

TRIFONA SEECHUNG-FEDERIS, PETITIONER, VS. HON. DELFIN VIR. SUÑGA, IGMEDIO ARCILLA, PACITA SEECHUNG-ESPIRITU, BIENVENIDA SEECHUNG-BERNAS, CEFERINA SEECHUNG-POBRE, AND LUIS RECATO...

G.R. No. L-34803. January 17, 1985

Ponente: PLANA, J.

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PLANA, J.:

This is an appeal by certiorari from the decision of the defunct Court of Appeals in CA-G.R. No. 46031-R denying the petition for mandamus and certiorari, as well as the subsequent resolution of the said Court denying petitioner's motion for reconsideration.

Petitioner Trifona Seechung-Federis and respondents Igmedio Arcilla, Pacita S. Espiritu, Bienvenida S. Bernas and Ceferina S. Pobre are five of the eight children of the late Benito Seechung, the three others being Carlos, Fortunata and Herman, all surnamed Seechung.

In February, 1963, the will of the late Benito Seechung was allowed in probate by the Court of First Instance of Camarines Sur in Special Proceedings No. 959, and Carlos Seechung was appointed executor.

On March 22, 1967, an order was issued by the court authorizing the executor to sell for not less than P200,000.00 the lot, property of the estate, covered by Original Certificate of Title No. 778, Registry of Deeds of Naga City, containing an area of 702 square meters and described in the will.

In December, 1968, Emily Bichara made a written offer to purchase the property for P180,000.00. Petitioner and private respondents, through counsel, filed a motion for the approval of the sale. When Herman Seechung and Fortunata Seechung-Abella objected to the sale, petitioner Trifona withdrew from said motion and joined the oppositors in objecting to the sale. Because of this objection, respondent judge issued an order dated December 23, 1968 requiring all the heirs "to come to Court on January 17 and 18, 1969, for a conference so as to get their opinion regarding the sale of the said property."

On January 9, 1969, respondent Luis Recato Dy offered to buy the property for P200,000.00.

At the scheduled conference on January 17, 1969 during which petitioner was present but respondent heirs were absent, respondent judge issued an order which in part reads:

"For the last time the conference of the heirs and their counsels over the property is reset to January 23, 1969, for the purpose of finding a solution in dividing the property equitably among the heirs. In the event that a feasible solution cannot be had on the division of said property, the Court has no other choice, other than to sell the property to the highest offer in accordance with the order of the Court dated March 22, 1967 in the amount of no less than P200,000.00 Philippine Currency.

"The heirs, namely, x x x are ordered to appear on this new assignment of this case, otherwise their rights to

object in the disposition of this case is deemed for-feited.

x x x x x x x x."

On the scheduled hearing on January 23, 1969, present were Herman, Carlos, Fortunata and Ceferina. Respondents Igmedio Arcilla, Pacita Seechung-Espiritu and Bienvenida Seechung-Bernas were represented by counsel. But petitioner Trifona S. Federis, despite prior notice with warning given by the Court, was neither present nor represented by counsel. The parties agreed that the property would be divided into two equal parts known as the eastern and the western portions, the eastern portion to pertain to respondents Igmedio, Pacita, Bienvenida and Ceferina and which portion they agreed to sell to respondent Luis Recato Dy for P105,000.00; and the western half to remain co-owned by Carlos, Herman, Fortunata, and petitioner Trifona. The agreement reached by the parties is embodied in an order dated January 23, 1969.

The circumstances leading to the partition and sale of one-half of the property are stated in the decision of the appellate court in CA-G.R. No. 43092, to wit:

"We have examined the transcript of the stenographic notes taken during the trial conference called by the respondent Judge on January 23, 1969 and we are convinced that the petitioner (Herman) and his co-heirs, Carlos Seechung, Fortunata Seechung Abella and Trifona Seechung Federis, after so much haggling through their attorneys over the sale of the entire estate, finally agreed to the sale of the shares of the respondent heirs corresponding to the eastern half to the respondent Luis Recato Dy. In that conference all the heirs objected to the partition of the property because the division thereof into eight parts would give a frontage of only 2.8 meters to each lot along Padlan St., thereby reducing the commercial value of each share. Petitioner Herman Seechung and his co-heirs aforementioned preferred to retain their shares, while the four respondent heirs wanted to dispose of their constituting one-half thereof. There is nothing in the transcript of the stenographic notes submitted to us for scrutiny to show that the petitioner and his three (3) co-heirs objected to the sale of the respondent heirs' share of one-half. Their objection was aimed at the sale of the whole property.

