

**HERODOTUS P. ACEBEDO AND DEMOSTHENES P. ACEBEDO,
PETITIONERS, VS. HON. BERNARDO P. ABESAMIS, MIGUEL ACEBEDO,
ALEXANDER ACEBEDO, NAPOLEON ACEBEDO, RIZALINO ACEBEDO,
REPUBLICA ACE...**

G.R. No. 102380. January 18, 1993

Ponente: CAMPOS, JR., J.

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CAMPOS, JR., J.:

The lower court's jurisdiction in approving a Deed of Conditional Sale executed by respondents-heirs and ordering herein administrator-petitioner Herodotus Acebedo to sell the remaining portions of said properties, despite the absence of its prior approval as a probate court, is being challenged in the case at bar.

The late Felix Acebedo left an estate consisting of several real estate properties located in Quezon City and Caloocan City, with a conservative estimated value of about P30 million. Said estate allegedly has only the following unsettled claims:

- a. P87,937.00 representing unpaid real estate taxes due Quezon City;
- b. P20,244.00 as unpaid real estate taxes due Caloocan City;
- c. The unpaid salaries/allowances of former Administrator Miguel Acebedo, and the incumbent Administrator Herodotus Acebedo; and
- d. Inheritance taxes that may be due on the net estate.

The decedent was succeeded by eight heirs, two of whom are the petitioners herein, and the others are the private respondents.

Due to the prolonged pendency of the case before the respondent Court for sixteen years, respondents-heirs filed a "Motion for Approval of Sale", on October 4, 1989. The said sale involved the properties covered by Transfer Certificate of Title Nos. 155569, 120145, 9145, and 18709, all of which are registered in Quezon City, and form part of the estate. The consideration for said lots was twelve (12) million pesos and by that time, they already had a buyer. It was further stated in said Motion that respondents-heirs have already received their proportionate share of the six (6) million pesos paid by the buyer, Yu Hwa Ping, as earnest money; that the balance of P6,000,000.00 is more than enough to pay the unsettled claims against the estate. Thus, they prayed for the Court to direct the administrator, Herodotus Acebedo (referred to as petitioner administrator hereafter):

1. to sell the properties mentioned in the motion;
2. with the balance of P6 million, to pay all the claims against the Estate; and
3. to distribute the residue among the Heirs in final settlement of the Estate.

To the aforesaid Motion, herein petitioner- administrator interposed an "Opposition to Approval of Sale", to wit:

"1. That he has learned that some of the heirs herein have sold some real estate property of the Estate located at Balintawak, Quezon City, without the knowledge of the herein administrator, without the approval of this Honorable Court and of some heirs, and at a shockingly low price;

2. That he is accordingly hereby registering his vehement objection to the approval of the sale, perpetrated in a manner which can even render the proponents of the sale liable for punishment for contempt of this Honorable Court;

3. The herein Administrator instead herein prays this Honorable Court to authorize the sale of the above mentioned property of the Estate to generate funds to pay certain liabilities of the Estate and with the approval of this Honorable Court if warranted, to give the heirs some advances chargeable against theirs (sic) respective shares, and, for the purpose to authorize the herein Administrator, and the other heirs to help the Administrator personally or through a broker, to look for a buyer for the highest obtainable price, subject always to the approval of this Honorable Court." [1]

On October 30, 1989, herein petitioners moved to be given a period of forty-five (45) days within which to look for a buyer who will be willing to buy the properties at a price higher than P12,000,000.00.

The case was set for hearing on December 15, 1989. However, by said date, petitioners have not found any buyer offering better terms. Thus, they asked the Court, on February 8, 1990, for an inextendible period of thirty days to look for a buyer.

Petitioner-administrator then filed a criminal complaint for falsification of a public document against Yu Hwa Ping and notary public Eugenio Obon on February 26, 1990. He initiated this complaint upon learning that it was Yu Hwa Ping who caused the notarization of the Deed of Conditional Sale wherein allegedly petitioner-administrator's signature was made to appear. He also learned that after he confronted the notary public of the questioned document, the latter revoked his notarial act on the same.

On April 2, 1990, petitioner-administrator filed the civil action to secure the declaration by the Court of the nullity of the Deed of Conditional Sale and the Deed of Absolute Sale.

