

**LEOPOLDO MORALES AND PRINCESITA SANTERO MORALES, VS.
COURT OF FIRST INSTANCE OF CAVITE, BR. V, ATTY. ROLANDO
DIAZ, IN HIS CAPACITY AS ADMINISTRATOR OF THE INTESTATE
ESTATE OF SI...***G.R. No. L-47125. December 29, 1986*

Ponente: PARAS, J.

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This special civil action of certiorari and prohibition deals with the jurisdiction of a probate court to rule on the validity of the redemption by the estate under administration of a parcel of land which, while it was originally owned by the decedent and has as such been included in the inventory of properties, had been mortgaged during the decedent's lifetime and thereafter sold to the mortgagee at extrajudicial foreclosure proceedings, such mortgagee having taken possession of the property in question.

As gleaned from the pleadings together with the annexes filed by the parties to this petition, the property is a saltbed-fishpond located at Dulongbayan, Bacoor, Cavite and described in Tax Declaration No. 5469 of the Office of the Provincial Assessor of Cavite as owned by one Simona Pamuti. On February 12, 1968, Simona Pamuti mortgaged the property in favor of petitioner Princesita Santero Morales in consideration of the sum of P15,000.00. On July 26, 1974, the property, following extrajudicial foreclosure proceedings, was sold at public auction to Princesita for the sum of P15,452.00. The certificate of sale was registered with the Office of the Register of Deeds of Cavite on August 4, 1974 with the redemption period set to expire on August 4, 1975 (Comment of Private Respondents, Rollo, p. 109).

Simona Pamuti was the spouse of Pascual Santero with whom she begot a son named Pablo Santero. During the lifetime of Pablo Santero, he cohabited and had children with three women, namely, Adela Crisostomo, Anselma Diaz and Feliberta Pacursa. Pablo had a child with Adela, seven children with Anselma and five with Feliberta. The petitioner Princesita Santero Morales is Pablo's eldest natural child with Feliberta (Annex E of Explanation of Respondent Judge, Rollo, p. 85).

Simona survived both her husband Pascual and son Pablo. The records do not show when Pascual and Pablo died, but the petitions for letters of administration of the intestate estate of Pascual Santero and Pablo Santero, Special Proceedings Nos. N-2061 and N-2062 docketed with the respondent court, were filed on January 3, 1974 by Juanito Santero, Pablo's eldest natural child with Anselma Diaz, as petitioner (Comment of respondent Clerk of Court, Rollo, p. 53). Princesita was an oppositor in these proceedings whereas the respondent Clerk of Court, Atty. Rolando Diaz, was appointed, first, as special administrator and later as regular administrator (Ibid, p. 57 and p. 60).

During the pendency of the proceedings for the settlement of the intestate estates of Pascual and Pablo, Juanito Santero filed a petition for guardianship over the properties of Simona Pamuti, docketed with the respondent court as SP. Proc. No. N-2068 (See Annex A of Respondent's Memorandum, Rollo, p. 168). In this guardianship

proceeding, the respondent Clerk of Court was appointed legal guardian of Simona Pamuti. As such guardian, he filed a motion to use the funds of the estates of Pascual and Pablo Santero to redeem Simona's property that had been sold at auction to petitioner Princesita. The motion was based on the theory that the ward, Simona, is an heir of Pablo Santero and is entitled to a share of the money in the possession of the guardian in his capacity as administrator of Pascual's and Pablo's estates (Rollo, p. 168). Princesita opposed the motion on the ground that the funds that are in the possession of the respondent Clerk of Court in his capacity as administrator are held by him in trust for the benefit of Pascual's and Pablo's heirs who "have not yet been judicially determined" (Rollo, p. 172). Over the opposition of Princesita, the respondent court, in the guardianship proceeding, granted the respondent Clerk of Court's motion in an Order dated July 11, 1975 (Rollo, p. 170). Apparently, the respondent clerk of court as Simona's legal guardian, failed to act in accordance with the order dated July 11, 1975, for, as stated in a subsequent Order issued by the respondent Court on August 4, 1975 (Rollo, p. 174):

1) the respondent Clerk of Court, in his capacity as Administrator of the Intestate Estates of Pascual and Pablo Santero and Legal Guardian of Simona Pamuti, filed an alternative motion that he be allowed to accept the money being offered by Juanito Santero for the redemption of the property in question "in lieu of using funds of the Estate presently in his possession and for which he was authorized by [this] Court in its Order of July 11, 1975",

2) the alternative motion is "predicated on the opposition of Princesita Santero-Morales in using funds of the Intestate Estate for the aforesaid purpose"

so that, on August 4, 1975, the respondent court, on the finding that Simona is a forced heir of both Pablo Santero and Pascual Santero, reiterated its Order of July 11, 1975 and ordered the respondent Clerk of Court "to redeem the property covered by tax Declaration No. 5469 immediately". The date of the Order, August 4, 1975, is the same date on which the redemption period was set to expire.

