearing of Civil Cases Nos. 1184-0 and 1224-0 by the lower court to be in accordance with Section 1, Rule 31 of the Rules of Court and the Commissioner's Report and Survey Plan to be valid, the Court of Appeals[9] dismissed CA-G.R. No. SP-02516-R on July 12, 1974.

Meanwhile, on February 24, 1974, judgment was rendered in Civil Case No. 1184-0, declaring Calixtra Yap Ortega as the surviving spouse of Joaquin Ortega and as the exclusive owner of the land in Sta. Cruz, Isabel, Leyte, with right to the 1/2 share of all other parcels of land found by the court to be the conjugal properties of Calixtra Yap and Joaquin Ortega, and adjudicating the other half to all other plaintiffs in equal proportion. Administrator of the Estate Jesus Laurente was ordered to deliver the land as above-indicated to Calixtra Yap upon termination of Special Proceedings No. 441-R, then pending in Branch II of the CFI of Cebu.

After the decision in CA-G.R. No. SP-02516-R had become final, the lower court[10] issued on September 16, 1975 an order granting the motion for an alias writ of execution. Petitioners Rosellos filed their notice of appeal from said order, prompting the administrator as well as Calixtra Yap to separately move for execution pending appeal. Calixtra Yap's motion was granted in an order dated June 25, 1976.

Petitioner Rosellos' motions for reconsideration of said June 25, 1976 order having been denied, they went anew to the Court of Appeals in CA-G.R. No. SP-05929-R. As earlier intimated, this petition was likewise dismissed. Hence, the present petition docketed as G.R. No. L-46274.

II

In G.R. No. L-46549, the records show that while Civil Case No. 1224-0 was being tried on the merits, private respondent Calixtra Yap filed on May 31, 1976 a petition for receivership which was unverified and unsupported by affidavits.[11] That notwithstanding, the petition was granted by respondent Judge Estenzo in his Order dated June 5, 1976, Mr. Artemio Manuel, a resident of Isabel, Leyte was appointed receiver of the properties in litigation.[12]

Petitioners Rosellos twice moved for a reconsideration of this order, but to no avail. They thus filed on September 23, 1976 a petition for certiorari, prohibition and injunction with preliminary injunction before the Court of Appeals, alleging grave abuse of discretion on the part of respondent judge in issuing the order of receivership. This petition was followed by a supplemental petition assailing the decision on the merits in said Civil Case No. 1224-0 which the respondent judge had in the meantime rendered on September 14, 1976 and praying for the respondent judge's disqualification from further hearing said Civil Case No. 1224-0. An administrative complaint against respondent judge was likewise filed in this Court, docketed as Adm. Matter No. 1409-CFI.

On March 17, 1977, the Court of Appeals[13] rendered judgment annulling the decision in Civil Case No. 1224-0 and ordering respondent judge to conduct a new trial for the reception of further evidence from therein defendants (herein petitioners). The same decision, however, held as devoid of merit petitioners' objections to the receivership and their prayer for the disqualification of respondent judge.

Said portion of the Court of Appeals decision is the bone of contention in the present appeal by certiorari in L-46549.

In G.R. No. L-46274, the issues raised are as follows:

"A. WHETHER OR NOT THE WRIT OF EXECUTION ISSUED BY THE TRIAL COURT OR RESPONDENT JUDGE CONFORM (sic) TO THE JUDGMENT.

"B. WHETHER OR NOT A WRIT OF EXECUTION MAY BE VALIDLY ISSUED AGAINST A PERSON

WHO IS NOT A PARTY TO THE CASE AND WHO OWN (sic) AND POSSESS (sic) A PARCEL OF LAND UNDER A VALID CERTIFICATE OF TITLE UNDER THE TORRENS SYSTEM.

"C. WHETHER OR NOT A WRIT OF EXECUTION MAY BE ISSUED IN FAVOR OF AN ALLEGED INTERVENOR WHO HAD NEVER BEEN ALLOWED TO INTERVENE"[14]

Petitioners allege "that the controversy between the parties now before this Honorable Court arose in an attempt of private respondents to include in the alias writ of execution and writ of execution pending appeal parcels of land that were not litigated nor the subject matter of the said case." [15]

We find this contention unmeritorious. The three (3) parcels of land included in the alias writ of execution and the writ of execution pending appeal, namely: [a] the southern portion of Lot No. 1 with an area of 475,898 square meters, more or less, under Tax Declaration 3262; [b] Lot No. 7, with an area of 159,439 square meters, more or less; and [c] Lot No. 4, with an area of 162,245 square meters, more or less, under Tax Declaration 3263, had been established through the survey conducted by Engineer Besavilla as forming part of the lands sought to be reconveyed to the Ortega Estate in Civil Case No. R-399, Lot No. 1 is identical to parcel 5 of the Sheriff's Return in Civil Case No. R-399, both being covered by Tax Declaration No. 7134 belonging to the Ortegas; Lot No. 4 is identical to parcel 2 of said Sheriff's Return, both being covered by Tax Declaration No. 4933; while Lot No. 7 is part of parcel 3 of said Sheriff's Return, both covered by Tax Declaration No. 6999 and bounded by Balit Brook on the southern portion.

