

EDUARDO J. BERENGUER, MERCEDES B. VDA. DE PERALTA, VICENTE J. BERENGUER, JOSE BERENGUER, JR., SILVERIO J. BERENGUER, AND FERNANDO J. BERENGUER, PETITIONERS, VS. THE HON. UBALDO ...

G.R. No. L-33774. April 09, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for certiorari with preliminary injunction seeking the reversal and setting aside of the Order of respondent Judge dated March 29, 1971 and the issuance of a writ of preliminary injunction pending determination of the merits of the petition, restraining respondent Judge from further enforcing the questioned order, and private respondents, their agents or representatives from performing acts of administration or management over the estate.

The facts of the case are as follows:

Testator Jose Martinez Berenguer died on November 1, 1965 leaving a widow (respondent executrix) and 10 legitimate children (petitioners and private respondents) and properties consisting mostly of agricultural lands (more than 450 ha.) and a number of commercial and residential houses situated in the province of Sorsogon (Rollo, p. 4).

His Last Will and Testament (Rollo, p. 23) which he executed on December 10, 1964, about a year before he died, was admitted by the Court of First Instance of Sorsogon, to probate on January 17, 1966 without any opposition from any of the heirs. In his Order respondent Judge (now deceased) confirmed the appointment of respondent Dominga Jaynario Berenguer, widow of the testator, and Jose Berenguer, Jr., as joint executors of the last will and testament, in accordance with the wishes of the testator as expressed in the same will (Rollo, p. 37). Two years after, however, Jose J. Berenguer, Jr., upon motion, was allowed by the Court to resign as such co-executor of the estate of the deceased Jose Berenguer, Sr., in an Order dated September 11, 1967 (Rollo, p. 40).

On January 18, 1971, herein petitioner Eduardo J. Berenguer filed an urgent petition in the lower court, for the replacement and removal of respondent Dominga Vda. de Berenguer as executrix, the reinstatement of Jose J. Berenguer, Jr., as executor and/or issuance of letters testamentary to Eduardo J. Berenguer, and for respondent Carlos Berenguer who was given a special power of attorney by the executrix to manage the estate on her behalf (Rollo, p. 67), to forthwith cease and desist from taking possession of and managing without authority and to the prejudice of the other heirs, the properties of the estate (Rollo, p. 41), as a result of which respondent Judge issued his Order dated March 22, 1971 reinstating petitioner Jose Berenguer, Jr., as co-executor and co-administrator of the estate (Rollo, p. 59). On the same date, respondent judge issued an Order naming the heirs of the deceased Jose Berenguer and their respective shares in the estate left by the deceased (Rollo, p. 136).

On ex-parte motion of private respondents (Rollo, p. 63), respondent Judge issued another Order on March 29,

1971, ordering petitioner Jose Berenguer, Jr., not to interfere with the management of the estate but only to act as eye and ear of the other heirs "so that they may not claim later that the one actually administering the property is taking advantage of her position to the detriment of the other heirs" (Rollo, p. 63). The Urgent Motion for Reconsideration of the Order of March 29, 1971 filed by petitioner Eduardo J. Berenguer on April 6, 1971 (Rollo, p. 69) was denied by respondent Judge in an Order dated June 9, 1971.

The petition was filed by petitioners on July 15, 1971 (Rollo, p. 1).

The issue in this case is whether or not respondent judge committed grave abuse of discretion or acted in excess of or without jurisdiction by: (1) the issuance of the Orders, (a) of March 29, 1971 (Rollo, p. 60) enjoining petitioner co-executor from performing acts of administration or management over the estate and constituting said co-executor a mere "eye and ear" of the other heirs without even defining what powers such an eye and ear" executor can perform and (b) of June 9, 1971 (Rollo, p. 99) denying petitioners' motion for reconsideration; and (2) in unduly delaying resolution of petitioners' urgent motion for reconsideration of order of March 29, 1971 dated April 6, 1971.

On July 26, 1971, this Court issued the preliminary injunction prayed for by petitioners pursuant to a resolution of the Court dated July 20, 1971 (Rollo, p. 102). On motion of the petitioners (Rollo, p. 107) the Court resolved on August 12, 1971 to require respondent Carlos J. Berenguer and Atty. Henry D. Diesta to show cause why they should not be punished for contempt of court for disobeying the writ (Rollo, p. 120).

