

ENRIQUE ABRIGO, PETITIONER, VS. THE HON. JUDGE UNION C. KAYANAN, COURT OF FIRST INSTANCE OF QUEZON, NINTH JUDICIAL DISTRICT, BRANCH IV, ANTONIA ABAS, HERMOGENES, MERCEDES, MARIA...

G.R. No. L-28601. March 18, 1983

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Petition to annul and set aside several orders of the respondent judge on the ground that they were issued with grave abuse of discretion.

In Civil Case No. 178-G (later designated as No. 07) of the defunct Court of First Instance of Quezon, the plaintiffs sought the partition of seven (7) parcels of land under a claim of co-ownership with the defendants. The plaintiffs claimed that except for one-half of the fifth parcel (e), two of the defendants, Leon and Enrique Abrigo, were in possession of the lands. The defendants put up the defense of ownership; they claimed ownership by hereditary title by virtue of an alleged duly approved Amended Project of Partition in the Testate Estate of Nazario Abrigo.

One of the lands sought to be partitioned is described in the Amended Complaint as follows:

"a—A parcel of coconut and pasture land, with its improvements. Bounded on the NORTH, by Public Land; on the SOUTH, by the Piris River and Public Land; and on the WEST, by the Macalawan River; containing an area of 802 hectares, more or less; covered by Tax Declaration No. 416, and assessed at P15,450.00."

As stated above, this parcel, including several others, are said to be in the possession of Leon and Enrique Abrigo.

On October 21, 1967, the plaintiffs filed an Urgent Motion for the appointment of a receiver to administer parcel (a) on the ground that numerous squatters had invaded the property to the plaintiffs' great damage and prejudice. The motion was set for hearing on November 3, 1967, but counsel for the defendants asked by telegram that the hearing be re-set to another date because of another court engagement. The motion was heard as scheduled in the absence of defendants' counsel and pursuant thereto then Judge Union C. Kayanan issued an Order on the same day with the following dispositive portion:

"WHEREFORE, Atty. Pedro S. Nantes, Acting Clerk of Court, Branch IV, CFI, Quezon is hereby appointed as receiver and before entering his duties he must be sworn to perform them faithfully, without the necessity of a bond being a public officer, who is expected to faithfully discharge the duties of a receiver in these actions and obey the orders of the Court accordingly. He is allowed compensation of P30.00 per day of actual service plus incidental expenses to be charged as costs against the losing party. Atty. Nantes shall follow strictly his general powers pursuant to Section 7, Rule 59 of the New Rules of Court." (Rollo, p. 50.)

On November 8, 1967, the respondent judge, *motu proprio*, issued the following Order:

"In order to insure the absolute and complete protection of the interest of party litigants, aside from Atty. Pedro

S. Nantes who has been appointed as Receiver herein, Mr. Benjamin M. Santiago is hereby appointed as Assistant to the Receiver, to stay as general field overseer in all the properties in question, subject to the control and supervision of the Receiver, to perform all the necessary rights and obligations heretofore to be assigned by the Receiver, to make periodic reports of his activities and to do all other acts pursuant to the general powers of a receiver under Section 7, Rule 59 of the New Rules of Court. As soon as Mr. Santiago shall have taken his oath, he shall assume the duties of his office with a reasonable compensation, plus incidental expenses at the discretion of the receiver, but which compensation shall not exceed P30.00 a day for both of actual service." (Rollo, p. 52.)

It was only on November 15, 1967, that the defendants filed an Opposition to the Motion for the appointment of a receiver but by then the two Orders above-quoted had been issued. Accordingly, the defendants filed a Motion to have the Orders of November 3 and 8, 1967, reconsidered but the Motion was denied by the respondent judge in his Order of December 15, 1967. The Order, however, provided that "to forestall mis-management, the Receiver is required to put up a surety bond in the amount of Five Thousand Pesos (P5,000.00), the expenses of which shall be borne by plaintiffs . . ." (Rollo, p. 69.)