On August 6, 1975, the Deputy Sheriff of Cavite, Mario Abueg, tendered to petitioner's Prudential Bank Check No. 140867 dated July 17, 1975 in the sum of P16,342.00 by way of redemption of the property in question (Petition, Rollo, p. 3; Comment, Rollo, p. 110). The tender was not accepted by the petitioner/s on the ground that the check was not a certified check, that the amount tendered was insufficient and that the tender was made after the lapse of the redemption period. On August 8, 1975, the petitioner/s executed an affidavit of Consolidation and requested the Provincial Sheriff of Cavite to execute the final deed of conveyance. The provincial sheriff did not issue the final deed requested by the petitioner/s. Neither did he issue any certificate of redemption in favor of the legal guardian of Simona.

On January 1, 1976, Simona Pamuti died intestate (Rollo, p. 74). In the special proceeding for the settlement of the estate of Simona, where one Felisa Pamuti-Jardin who claimed to be Simona's sole surviving heir was the petitioner, the herein petitioner Princesita Santero was allowed to intervene not as heir but as "creditors of the intestate estate of the late Simona Pamuti, or as co-owners, together with said intestate estates, of certain properties as the interests of said oppositors may appear" (Rollo, p. 95). The same respondent Clerk of Court was appointed Administrator and eventually, the three special proceeding/s for the settlement of the intestate estates of Pascual Santero, Pablo Santero and Simona Pamuti were consolidated.

On June 15, 1976, the respondent Clerk of Court in his capacity as administrator of the intestate estate of Simona Pamuti, filed a Motion to Order the Provincial Sheriff of Cavite To Issue Certificate of Redemption" alleging that on July 17, 1975, before the expiration of the redemption period on August 4, 1975, payment of the redemption amount had been tendered and accepted by the Provincial Sheriff of Cavite; that upon request of the sheriff, another amount of P964.25 was tendered and accepted by the sheriff's deputy and that the sheriff, having received the full redemption price, is duty bound to issue a certificate redemption in favor of the estate of Simona (Annex

A, Petition, Rollo, p. 24). The provincial sheriff was the only party furnished with a copy of the motion.

On January 13, 1977, the respondent court granted the aforementioned motion. In its Order, the respondent court stated that on July 17, 1975, the amount of P16,342 "per check number AN-140867-S of the Prudential Bank of Cavite City", was deposited with the provincial sheriff; that the provincial sheriff requested Princesita Santero Morales to get the check but the latter refused to do so because the check was neither a cashier's check or a manager's check and because the amount was insufficient; that the insufficiency was due to the "misinformation erroneously furnished by the sheriff"; that the deficiency which represented interests in the amount of P964.24 was deposited on August 25, 1975; and that in view of the refusal of Princesita to accept payment, "the check in the amount of P16,324.00 covering the principal together with interest in the amount of P964.24 in cash or a total of P17,306.24 were deposited with the Rural Bank of Kawit under Savings Account No. 13147 in the name of the Provincial Sheriff of Cavite and for which the Provincial Sheriff had issued a receipt dated July 17, 1975" (Rollo, pp. 21-22). The respondent court ruled that on the basis of the recited facts, "the administrator herein has complied with the requirements of law for the redemption of mortgaged properties."

On February 18, 1977, the petitioners filed a Motion for Reconsideration on the grounds that the respondent probate court does not have jurisdiction to resolve the validity of the redemption of the property in question; that there was no valid redemption and that the motion was resolved without giving the herein petitioners a chance to be heard (Rollo, p. 26). And, on May 3, 1977, the herein petitioners filed a motion for the removal of the administrator on the grounds that such administrator does not have enough time to attend to his duties because of his official duties as Clerk of Court of the Court of First Instance of Cavite; that appointment of Clerks of Court as administrators is disfavored by the Supreme Court and that the administrator has shown his bias for Felisa Jardin whose interests as alleged heir of Simona conflicts with that of the herein petitioners. It was mentioned in petitioners' motion that the administrator was being represented by the same counsel engaged by Felisa Jardin.