There is nothing in the record to show that the Commissioner's Report and Survey Plan submitted by Engineer Besavilla were tainted with fraud or mistake. The Court of Appeals found said report and survey plan to be valid, and petitioners to have been duly informed of the Commissioner's appointment and survey. Moreover, this decision of the Court of Appeals in CA-G.R. No. SP-02516-R had attained finality by failure of petitioners to further appeal the same.

From the foregoing, it is obvious that rather than contradict or traverse the decision of December 21, 1957, the alias writ of execution which includes Lots Nos. 4, 7 and the southern portion of Lot No. 1 operates to give full force and effect to the judgment sought to be executed.

However, we take note of the findings of Engineer Besavilla that Lot No. 4 is identical to parcel no. 2 of the Sheriff's Return which could not be turned over and delivered to the administrator because the same is owned and possessed by the Mendoza spouses under OCT No. 2151. It appears that the same land was transferred to Bienvenido Roselle and later to Bayani Rosello. As these persons were not parties in any of the three (3) civil cases, there is merit in petitioners' contention that to include Lot No. 4 in the writ of execution would amount to a deprivation of their property without due process of law.

Petitioners further assert that private respondent Calixtra Yap has no personality and is not the real party in interest to file a Motion for Execution Pending Appeal, and consequently, said motion should have been denied.

This Court had occasion to rule on this issue in "Luisa Y. Ortega, et al. v. Court of Appeals", G.R. No. L-43155, August 14, 1987, involving the same Civil Case No. 1184-0. It was held that the declaration of heirs made by Judge Estenzo in an Action for Quieting of Title, Declaration of Nullity of Sale and Annulment of Tax Declaration of a Parcel of Land is void, said matter having been already resolved with finality by the Probate Court, whose Order of November 24, 1962 was not appealed and is therefore final insofar as said declaration is concerned.

But in the same case, it was also ruled that Civil Case No. 1184-0 was instituted for the purpose of having Calixtra Yap declared owner of a parcel of land in Barrio Sta. Cruz, Isabel, Leyte, asserting her title as against the

decendent Joaquin Ortega himself. The subject matter being beyond the jurisdiction of the Court of First Instance of Cebu, sitting as a probate court, it is fitting and proper that the issue of ownership of said land be resolved in the already instituted Civil Case No. 1184-0 in the then Court of First Instance of Leyte, Branch V.

It will be recalled that in said Civil Case No. 1184-0, the lower court rendered judgment on February 24, 1974, declaring, among others, Calixtra Yap as the exclusive owner of the Sta. Cruz property. Under this circumstance, it cannot be rightfully argued that Calixtra Yap has no personality and is not the real party in interest to file a motion for execution pending appeal, as she herself has a judgment in her favor in Civil Case No. 1184-0, which is intimately linked with Civil Case No. R-399.

To recapitulate, the six (6) parcels of land involved in Civil Case No. R-399 were finally adjudicated in favor of the estate of Joaquin Ortega, judgment having been rendered by the trial court on December 21, 1957, which was affirmed by the Court of Appeals with the sole modification as to the award of damages and attorney's fees. Said decision became final on November 7, 1972. A writ of execution was issued and five (5) parcels of land were delivered to the estate of the late Joaquin Ortega. Parcel No. 2 was not turned over because it was owned and possessed by the Mendoza spouses under OCT No. 2151.

In Civil Case No. 1184-0, Calixtra Yap was declared the exclusive owner of the land in Sta. Cruz, Isabel, Leyte. Said land cannot, therefore, be included in the writ of execution in favor of the estate in question as the same properly belongs to Calixtra Yap as decided by the lower court in said case which decision has become final and executory.

Civil Case No. 1224-0 involving ownership of certain disputed parcels of land was remanded to the court a quo for a new trial for the reception of further evidence of the defendants. The ownership of said parcels are therefore subject to the final outcome of said case.

Thus, of the parcels of land being claimed by the administrator of the estate, three (3) were excluded by agreement of the parties, as follows: Lot No. 5 belonging to the Republic of the Philippines and occupied by the Cangag Community; Lot No. 6 as forming part of the property of Rosello and Lot No. 8 which is involved in Civil Case No. 11224-0 and agreed upon by the parties to be litigated in said case.

Lot No. 7 and Lot No. 1 which have been shown to be parts of the estate of Joaquin Ortega should be included in the list of properties to be administered by the Administrator, while Lot No. 4 which is identical to Parcel No. 2 of the Sheriff's Return and found to be owned and possessed by another party under a Torrens Title should be excluded therefrom.