"Respondent Luis Recato Dy was present at the conference and signified his willing-ness to buy one-half of the land pertaining to the shares of the respondent heirs, and his offer of P105,000.00 was accepted by them including the petitioner and his three (3) co-heirs abovementioned.

"The difficulty that later confronted the heirs was as to which one-half portion of the land would be sold to Luis Recato Dy who chose the western half, while the petitioner and his co-heirs, who were on his side also wanted to retain the same western half. After several exchanges of views, the parties finally agreed that the western portion shall be retained by the petitioner and his co-heirs, Carlos Seechung, Fortunata Seechung Abella and Trifona Seechung Federis, and the eastern half shall be sold unconditionally to Luis Recato Dy for P105,000.00."

After the foregoing agreements had been reached, Herman had a change of mind. He filed a motion for reconsideration of the order of January 23, 1969, praying that he, instead of Luis Recato Dy, be allowed to purchase the eastern portion, at the same time de-positing with the Consolidated Bank and Trust Company, Naga Branch, the sum of P105,000.00 for the purpose. This was opposed by private respondent Dy.

Petitioner Trifona S. Federis, having learned of the order of January 23, 1969, appeared during the hearing of Herman's motion for reconsideration on January 28, 1969 and, upon leave being granted, filed a "Reply to the Motion for Reconsideration", praying that the same be granted or, in the alternative, should it be denied, that she be allowed to exercise her right of pre-emption and/or redemption of the eastern portion which was sold to Luis Recato Dy, a stranger to the Seechung Family. (The alternative offer of petitioner was however not accompanied or ever followed by consignment or any tender of the purchase price.)

On February 3, 1969, respondent judge issued an order denying Herman Seechung's motion for reconside-ration,

"including that of Mrs. Trifona Seechung--Federis."

On February 10, 1969, respondent judge granted an ex-parte motion filed by respondent Luis Recato Dy to have the Clerk of Court and ex-officio City Sheriff execute a deed of sale for the eastern half of the property in question in his favor. Pursuant to this order, the Clerk of Court, in lieu of the regular executor, executed a deed of sale in favor of Luis Recato Dy for the eastern half of the land, and submitted the same to the court a quo for approval on February 20, 1969.

Petitioner objected to the approval of said sale, contending that the vendors had no legal authority to sell a definitive 351 square meter portion thereof because there had as yet been no valid partition among the heirs and that the written notice to co-owners required in Article 1623 of the Civil Code had not been complied with.

In an order dated March 10, 1969, respondent judge denied petitioner's objections and ruled that "the motion to approve the deed of sale should be modified and be executed in accordance with the order of the Court dated February 10, 1969. After this modification or correction, the same is hereby approved."

On April 1, 1969, petitioner filed a motion for reconsideration.

Meanwhile, Herman Seechung appealed the order of January 23, 1969 and the order of March 10, 1969. His appeal, however, was disallowed by respondent judge on the ground that the agreement entered into on January 23, 1969 was a compromise agreement and therefore not appealable.

Herman Seechung elevated the case to the Court of Appeals (CA-G.R. No. 43042-R). On February 27, 1970, the Court of Appeals denied the petition, ruling that the agreement of January 23, 1969 partook of a judicial compromise, and was therefore not appealable. Herman raised the case to the Supreme Court (G.R. No. L-31349), but the same was denied for lack of merit.

In an order dated March 2, 1970, respondent judge denied Trifona's motion for reconsideration dated April 1, 1969.

Within the reglementary period, petitioner perfected an appeal from the orders of January 23, 1969, February 3, 10 and 11, 1969, March 10, 1969 and March 2, 1970, by filing a notice of appeal, an appeal bond and the record on appeal. Before the record on appeal could be approved, respondent judge issued an order dated April 6, 1970 which, among other things, finally approved the modified and corrected deed of sale as well as the Subdivision Plan Psu-62670, for which reason petitioner filed a motion to admit supplemental record on appeal.

On April 18, 1970, private respondents filed an opposition to the appeal and moved to dismiss the same on the grounds that (1) the orders sought to be appealed were no longer appealable, and (2) the said orders were binding upon petitioner under the doctrine of res judicata.

On July 14, 1970, respondent judge issued an order disallowing petitioner's record on appeal, ruling that the orders sought to be appealed were no longer appealable because the same were res judicata.

The petitioner filed a motion for reconsideration, but the same was denied.

In an order dated August 17, 1970, respondent judge ordered inter alia the Register of Deeds of Naga City to cancel Original Certificate of Title No. 778, and issue in lieu thereof, two transfer certificates of title to cover the eastern portion sold to respondent Luis Recato Dy and the western portion retained in co-ownership by Herman, Carlos, Fortunata and Trifona.