On August 26, 1971, respondents filed their Answer to the petition, praying that the petition for certiorari be dismissed and opposing the issuance of a writ of preliminary injunction (Rollo, p. 128) and on September 6, 1971, their answer to the motion for contempt (Rollo, p. 157). Petitioners filed their reply to the answer to motion for contempt on October 4, 1971 (Rollo, p. 171).

At the hearing of the contempt incident on November 18, 1971, this Court gave both parties a period of five days in which to inform this Court of the result of negotiations to select an administrator of the estate, of their common choice (Rollo, p. 201) which resulted in a joint manifestation filed by both parties on November 27, 1971 wherein petitioners proposed two names and respondents, three names, excluding the possibility of having any co-heir appointed to said position (Rollo, p. 202). Petitioners and respondents could not agree on a common nominee.

On December 13, 1971, petitioners submitted their memorandum (Rollo, p. 224).

Meantime, acting on the joint manifestation of both parties, this Court resolved on December 28, 1971 to order the Court of First Instance of Sorsogon, Branch I, to choose and appoint an administrator of the estate from among the persons proposed by the parties in their joint manifestation, or any other person who may be agreed upon by the parties, within 30 days from notice thereof and to report to this Court the action taken (Rollo, p. 231). In a resolution dated January 13, 1972, the Court granted Petitioner's motion (Rollo, p. 232) to replace the two names submitted by them in the joint manifestation, with two other names which this Court promptly referred to the lower court (Rollo, p. 239). Pursuant to the resolutions of the Court dated December 28, 1971 and January 13, 1972, the Court of First Instance issued the Order of March 6, 1972 giving the parties five days from receipt of the Order to make known to the court a quo their common choice among three names — two picked out by the lower court, one each from the names submitted by the parties and a third name, Hermo Velasco, proposed by the lower court itself (Rollo, p. 242). It appears that in compliance with respondent Judge's order, Petitioners manifested their choice and that they have no objection to the lower court's appointing Hermo Velasco as administrator. Respondents, on the other hand, did not indicate their choice but filed a motion to suspend implementation of the Resolution of this Court. Presiding Judge left for abroad on a vacation before he could act on Petitioner's manifestation and Respondent's motion and expected to be back only after 3 months. Thus, Petitioner's urgent

omnibus motion filed with this Court on April 20, 1972 praying, among others, that Hermo Velasco, the person proposed by the lower Court, be appointed as administrator of the estate and that Carlos Berenguer, Pablo Berenguer and their agents be ordered to show cause why they should not be punished for contempt, with Carlos Berenguer to be held in custody pending resolution of the contempt charge so that no further dissipation and/or absconding with the estate's assets may be made by him (Rollo, p. 245).

Meanwhile, in the Court of First Instance of Sorsogon, Branch I, a petition was filed on January 14, 1972 by Carlos Berenguer for the probate of the holographic will of the deceased testator Jose M. Berenguer, dated June 17, 1965, signed and written in his own handwriting (Rollo, p. 325), the hearing of which was set by the probate court on July 14, 1972 (Rollo, p. 328).

On May 22, 1972, Petitioners submitted their third motion for contempt, praying for this Court to issue an order requiring respondents Carlos Berenguer, Pablo Berenguer, Remedios Berenguer-Lintag, Atty. Manuel Lintag and their employees to show cause why they should not be punished for contempt of court (Rollo, p. 262), granted by this Court in a resolution dated May 29, 1972 (Rollo, p. 268).

On May 16, 1972, this Court resolved to appoint Mr. Hermo Velasco as administrator of the estate of the late Jose Berenguer, to require him to file a bond of P10,000.00 and to qualify as such administrator and commence performing his duties without delay; and to authorize the vacation judge who may be presiding over Branch III of the Court of First Instance of Sorsogon, or in the absence of the Vacation judge, the judge presiding over Branch II, to hear and receive evidence in connection with petitioners' charges against respondent Carlos J. Berenguer and Atty. Henry D. Diesta for contempt of court as embodied in the motion for contempt dated July 31, 1971, and to submit a report and recommendation to this Court on the matter (Rollo, p. 269). A motion for reconsideration of the resolution of the Court dated May 16, 1972 with opposition to urgent omnibus motion and counter motion to cite petitioners for contempt, was filed by respondents on June 9, 1972 (Rollo, p. 272), and on June 21, 1972, respondents filed their opposition to petitioners' third motion for contempt (Rollo, p. 345).

