

**CONRADO, ERNESTO, GENEROSO, PURIFICACION, RESURRECCION,
RICARDO, TERESITA AND TOMAS, ALL SURNAMED DIZON,
PETITIONERS, VS. HON. HONORIO ROMERO, IN HIS CAPACITY AS
JUDGE OF THE CO...**

G.R. No. L-26252. December 24, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Review on certiorari of a decision of the Court of Appeals dismissing the petition for mandamus therein filed against Honorable Honorio Romero, as Judge of the Court of First Instance of Pampanga, and the Philippine National Bank.

On May 4, 1949, Paula Sanchez Vda. de Dizon executed a general power of attorney in favor of Jesus Dizon, one of her children, authorizing him, inter alia, "to borrow money x x x with or without security, upon such terms and conditions as he x x x may approve x x". Purporting to act in pursuance of this authority, Jesus Dizon obtained, from the Bank, from 1952 to 1956, several crop-loans for which he executed the corresponding promissory notes, to guarantee the payment of which he constituted chattel mortgages on standing crops and real estate mortgages on several parcels of land, one of which is covered by TCT No. 2727, in the name of his aforementioned mother. The latter died intestate, on May 1960. She was survived by nine (9) children, namely, petitioners herein - Conrado, Ernesto, Generoso, Purificacion, Resurreccion, Ricardo, Teresita and Tomas, all surnamed Dizon -- and said Jesus Dizon.

On June 1, 1964, the Bank instituted Special Proceedings No. 1783 of the Court of First Instance of Pampanga for the appointment of an administrator of her intestate estate. Upon the Bank's recommendation, Mrs. Concha B. Sugay, Deputy Clerk of Branch II of said Court, was appointed administratrix of said estate. Soon thereafter, the Bank commenced Civil Case No. 2715 of the same court, against Jesus Dizon, his wife, Felicidad Zamora and said administratrix - hereinafter referred to collectively as the defendants - to recover the amount of the aforementioned promissory notes and to foreclose the mortgages guaranteeing the same. Before summons could be served, on April 22, 1965, the Bank amended its complaint.

The defendants took, however, no step whatsoever to resist this action. Having heard about it, petitioners herein, accordingly, asked the administratrix, on June 30, 1965, to either file her answer to the complaint in said case, or allow their counsel to represent her therein. The administratrix replied that she would first consult the Bank. Three (3) days later, or on July 3, 1965, the Bank moved to declare the defendants in default. Thereupon, or on July 6, 1965, petitioners herein filed a motion praying that they be allowed to intervene by filing an answer in intervention which was filed on the same date. The next day, July 7, 1965, the defendants were declared in default. On August 11, 1965, the court, presided over by Honorable Honorio Romero, Judge, denied said motion to intervene. A motion for reconsideration filed by petitioners herein had, on November 12, 1965, the same fate.

Thereupon, petitioners filed with the Court of Appeals their present petition for certiorari and mandamus with

preliminary injunction, against Judge Romero and the Bank, to annul the orders of respondent Judge, dated August 11 and November 12, 1965, to compel him to allow petitioners' intervention in said Case No. 2715, as well as to admit petitioners' answer in intervention therein, and to restrain respondents herein from proceeding with and/or trying said case, until this action shall have been finally decided. Soon later, the Court of Appeals issued the writ of preliminary injunction sought by the petitioners. In due course, thereafter, the Court of Appeals rendered its appealed decision dismissing said petition and dissolving the writ of preliminary injunction. Hence, this petition for review on certiorari.

The appealed decision is based upon the theory that "the granting or refusal of a motion to intervene is a matter of judicial discretion" and that, "once exercised" the action of the court "can-not be reviewed or controlled by mandamus, however erroneous it may be". The decision in the case of *Tavera-Luna v. Nable*[1], from which this statement was taken, adds, however, that "the only exception" to said rule "is when there is an arbitrary abuse of that discretion, in which case mandamus may issue if there is no other adequate remedy, though the result is that the court will be called upon to review the exercise of a discretionary power." [2] It so happened that no such abuse of power had been committed in said case, which involved an attempt by Tavera-Luna, Inc., as owners of the Cristal Arcade building to intervene in an action, filed by the Hogar Filipino, as administrator of said building, to eject therefrom Andres Luna - the very president of Tavera-Luna, Inc. - for non-payment of rentals. The order of the Court of First Instance, dismissing the action for mandamus against the municipal judge who refused to allow the intervention, was affirmed because "the sole question presented" in the unlawful detainer case "was one of possession. The question of ownership of the building was a matter foreign." Such is not the situation obtaining in the case at bar.