On December 19, 1967, the respondent judge issued an Order which reads as follows:

"The attention of the Court was called by Atty. Pedro S. Nantes and Mr. Benjamin Santiago, Receiver and Assistant, respectively, to the effect that only party litigants Antonia Abas and others represented by the De Mesa Law Office, deposited the sum of P200.00 to defray their expenses during the ocular inspection of the properties in question from November 20 to 27, 1967, but that defendants Crisanta Manaluan and others represented by Atty. Manuel R. Edaño of Lucena City, and party litigants Enrique Abrigo and others represented by Quejano and Arroyo Law Office, thru Atty. Cesar. Parelejo, 320 Natividad Bldg., Escolta, Manila have not paid their corresponding shares. It appears that the Receiver and his Assistant spent the actual amount of P275.05 excluding their compensation at P30.00 a day for eight (8) days or a total of P240.00. It will thus appear that the valid claim of the Receiver and his Assistant would total to P515.05 so that party litigants represented by Attys. Edaño and Parelejo are directed to deposit the balance of P315.05 or P157.53 each, within ten (10) days upon receipt hereof. The parties are requested to study the recommendations of the Receiver and his Assistant, copies of which have been furnished them accordingly, and if they so desire they should make representations with any banking institution to mortgage the properties in order to raise a reasonable amount to cover the expenses of cultivation and improvement of the property to the end that it will become a going concern pending litigation." (Rollo, pp. 70-71.)

On January 9, 1968, one of the defendants who is the petitioner herein, filed a Motion for the reconsideration of the Order of December 15, 1967; he claimed that there was no legal basis for the appointment of a receiver under the facts of the case; and alternatively, he offered to post a bond so that the receiver be discharged. The Motion was denied in an Order dated January 15, 1968.

On January 14, 1968, the respondent judge issued another Order which reads in part:

"Acting on the oral manifestation of counsel for the plaintiffs to the effect that six (6) of his witnesses came from Quezon City and three (3) others from Buenavista, Quezon and that they have been staying in Lucena City since the other day and as a result incurred expenses totalling P300.00, for which he requests that they be reimbursed of said expenses, and finding the same to be well-taken the defendant Enrique Abrigo is hereby ordered to reimburse to the plaintiffs, thru counsel, the sum of P300.00 on or before the next hearing of this case." (Rollo, pp.79-80.)

Petitioner Enrique Abrigo who is one of the defendants in the action for partition now seeks the annulment and setting aside of the foregoing orders on the ground that they were issued with grave abuse of discretion.

After the private respondents had filed their answer to the petition, the case was set for hearing but while counsel

for the petitioner appeared there was no appearance for the private respondents. The parties were required to file memoranda and reply memoranda. The petitioner filed a memorandum but the private respondents did not despite an extension granted to them. Hence, the case was submitted for decision the indifference of the private respondents notwithstanding.

The petition is highly impressed with merit.

The respondent judge committed grave abuse of discretion in connection with the appointment of a receiver and he can be faulted on the following counts:

- The instant case is similar to *Paranete vs. Tan*, 87 Phil. 678 (1950) so that what was there said can well apply to the actuations of the respondent judge, to wit:

"On January 16, 1950, Felix Alcaras, Fructuosa Vasquez, Maxima Vasquez and Norberta Vasquez filed a case in the Court of First Instance of Rizal for the recovery of five parcels of land against Agustina Paranete and six other codefendants, (civil case No. 1020). On January 28, 1950, plaintiffs filed a petition for a writ of preliminary injunction for the purpose of ousting the defendants from the lands in litigation and of having themselves placed in possession thereof. The petition was heard ex parte and as a result the respondent judge issued the writ of injunction requested. On February 28, 1950, the defendants moved for the reconsideration of the order granting the writ, to which plaintiffs objected, and after due hearing, at which both parties appeared with their respective counsel, the respondent judge reconsidered his order, but required the defendants to render an accounting of the harvest for the year 1949, as well as all future harvests, and if the harvest had already been sold, to deposit the proceeds of the sale with the clerk of court, allowing the plaintiffs or their representative to be present during each harvest. This order was issued on March 4, 1950. Defendants again filed a motion for the reconsideration of this order, but it was denied, hence the petition under consideration.