In a resolution dated June 26, 1972, this Court resolved, among other things, to require petitioners to comment on and/or answer within ten days from notice thereof, respondents-oppositors' motion for reconsideration (with opposition to petitioners' omnibus motion and counter-motion to declare petitioners in contempt of court); and to require the Deputy Clerk of the Court of First Instance of Sorsogon (Branch III) to inform this Court as to whether or not Mr. Hermo Velasco had already qualified as administrator and already performing the duties of administrator of the estate (Rollo, p. 385a).

Respondents' motion for reconsideration was opposed by petitioners in their answer and motion to cite Judge Jorge Imperial, Judge Norberto Villamor and Manuel Lintag for contempt of court (Rollo, p. 391) filed with this Court on July 14, 1972.

On June 26, 1972, a criminal complaint for usurpation of authority and official function was filed in the Municipal Court of Sorsogon, against Mr. Hermo Velasco for assuming the position of administrator of the Berenguer properties although respondents' motion for reconsideration had not yet been resolved by this Court (Rollo, p. 462). A warrant for the arrest of Hermo Velasco was then issued by Judge Norberto Villamor of the Municipal Court of Sorsogon (Rollo, p. 524).

On June 30, 1972, Judge Jorge Imperial of the Court of First Instance of Sorsogon, Branch I, issued an Order cancelling the letters of administration issued to Mr. Hermo Velasco and the bond set up by him (Rollo, p. 460).

In a resolution dated October 16, 1972, this Court resolved to deny respondents' motion for reconsideration of the Court's resolution of May 16, 1972 and counter-motion to cite petitioners for contempt of court; reiterated Its

appointment of Hermo Velasco as administrator of the estate of Jose Berenguer; ordered the restoration of Mr. Velasco's letters of administration and the restoration and approval of his bond; ordered Judges Imperial and Villamor, Manuel Lintag, etc., to show cause why they should not be dealt with for contempt of court and to reiterate Its order embodied in its resolution of May 29, 1972, to require Carlos Berenguer, Pablo Berenguer, Remedios Berenguer-Lintag, Atty. Manuel Lintag, and their employees to show cause why they should not be dealt with for contempt of court; and to order the presiding Judge of Branch III of the Court of First Instance of Sorsogon to take all the steps necessary to bring about the earliest settlement of the estate and its distribution among the heirs of the late Jose Berenguer, Sr. (Rollo, p. 519).

Respondents' consolidated explanation and opposition to petitioners' third motion for contempt was filed with this Court on November 13, 1972 (Rollo, p. 580); respondent Judge Imperial's explanation, on November 15, 1972 (Rollo, p. 598). Respondent Judge Villamor filed his explanation on November 18, 1972 (Rollo, p. 622); the consolidated explanation on January 2, 1973 (Rollo, p. 650).

On November 28, 1972, the presiding Judge of Branch III, Court of First Instance of Sorsogon, issued an Order directing Mr. Velasco to submit an inventory of the estate and claim of compensation within a reasonable time; and the group of Mrs. Dominga Vda. de Berenguer, on one hand, and the group of Eduardo Berenguer, on the other, to appoint within 5 days from receipt of the order, their duly authorized representative under special power of attorney to represent them in the conference for the purpose of approving a project of partition (Rollo, p. 565). On December 19, 1972, Branch III of the Court of First Instance of Sorsogon issued another order requiring the parties to submit their opposition to the inventory list of the properties of the estate as submitted by the administrator and to submit their respective projects of partition and if possible, one project of partition acceptable to all, on or before January 15, 1973 (Rollo, p. 569).

On February 10, 1973, Respondents filed their reply to petitioners' answer to their motion for reconsideration (Rollo, p. 715) and the supplement to their reply on March 7, 1973 (Rollo, p. 730).

On March 10, 1973, counsel for respondent widow, Dominga J. Vda. de Berenguer, filed in the Court of First Instance of Sorsogon, Branch III, a motion for partition in accordance with the will and the immediate delivery of her one-half conjugal share in the estate, with alternate prayer, for appointment of commissioners, the other 1/2 to remain in co-ownership by the instituted heirs for 20 years from the demise of Jose Berenguer, Sr. Acting upon the motion, the presiding Judge of the lower court issued an Order dated April 11, 1973 requiring the parties to submit within ten days from receipt of a copy of the Order the name and address of one representative and who, together with a representative of this Court, shall sit together in conference, and with another representative each from each group to attend as observer only (Rollo, p. 780), a copy of which was received by this Court on April 26, 1973. On April 18, 1973, counsel for the widow also had filed with this Court a manifestation of the widow's desire to end further administration of her conjugal share by a third person.