In L-46549, the petitioners raised the following issues:

"A. WHETHER OR NOT A PETITION FOR RECEIVERSHIP WHICH IS NOT UNDER OATH AND NOT SUPPORTED BY AFFIDAVITS CAN BE PROPERLY AND LEGALLY GRANTED; and

"B. WHETHER OR NOT THE RESPONDENT JUDGE SHOULD BE DISQUALIFIED FROM FURTHER HEARING CIVIL CASE NO. 1224-0 CONSIDERING, AMONG OTHERS, THAT PETITIONER DOROTEA ROSELLO WHO IS ONE OF THE PRINCIPAL DEFENDANTS IN SAID CASE HAS FILED AN ADMINISTRATIVE CASE AGAINST HIM FOR GROSS VIOLATION OF PROCEDURAL AND SUBSTANTIVE DUE PROCESS AND PATENT DISREGARD OF PERTINENT RULINGS OF THIS HONORABLE COURT AND THEREIN PRAYING THAT RESPONDENT JUDGE BE DISMISSED FROM THE SERVICE." [16]

Petitioners come to this Court to assail the order of respondent Judge dated June 25, 1976, approving the petition for receivership, which petitioners argue should not have been done as the petition was neither under oath nor

supported by affidavits.

The ground relied upon by petitioners is procedural, the defects complained of being formal in nature, and which defects were cured when respondent judge heard the testimonies under oath in open court, on direct and cross examinations of private respondent's witnesses, i.e., the very persons who were supposed to execute affidavits; and when all the documentary exhibits were submitted for the appreciation of the lower court. In fact, private respondent had formally rested her case. Petitioners, on the other hand, were given the opportunity to object and oppose the private respondents.

As to the issue of disqualification, this Court has ruled that to disqualify or not to disqualify is a matter of conscience and is addressed primarily to the sense of fairness and justice of the judge concerned. Thus, the mere filing of an administrative case against respondent Judge is not a ground for disqualifying him from hearing the case, for if on every occasion the party apparently aggrieved would be allowed to either stop the proceedings in order to await the final decision on the desired disqualification, or demand the immediate inhibition of the Judge on the basis alone of his being so charged, many cases would have to be kept pending or perhaps there would not be enough judges to handle all the cases pending in all the courts. This Court has to be shown acts or conduct of the judge clearly indicative of arbitrariness or prejudice before the latter can be branded the stigma of being biased or partial.[17]

In the case at bar, the Court of Appeals did not find any act or conduct of the judge indicating arbitrariness sufficient to disqualify him from further taking cognizance of the case. At most, the Court of Appeals found respondent judge to have been unduly strict in the reception of evidence by adhering religiously to the requirements of his pre-trial orders.[18] This had been corrected by the Court of Appeals when it ordered the holding of a new trial to receive the evidence for the defendants therein. Accordingly, the Court of Appeals denied, and properly so, the request for disqualification of respondent judge for lack of legal basis.[19]

At any rate, this issue of disqualification has been rendered moot and academic by the retirement of respondent judge on July 5, 1979.

WHEREFORE, the petitions in G.R. Nos. L-46274 and L-46549 are DISMISSED for lack of merit and for being moot and academic in the latter case. The decisions of the Court of Appeals assailed in both cases are AFFIRMED with the modification in G.R. No. L-46274 that Lot No. 4 is excluded from the alias writ of execution issued by the trial court.

This decision is immediately executory.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

[1] Penned by Justice Jose G. Bautista, concurred in by Justices Crisolito Pascual and Vicente M. Santiago, Jr.

[2] Penned by Justice Mariano Serrano and concurred in by Justices Ramon G. Gaviola, Jr. and Lorenzo Relova

[3] Judge Ignacio Debuque, Presiding

[4] by Justices Ramon C. Fernandez, Juan P. Enriquez and Eulogio S. Serrano

[5] The exact title of Civil Case No. 1184-0 is "Calixtra Yap, Adelaida Y. Ortega, Conchita Y. Ortega, Maximo Jose Y. Ortega, Jesus Y. Ortega, Carmen Y. Ortega Lim, Amparo Y. Ortega Longalong, Antonio Y. Ortega and Mercedes Y. Ortega Bacalso v. Int, Estate of the late Joaquin Ortega, deceased, represented by its administrator,

Jesus Laurente, Antonio Seville, Luisa Ybañez Seville, Felipe Seville, Mamerto Polancos, Maria Marizal Polancos, represented by her father and natural guardian Mamerto Polancos, Nieves Ybañez Alvarez and Concordia Agueda Ybañez".

[6] G.R. No. L-43155, August 14, 1987

[7] Petitioners' Brief in L-46274, p. 5, Rollo, pp. 190-191

[8] pp. 63-64, Rollo in L-46274

[9] Decided by Justices Luis B. Reyes, Magno S. Gatmaitan and Efren I. Plana

[10] Presided by respondent Judge Numeriano G. Estenzo

[11] pp. 81-84, Rollo in L-46549

[12] p. 85, *ibid.*

[13] Penned by Justice Mariano Serrano, concurred in by Justices Ramon Gaviola, Jr. and Lorenzo Relova

[14] p. 20, Rollo in L-46274

[15] pp. 22-23, Rollo in L-46274

[16] p. 12, Rollo in L-46549

[17] *Gahol v. Riodique*, 65 SCRA 505

[18] p. 64, Rollo in L-46549

[19] p. 69, *ibid.*

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