The period granted herein petitioners having lapsed without having found a buyer, petitioner Demosthenes Acebedo sought to nullify the Orders granting them several periods within which to look for a better buyer. Respondents filed a comment thereon.

Having miserably failed to find a better buyer, after seven long months, petitioner-administrator filed another "Opposition to Approval of Sale", dated May 10, 1990, maintaining that the sale should wait for the country to recover from the effects of the coup d'état attempts, otherwise, the properties should be divided among the heirs.

On June 21, 1990, petitioners filed a "Motion for Leave of Court to Mortgage and Lease some of the Properties of the Estate". To this Motion, respondents filed an Opposition on the following grounds: that the motion is not proper because of the pending motion to approve the sale of the same properties; that said conditional sale was initiated by petitioner-administrator who had earlier signed a receipt for P500,000.00 as earnest money; that the approval of the sale would mean Yu Hwa Ping's assumption of payment of the realty taxes; that the estate has no further debts and thus, the intestate administrator may be terminated.

On August 17, 1990, respondent Court issued an Order, the dispositive portion of which, stated, among others, to wit: [2]

"b. the motion filed by the heirs-movants, dated October 4, 1989, praying that the new administrator be directed to sell the properties covered by TCT Nos. 155569, 120145, 9145 and 18709, in favor of Yu Hwa

Ping is hereby denied; and

c. the new administrator is hereby granted leave to mortgage some properties of the estate at a just and reasonable amount, subject to the approval of the Court."

On December 4, 1990, the respondent Judge issued an order resolving to call the parties to a conference on December 17, 1990. The conference was held, but still the parties were unable to arrive at an agreement. So, on January 4, 1991, it was continued, wherein the parties actually agreed that the heirs be allowed to sell their shares of the properties to Yu Hwa Ping for the price already agreed upon, while herein petitioners negotiate for a higher price with Yu Hwa Ping.

Petitioners, then, instead filed a "Supplemental Opposition" to the approval of the Deed of Conditional Sale.

On March 29, 1991, the respondent Court issued the challenged Order, the dispositive portion of which states, to wit:

"WHEREFORE, the Order dated August 7, 1990, is hereby lifted, reconsidered and set aside, and another one is hereby issued as follows:

1. Approving the conditional sale, dated September 10, 1989, executed by the heirs-movants, in favor of Yu Hwa Ping, pertaining to their respective shares in the properties covered by TCT Nos. 155569, 120145, 1945 and 18709 of the Register of Deeds of Quezon City;
2. Ordering the administrator Herodotus Acebedo to sell the remaining portions of the said properties also in favor of Yu Hwa Ping at the same price as the sale executed by the herein heirs-movants;
3. Ordering Yu Hwa Ping to deposit with the Court the total remaining balance of the purchase price for the said lots within TWENTY (20) DAYS from notice hereof;
4. The motion to cite former administrator Miguel Acebedo in contempt of court, resulting from his failure to submit the owner's copy of TCT Nos. 155569, and 120145 is hereby denied." [3]

Yu Hwa Ping, on April 4, 1991, deposited the remaining balance of the purchase price for the properties subject of the Deed of Conditional Sale in the amount of P6,500,000.00.

Petitioners herein received the questioned Order on April 11, 1991. Twenty one (21) days thereafter, they filed a Motion for Reconsideration, praying that the Court reinstate its Order of August 17, 1990. To this, private respondents filed their Opposition. [4]

Instead of making a reply, petitioners herein filed a Supplemental Motion for Reconsideration. The motions for reconsideration of herein petitioners were denied by the respondent Court on August 23, 1991.

On September 23, 1991, herein petitioners filed a Motion for Partial Reconsideration, hoping for the last time that they would be able to convince the Court that its Order dated March 29, 1991 in effect approving the conditional sale is erroneous and beyond its jurisdiction.

On October 17, 1991, the respondent Court denied the Motion for Partial Reconsideration for "lack of merit".

On November 7, 1991, private respondents filed a Motion for Execution of the Order dated March 29, 1991. This was pending resolution when the petitioners filed this Petition for Certiorari.

The controversy in the case at bar revolves around one question: Is it within the jurisdiction of the lower court, acting as a probate court, to issue an Order approving the Deed of Conditional Sale executed by respondents-heirs without prior court approval and to order herein Administrator to sell the remaining portion of said properties?

We answer in the positive.