Thereafter, petitioner filed with the Court of Appeals a petition for mandamus and certiorari (CA-G.R. No. 46031), but the same was denied in a decision promulgated on November 11, 1971. A motion for reconsideration

subsequently filed was likewise denied in a resolution dated January 26, 1972. Hence, this appeal by certiorari raising four errors:

- The petition before it being one for mandamus, the Court of Appeals erred in passing upon the merits of the orders sought to be appealed and in resolving the issues intended to be brought up on appeal, especially be-cause factual and evidentiary matters decisive in the resolution of said issues were not before it;
- The Court of Appeals erred in holding that petitioner is bound by the agreement entered into by her co-heirs on January 23, 1969;
- The Court of Appeals erred in holding that petitioner, although not a party to CA-G.R. No. 43042-R, is bound by the decision therein; and
- The Court of Appeals erred in holding that the order of March 10, 1969 (approving the deed of sale of a definitive 351 square meter area) and that of April 6, 1970 (approving the modified and corrected deed of sale, including a subdivision plan) are unappealable.

The first issue deals with the propriety of the appellate court's having passed upon questions of fact involving the merit of petitioner's appeal. In this connection, petitioner's stand that the Court of Appeals erred in looking into the merit of her appeal since the petition (CA-G.R. No. 46031-R) she filed with the said court, is one for mandamus, is wrongly premised. What she actually filed with the appellate court was a petition for mandamus and certiorari. In that petition, petitioner not only alleged grave abuse of discretion on the part of the trial court in dismissing her timely appeal on the ground that the orders sought to be appealed were already *res judicata*, but also raised, in connection with this allegation, issues, in the resolution of which the appellate court had to examine facts and consequently rule on the merit of her appeal from the order dated January 23, 1969, as amended, and related orders.

Moreover, even if G.R. No. 46031-R were only for mandamus and the petition could, strictly speaking, be granted since the trial court dismissed the appeal on a ground other than that provided for in Section 14, Rule 41 of the Rules of Court which is failure to perfect the appeal on time, it cannot be denied that the Court of Appeals is clothed with discretion, before issuing the writ, to "inquire into the facts involved in order to determine whether once the writ is granted and the case is brought up here on appeal, the appellant has any chance, even possibility, of having the decision of the trial court set aside or modified; for if the the appellant has not that prospect or likelihood then the granting of the writ and the consequent appeal would be futile and would mean only a waste of time to the parties and to this Court." (*Paner v. Yatco*, 87 Phil. 271; *Razon, Inc. v. Moya*, 103 SCRA 41, 46).

The contention of petitioner that the appellate court was not in possession of factual and evidentiary matters decisive in the resolution of these issues is belied by the assailed decision which contains a recital of facts and evidence sufficient to sustain its conclusions and to justify its ruling. The factual background of the case, consisting of the findings of fact of the respondent judge, is clearly stated in the decision. Thus, the decision, among others, re-ferred to and considered the circumstances leading to the grant of the executor's motion, dated March 22, 1967, seeking permission to sell the property in question; the proceedings during the January 17, 1969 hearing wherein the petitioner was present; and the conference among the heirs on January 23, 1969 which culminated in the issuance of the disputed order. As respondent heirs stated, the appellate court had been sufficiently apprised of facts and circumstances of the case through the pleadings and their annexes filed by the parties. Besides, the same factual findings had already been brought to the knowledge of the Court of Appeals in CA-G.R. No. 43042-R (the appeal of Herman Seechung) as may be seen from the decision in the said case which adverted to the transcript of stenographic notes taken during the trial conference of January 23, 1969 which it had considered.

The rest of the issues posed by petitioner pertains to the correctness of the decision of the Court of Appeals that the order dated January 23, 1969, as amended, and related orders are unappealable as held in CA-G.R. No. 43042-R and in effect affirmed by the Supreme Court in G.R. No. 31349; that the decision in Herman's appeal is *res judicata* to herein petitioner even if she was not a party thereto; and that she was bound by the said orders as well as the later orders dated March 2, 1970 and April 6, 1970. The challenged decision is based on the findings that the agreement on which the order of January 23, 1969 was based is a judicial compromise to which she had impliedly consented, and that in the implementation of the said agreement the court ordered the sale to respondent Luis Recato Dy of the eastern half of the property, but not before the heirs had agreed to partition the property into two equal portions, the eastern portion to pertain to private respondents who agreed to sell their shares to respondent Dy, and the western portion to remain with petitioner Trifona and her co-heirs Carlos, Herman, and Fortunata.