The group of the heir, Eduardo J. Berenguer, submitted the name of their representative, Mr. Jose Destura, on May 31, 1973 embodied in a manifestation, a copy of which was received by this Court on June 5, 1973 (Rollo, p. 816). On June 2, 1973, the lower court issued an Order dated June 2, 1973, copy received by this Court on June 16, 1973, admitting the undated proposed equitable partition submitted for the group of Mrs. Dominga Vda. de Berenguer (Rollo, p. 821).

On August 1, 1973, in a joint motion (Rollo, p. 833), the heirs submitted for the approval of the Court of First Instance of Sorsogon, Branch III, a compromise partition of the properties forming the estate of the conjugal partnership of the spouses Jose Berenguer, Sr. (deceased) and Dominga J. Vda. de Berenguer, and on August 6, 1973, counsel for respondents filed a manifestation informing this Court of the joint motion for the approval of

the compromise partition filed by the heirs with the Court a quo and that as a result thereof, the petition for certiorari had become moot and academic (Rollo, p. 831). The lower court, however, issued an Omnibus Order dated August 9, 1975, holding the approval of the compromise agreement in abeyance until after the approval of the final report and accounting of the Administrator, Herno Velasco (Rollo, p. 868).

On August 15, 1973, private respondents filed an urgent petition for relief against the refusal of the court a quo to approve the compromise partition and allow the heirs in the continued possession of their respective adjudicated shares pursuant to partition (Rollo, p. 856). This Court resolved to require petitioners to comment on the urgent petition (Rollo, p. 875) and in another resolution dated September 3, 1973, resolved to require petitioners to comment on the manifestation of respondents informing this Court of the compromise partition making their petition moot and academic (Rollo, p. 877).

On September 13, 1979, the court a quo approved the final accounting report submitted by the administrator, Mr. Herno Velasco, relieving him from his various duties or responsibilities as administrator of the estate of the late Jose Berenguer, Sr., and finally approved the compromise partition of the heirs, executed by the heirs on August 18, 1973 (Rollo, p. 939), a copy of which order was furnished by this Court on September 17, 1973.

On September 17, 1973, petitioners filed their opposition to respondents' urgent petition for relief inasmuch as the probate court had sufficient legal basis for holding in abeyance the approval of the partition (Rollo, p. 887). On November 6, 1973, respondents filed their reply to petitioners' comment (Rollo, p. 902).

On September 28, 1983, the Court received the entire record of Special Proceedings No. 2037 (Sp. Proc. No. 056-CFI Br. III) from the Branch Clerk of Court as required by this Court in a letter dated September 2, 1983 (Rollo, p. 946).

In view of the subpoena duces tecum issued by the Regional Trial Court of Sorsogon, Branch II to this Court's Clerk of Court, on April 22, 1985, this Court resolved to require the presiding Judge of said trial court or his duly authorized representative to secure from this Court certified copies of the specific documents needed by the trial court in this case (Rollo, p. 951). The subpoena duces tecum was, however, cancelled by the Regional Trial Court in an order dated July 3, 1985 (Rollo, p. 952).

On July 29, 1985, counsel for petitioners filed with the Court a motion for reconsideration of this Court's resolution dated April 22, 1985, requiring the Regional Trial Court to secure from this Court certified copies of the documents needed by the trial court, praying that instead the Clerk of the Supreme Court be directed to return to the Regional Trial Court of Sorsogon the entire records of Spec. Proc. No. 056 (2037) consisting of 3 volumes (Rollo, p. 953).

On September 9, 1985, this Court resolved before taking action on petitioners' motion for reconsideration to require the parties to explain and show cause why the main petition should not be dismissed for having become moot and academic (Rollo, p. 957). In a resolution dated November 18, 1985, this Court noted the manifestation of petitioner stating that the issues in the case have become moot and academic in view of the compromise partition approved by the trial court but that there are still pending incidents needed to fully implement said compromise partition but no further action could be had as the entire records of Spec. Proc. No. 056 (or 2037) had been transmitted to this Court, with prayer that the records of the case be now returned to the trial court so the heirs can proceed to fully implement said compromise partition.

With the consent of both parties and because this petition has become moot and academic with the approval of the compromise partition, said petition is hereby **DISMISSED**, and the records of this case are hereby ordered **RETURNED** to the trial court to fully implement the compromise partition that has been agreed upon.

SO ORDERED.

Fernan, (Chairman), Gutierrez, Jr., Padilla, Bidin, and Cortes, JJ., concur.

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