"The question to be determined is whether or not the respondent judge exceeded his jurisdiction in issuing his order of March 4, 1950, under the terms and conditions set forth above.

"We hold that the respondent judge has acted in excess of his jurisdiction when he issued the order above adverted to. That order, in effect, made the clerk of court a sort of a receiver charged with the duty of receiving the proceeds of sale and the harvest of every year during the pendency of the case with the disadvantage that the clerk of court has not filed any bond to guarantee the faithful discharge of his duties as depositary; and considering that in actions involving title to real property, the appointment of a receiver cannot be entertained because its effect would be to take the property out of the possession of the defendant, except in extreme cases when there is clear proof of its necessity to save the plaintiff from grave and irremediable loss or damage, it is evident that the action of the respondent judge is unwarranted and unfair to the defendants. (*Mendoza vs. Arellano*, 36 Phil. 59; *Agonoy vs. Ruiz*, 11 Phil. 204; *Aquino vs. Angeles David*, 77 Phil. 1087; *Ylarde vs. Enriquez*, 78 Phil. 527; *Arcega vs. Pecson*, 44 Off. Gaz., (No. 12), 4884, 78 Phil. 743; *De la Cruz vs. Guinto*, 45 Off. Gaz., pp. 1309, 1311; 79 Phil. 304.)" (At pp. 680-681)

- The reason for the appointment of the receiver was the fact that the land had been entered by numerous squatters. But a receiver who is also burdened with his duties as Clerk of Court cannot be in a better position than the actual possessors in dealing with the squatters. As the petitioner has pointed out:

"The appointed receiver does not acquire any advantage from the owners and/or present possessors, nor is he in a better position in order to protect the respective interest of the herein parties for he has to apply as are the present possessors deprived of their possession, for the same remedies and relief normally afforded to an aggrieved property owner, under our legal system. A receiver is not endowed with extra-legal power to take the law in his hands with a view to quell and disband the squatters short of taking legal action; nor is he conferred with a magic wand not possessed by herein party-litigants as property owners. On the contrary, the receivership placed the parties at a disadvantage. He stands between the squatters and owner-possessors, so

much so that any action of the owner-possessor against the squatters will have to pass through the receiver. Whereas, if the status quo were left undisturbed, the owner-possessor, whose holding over the parcel of land under litigation is actually occupied and entered by squatters can take direct legal action as he has the legal right to proceed against the untruders." (Rollo, p. 187)

- The respondent judge should at least have accepted the bond offered by the petitioner. Rule 59, Sec. 4 stipulates that "the receiver (may be) discharged when the party opposing the appointment files a bond executed to the applicant in an amount to be fixed by the court, to the effect that such party will pay the applicant all damages he may suffer by reason of the acts, omissions, or other matters specified in the application as ground for such appointment." In *Lacson vs. Hodges*, 80 Phil. 216 (1948), this Court said:

"El nombramiento, por tanto, de depositario debe hacerse solamente cuando ya no hay otro medio para garantizar los derechos del demandante; pero ofrecida la fianza, ya deja de tener justificación el depósito, especialmente cuando, como en el caso presente, la responsabilidad del demandado ya está determinada, aunque sujeta, desde luego, a los resultados de la apelación.

"El Honorable Juez recurrido ha abusado de su discreción al no permitir al demandado que prestase fianza de acuerdo con la Regla 61, artículo 4." (At. p. 220)

Anent the order of the respondent judge that the petitioner should reimburse to the plaintiffs the sum of P300.00 for the reason stated in the Order dated January 14, 1968, it suffices to state that it was issued without notice and in the absence of the party affected and consequently void for lack of jurisdiction in its issuance.

WHEREFORE, the petition is granted; the Orders issued by the respondent judge mentioned above are hereby annulled and set aside. Costs against the private respondents.

SO ORDERED.

Makasiar (Chairman), Concepcion Jr., Guerrero, De Castro and Escolin, JJ., concur.
Aquino, J., is on leave.

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