In the Herman case (CA-G.R. No. 43042-R; G.R. No. L-31349), it was held that a judgment based on a compromise agreement, such as the January 23, 1969 order, is unappealable. This ruling, as a statement of a legal principle, is applicable to any party to the compromise agreement, whether expressly or impliedly. By the same token, the subsequent orders of the trial court dated March 10, 1969, which approved the deed of sale to respondent Dy, and April 6, 1970, which approved the subdivision plan of the subject property are likewise unappealable since they are in the nature of execution orders. As held by the Court of Appeals:

"The orders of March 10, 1969 approving the deed of sale; and of April 6, 1970 approving the subdivision plan except paragraph 4 therein, are both merely implementary of the final order of January 23, 1969 as amended and amplified by the orders of February 3, 10, and 11, 1969 and as the two orders do not vary the terms of the said final orders and leave no room for interpretation it is clear that the same are not appealable."

The insistence of petitioner that she cannot be bound by the agreement of her co-heirs of January 23, 1969 since she was not present thereat either personally or through counsel cannot be sustained. For neither is it disputed that petitioner Trifona was present during the hearing of January 17, 1969, when the trial court issued an order resetting for the last time the trial conference of the heirs and their counsel on January 23, 1969 for the purpose of dividing the property equitably among the heirs, and if division would not be feasible, of selling the same, the proceeds thereof to be distributed among the heirs; and considering the failure of any of the parties to attend the said conference as a forfeiture of his right to object to the disposition of the case. Despite the order, petitioner chose to absent herself during the trial conference and gave the court no satisfactory explanation for her disregard of its order. Petitioner is estopped from claiming exception from the compromise agreement. The Court of Appeals aptly said:

"x x x. Her conduct had incurred her in estoppel to object; she was considered to have impliedly agreed to the disposition that her co-heirs adopted with the Court's approval. To rule otherwise would be tantamount to making light of, nay negating the admonition of the Court that it would brook no absences on the part of the heirs. No rule of justice or equity can be invoked to allow petitioner now to benefit from her disregard of the lawful order of the court; under the circumstances no rule of reason can accept her argument that because she was not present at the conference she can not be considered a party to the compromise agreement."

As a party to the compromise agreement which was the basis for the issuance of the Order dated January 23, 1969, petitioner is bound by the said order of the trial court, as amended, as well as the subsequent orders which were issued in implementation thereof.

Indeed petitioner's absence from the trial conference constituted a waiver of her right to object to whatever disposition her co-heirs may have made, which included, among others, the partition of the lot into the eastern and the western portions; the assignment of the eastern portion to the four heirs who chose to sell their shares, and of

the western portion to the other four heirs who chose to retain their shares; and the sale to respondent Dy of the eastern portion. As found by the appellate court, the partition and sale of one-half of the property was the result of a voluntary agreement among the heirs with the approval of the court as embodied in the order of the latter dated January 23, 1969, and we find no reason to disturb this finding which is supported by evidence. There is obviously no basis for petitioner to say, therefore, that the order of the trial court issued on January 17, 1969, which declared the failure of a party to appear during the scheduled trial conference as a waiver of his right to object to the disposition of the case, is contrary to law and the Rules since it was tantamount to compelling the heir to agree to a manner of partition that is not to his liking; and that the sale of the eastern portion of the lot to respondent Dy is invalid because the sale of the said definite portion was made prior to partition among the heirs.

Likewise without merit is petitioner's argument that as a co-owner of the subject lot, she was deprived of her right of pre-emption and redemption as she was not notified in writing of her co-owner's intention to sell their shares as required under Articles 1088 and 1623 of the New Civil Code. The records show that even as early as March 22, 1967, the executor of the estate of the deceased Benito Seechung who had petitioned the trial court for authority to sell the property in question, was granted such authority with the conformity of all the heirs. The heirs' conformity, as correctly stated by the appellate court, was "actually a waiver of their right to pre-emption; and, in the least, it was notice of the intention of the heirs to sell their shares, sufficient to supplant the written notice required by Article 1623 of the Civil Code." Besides, there really was no need for petitioner to be notified of the sale by the vendor heirs because the sale was actually executed and approved by the court after the partition of the lot into the eastern and the western portions and the assignment of the said portions to the respective heirs. Hence, petitioner was no longer a co-owner of the portion sold to respondent Dy who was not a co-owner of the property.

Premises considered, the petition is dismissed.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Relova, Gutierrez, Jr., and De la Fuente, JJ., concur.

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