The petitioners' motion for reconsideration was denied on August 18, 1977 (Rollo, p. 33). The respondent Court reiterated the facts mentioned in its January 13, 1977 Order, and justified its order for the issuance of the certificate of redemption as within its power "to inquire regarding the proper implementation" of the previous order of August 4, 1975 requiring the immediate redemption of the property. The respondent court further stated that:

"This Court, sitting as a probate court was acting upon a mere incident of redemption that arose in the settlement of the estates under reference and that, as such, this Court did not rule categorically as to which party is the rightful owner of the property in question as the right of ownership could and should be ruled upon in case of any dispute in a separate action before the proper court." It added that:

"At any rate, movant Princesita Santero, not having been called to participate in the proceedings which led to the issuance of the Order of January 13, 1977, is not bound by said Order of this Court. If she is in any way adversely affected by said Order, then movant should take proper legal steps."

The records indicate that the property in dispute was in the possession of the petitioners at the time that the controversy re-garding its redemption arose. Thus, the respondent court, on May 17, 1977, ordered that the petitioners turn over the possession to the herein respondent Clerk of Court-Administrator (Annex K, Petition, Rollo, p. 40). It was mentioned in the May 17, 1977 Order that on February 13, 1977, the administrator was temporarily enjoined from taking over possession of the property and Princesita was likewise enjoined from disposing of its produce; that Felisa Pamuti-Jardin prayed in a motion dated March 26, 1977 that the administrator be ordered to take immediate possession to preserve the fruits of the property and that Felisa's motion was opposed by Princesita on the ground that the validity of the redemption is pending adjudication. As already stated, the respondent court, under its May 17, 1977 Order, required the petitioners to surrender possession of the

property.

To implement the just cited order, the respondent court, on June 16, 1977, ordered the administrator to break open the bodega standing on the property. The petitioner/s allege/s that on June 18, 1977, the respondent sheriff Melgar together with two policemen entered the premises, forced his way in, opened the bodega by force, hauled the salt from the bodega (Rollo, p. 6) and, on that occasion, boxed the petitioner Princesita as a result of which respondent Melgar was charged with Slight Physical Injuries (Rollo, pp. 127-128).

Thus, the instant petition was filed questioning the validity of the Orders of January 13, 1977, May 17, 1977 and June 16, 1977 on the principal ground that the issue regarding the validity of the redemption involves a question of ownership which is outside the jurisdiction of the respondent court as a probate court and that the petitioners may be deprived of possession of the property only through a separate civil action.

On October 27, 1977, this Court temporarily restrained the respondents from enforcing the questioned orders and required the respondent Judge Jose Raval and the respondent Clerk of Court, Atty. Rolando Diaz, to explain why Atty. Diaz as Clerk of Court has been appointed administrator in violation of the Court's Memorandum Circular dated August 15, 1975 prohibiting the appointment of Clerks of Court and other personnel as administrator in any pending case (Rollo, p. 44). Following the explanations of the Judge and the Clerk of Court which mentioned that Atty. Diaz had resigned as administrator but no successor has as yet been appointed, this Court, on December 6, 1977, ordered the respondent judge to immediately discharge the Clerk of Court as administrator and to appoint a special administrator within five (5) days from notice.

The petition is meritorious.

As stated in *Cuizon vs. Ramolete*, 129 SCRA 495, 499 -

"It is a well-settled rule that a probate court or one in charge of proceedings whether testate or intestate cannot adjudicate or determine title to properties claimed to be a part of the estate and which are equally claimed to belong to outside parties. All that the said court could do as regards said properties is to determine whether they should or should not be included in the inventory or list of properties to be administered by the administrator. If there is no dispute, well and good; but if there is, then the parties, the administrator, and the opposing parties have to resort to an ordinary action for a final determination of the conflicting claims of title because the probate court cannot do so (*Mallari v. Mallari*, 92 Phil. 694; *Baquial v. Amihan*, 92 Phil. 501).

"Similarly, in *Valero Vda. de Rodriguez v. Court of Appeals*, (91 SCRA 540) we held that for the purpose of determining whether a certain property should or should not be included in the inventory, the probate court may pass upon the title thereto but such determination is not conclusive and is subject to the final decision in a separate action regarding ownership which may be instituted by the parties (3 *Moran's Comments on the Rules of Court*, 1970 Edition, pages 448-449 and 473; *Lachenal v. Salas*, L-42257, June 14, 1976, 71 SCRA 262, 266)."

The provisional character of the inclusion in the inventory of a contested property was stressed in *Pio Barreto Realty Development, Inc. vs. Court of Appeals*, 131 SCRA 606 where the cases of *Junguera vs. Borromeo*, 19 SCRA 565; *Borromeo vs. Canonoy*, 19 SCRA 667; *Recto vs. de la Rosa*, 75 SCRA 226 and *Bolisay v. Alcid*, 85 SCRA 213, on the same elemental principle were cited.