Upon the other hand, in the case of *Otto Gmur, Inc. v. Revilla*[3] - likewise cited by the Court of Appeals in support of its stand - the Supreme Court issued the writ of mandamus directing the lower court to permit the petitioners to intervene in the main case. The writ was similarly granted in *Zaide v. Concepcion*[4]. Indeed, rather recently, this Court, speaking through Mr. Justice Makalintal said, in *Balane v. de Guzman*[5]:

"It is true that mandamus cannot be resorted to in order to control discretion, and that as a general rule allowance of a motion to intervene rests in the sound discretion of the court. But such discretion is not unlimited. In the exercise thereof, the Rules provide that the Court 'shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether or not the intervenor's rights may be fully protected in a separate proceeding.' If these considerations weigh in favor of the intervenor, a denial of the intervention may amount to an arbitrary or capricious exercise of discretion which is correctable by mandamus, if an ordinary appeal would not be an adequate and speedy remedy." [6]

Under the facts obtaining in the case at bar, we are of the considered opinion that respondent Judge had abused his discretion gravely in denying petitioners' motion to intervene, for:

1. It is evident that the administratrix was not inclined to contest the foreclosure suit. She did not answer the complaint therein. What is more, when petitioners urged her to resist the action of the bank or to allow their counsel to do so for her, the administratrix replied that she would first consult the bank, the very party she was supposed to fight. And, seemingly, she did consult the bank for, three (3) days later, it moved to declare her and her co-defendants in default. In this connection, it should be noted that she owed her appointment as administratrix to the bank.
2. Petitioners' motion to intervene was filed before the defendants had been declared in default and, hence, before the issues had been joined. In other words, the intervention would not have caused undue delay in the proceedings.

3. The answer in intervention attached to petitioners' motion to intervene set up defenses which had a reasonable semblance of validity. For instance, petitioners assailed the validity of the mortgages constituted by Jesus Dizon, insofar as the real properties of their mother were concerned, upon the ground that his authority was contained in a general power of attorney, whereas Article 1878 of the Civil Code of the Philippines requires a special power of attorney "to create or convey real rights over immovable property". It is true that said general power of attorney was given on May 4, 1949, or prior to the effectivity of the Civil Code of the Philippines, but it is, likewise, undisputed that the aforementioned mortgages were constituted from 1952 to 1956, when said Code was already in force. Then, again, petitioners set up the defense of prescription of action, inasmuch as Civil Case No. 2715 was commenced in 1965, or more than ten (10) years after the execution of some of the promissory notes and mortgages involved in the case.

4. Respondents maintain that petitioners herein have no actual, material, direct and immediate right or interest to entitle them to intervene in the principal action, their interest therein being allegedly inchoate or in expectancy. This contention is manifestly devoid of merit for successional rights are "transmitted from the moment of the death of the decedent"[7] and it is conceded that petitioners herein are children of the deceased and her forced heirs.

Needless to say, an appeal from the decision that may be rendered in the main case would not be a speedy and adequate remedy for petitioners herein. On the contrary, it would unduly delay the termination of said case, for it would require a remand thereof to the lower court for retrial, with the possibility of another appeal.

WHEREFORE, the decision appealed from should be, as it is hereby reversed and another one shall be entered directing respondent Judge to grant petitioners' motion to intervene in said Civil Case No. 2715, to admit their aforementioned answer in intervention, and to otherwise allow them to participate in the proceedings in said case as intervenors therein, with costs against the Philippine National Bank. Writ granted.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, and Capistrano, JJ., concur.

[1] 67 Phil. 340, 344.

[2] Underscoring ours.

[3] 55 Phil. 627, 632.

[4] 32 Phil. 403, 412-413.

[5] L-21281, May 24, 1967.

[6] Underscoring ours.

[7] Article 777, Civil Code of the Philippines.

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