In the case at bar, the question regarding the validity of the redemption which was supposed to have been made by the respondent clerk of court as guardian and then later as administrator of the estate of Simona Pamuti, is determinative of the ownership of the property in question. The Order of January 13, 1977 wherein the validity of the redemption was upheld is effectively a judgment that the property is owned by the estate of Simona Pamuti. Contrary to the ruling of the respondent court, such order is not merely an implementation of the July 11, 1975

Order as reiterated in the August 4, 1975 Order. At that time, the petitioners had already asserted ownership having executed the affidavit of consolidation on August 8, 1975, and the administrator of Simona's estate, on the other hand had likewise asserted his redemption of the property, having deposited with the sheriff the check in the amount which was believed to be the proper redemption price. Since the sheriff did not issue a final deed in favor of the petitioners, and neither did he issue a certificate of redemption in favor of the estate of Simona, there was, then, a clearly existing ownership contest between the parties.

The controversy was not whether or not the redemption ordered by the respondent court was done, but whether or not such redemption, as done, was valid. According to settled jurisprudence, such controversy is outside the jurisdiction of the probate court. Parenthetically, it must be mentioned that the respondent court itself had, at that time, already determined that the petitioners are intervenors in the settlement proceedings of Simona's estate not as heirs but as "co-owners" with the intestate estate, and the respondent court in fact would later state in the January 13, 1977 order that the petitioners have "not been called to participate in the proceedings." The petitioners, are, therefore, outside parties claiming title to property included in the inventory of properties under administration.

To use the language of *Bolisay vs. Alcid*, 85 SCRA 213, it does appear strange that the respondent court, after saying that it "did not rule categorically as to which party is the rightful owner of the property in question", proceeded to Order thereafter that the possession should be surrendered by the petitioners. Such latter Order clearly indicated the respondent court stated the opposite of what it meant.

Indeed the contrariness of even the factual basis of the Order of January 13, 1977 is patent. Thus, it stated that on July 17, 1975 the check in the amount of P16,342.00 was deposited with the Sheriff, that on July 21, 1975 the petitioner refused to get the check partly because of the insufficiency of the amount, that the amount corresponding to the deficiency was deposited on August 25, 1975, and that because of the refusal of the petitioners to accept the original amount and the additional amount, the total amount of P17,306.24 was deposited in the Rural Bank of Cavite, in the name of the Sheriff for which such sheriff issued a receipt dated July 17, 1975. How the sheriff was able to issue on July 17, 1975 a receipt for an amount that was de-termined only on August 25, 1975 defies explanation. There definitely is same doubt as to when the redemption price was tendered, considering, additionally, the submission of the petitioners in their reply that the supposed completion of the redemption price was made only on March 10, 1976 and not August 25, 1975 and that the check for the sum of P16,342.00 issued by the Rural Bank of Kawit is dated March 3, 1976 (*Rollo*, p. 128). The respondents correctly asserted in their Memorandum that upon payment to the sheriff of the redemption money, it is the ministerial for the sheriff to issue the certificate of redemption (*Rollo*, p. 160). It was stated in *Atega vs. Ortiz*, 27 SCRA 427, 429 that:

"We are of the opinion and so hold that Section 27 of Rule 39 of the Rules of Court, in relation to the provisions of Act 3135 as amended by Act 4118 is decisive of the above issue. It provides that the payment of the redemption money should be made "to the purchaser or redemptioner, or for him to the the officer who made the sale." And it has been held in this connection that it is the duty of the officer who made the sale to accept the tender of payment and execute the corresponding certificate of redemption provided such tender is made within the period for the purpose (*Enage vs. Vda. A. Escaño*, 38 Phil. 657)."

It must be noted however that the above-cited principle is based on the premise that the tender is made within the period and in the correct amount. Such basis is precisely the bone of contention in the instant case. Apart from the uncertainty of the factual basis of the order of January 13, 1977, as already shown above, it may be mentioned additionally that the asserted fact of payment on July 17, 1975 cannot be, insofar as the records submitted to this Court are concerned, beyond doubt because as late as August 4, 1977, the res-pondent Court still had to order the

respondent Clerk of Court to redeem the property "immediately".

IN VIEW OF THE FOREGOING, the questioned Orders of January 13, 1977, May 17, 1977 and June 16, 1977 are declared VOID for having been issued beyond the jurisdiction of the probate court; and the restraining order issued by this Court on October 26, 1977 is made permanent, without prejudice to the filing of a separate action by the present administrator (of the intestate estate of Simona Pamuti) (where the question of the redemption of the disputed property can be conclusively determined) within 30 days from finality of this decision.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Gutierrez, Jr., JJ., concur.

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