In the case of *Dillena vs. Court of Appeals*,^[5] this Court made a pronouncement that it is within the jurisdiction of the probate court to approve the sale of properties of a deceased person by his prospective heirs before final adjudication. Hence, it is error to say that this matter should be threshed out in a separate action.

The Court further elaborated that although the Rules of Court do not specifically state that the sale of an immovable property belonging to an estate of a decedent, in a special proceeding, should be made with the approval of the court, this authority is necessarily included in its capacity as a probate court. Therefore, it is clear that the probate court in the case at bar, acted within its jurisdiction in issuing the Order approving the Deed of Conditional Sale.

We cannot countenance the position maintained by herein petitioners that said conditional sale is null and void for lack of prior court approval. The sale precisely was made conditional, the condition being that the same should first be approved by the probate court.

Petitioners herein anchor their claim on Section 7, Rule 89 of the Rules of Court.^[6] It is settled that court approval is necessary for the validity of any disposition of the decedent's estate. However, reference to judicial approval cannot adversely affect the substantive rights of the heirs to dispose of their ideal share in the co-ownership and/or co-ownership among the heirs.^[7]

This Court had the occasion to rule that there is no doubt that an heir can sell whatever right, interest, or participation he may have in the property under administration. This is a matter which comes under the jurisdiction of the probate court.^[8]

The right of an heir to dispose of the decedent's property, even if the same is under administration, is based on the Civil Code provision^[9] stating that the possession of hereditary property is deemed transmitted to the heir without interruption and from the moment of the death of the decedent, in case the inheritance is accepted. Where there are however, two or more heirs, the whole estate of the decedent is, before its partition, owned in common by such heirs.^[10]

The Civil Code, under the provisions on co-ownership, further qualifies this right.^[11] Although it is mandated that each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and thus may alienate, assign or mortgage it, and even substitute another person in its enjoyment, the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.^[12] In other words, the law does not prohibit a co-owner from selling, alienating or mortgaging his ideal share in the property held in common.^[13]

As early as 1942, this Court has recognized said right of an heir to dispose of property under administration. In the case of *Teves de Jakosalem vs. Rafols, et al.*,^[14] it was said that the sale made by an heir of his share in an inheritance, subject to the result of the pending administration, in no wise, stands in the way of such administration. The Court then relied on the provision of the Old Civil Code, Article 440 and Article 399 which are still in force as Article 533 and Article 493, respectively, in the new Civil Code. The Court also cited the words of a noted civilist, Manresa: "Upon the death of a person, each of his heirs becomes the undivided owner of the whole estate left with respect to the part or portion which might be adjudicated to him, a community of ownership being thus formed among the co-owners of the estate which remains undivided'."

Private respondents having secured the approval of the probate court, a matter which is unquestionably within its jurisdiction, and having established private respondents right to alienate the decedent's property subject of administration, this Petition should be dismissed for lack of merit.

PREMISES considered, Petition is hereby DISMISSED. With Costs.
SO ORDERED.

Narvasa, C.J., (Chairman), Feliciano, Regalado, and Nocon, JJ., concur.

[1] Annex 2, Opposition to Approval of Sale, Rollo, pp. 121-122.

[2] Rollo, p. 145-a.

[3] Rollo, pp. 164-165.

[4] Rollo, pp. 173-176.

[5] 163 SCRA 30 (1988).

[6] "Section 7 - Regulations for granting authority to sell, mortgage, or otherwise encumber estate. - The court having jurisdiction of the estate of the deceased may authorize the executor or administrator to sell personal estate, or to sell, mortgage, or otherwise encumber real estate, in cases provided by these rules and when it appears necessary or beneficial, under the following regulations:

a) The executor or administrator shall file a written petition setting forth the debts due from the deceased, the expenses of administration, the legacies, the value of the personal estate, the situation of the estate to be sold, mortgaged or otherwise encumbered, and such other facts as show that the sale, mortgage, or other encumbrance is necessary or beneficial;

b) The court shall thereupon fix a time and place for hearing such petition, and cause notice stating the nature of the petition, the reason for the same, and the time and place of hearing, to be given personally or by mail to the persons interested, and may cause such further notice to be given, by publication or otherwise, as it shall deem proper;

c) If the court requires it, the executor or administrator shall give an additional bond, in such sum as the court directs, conditioned that such executor or administrator will account for the proceeds of the sale, mortgage, or other encumbrance;

d) If the requirements in the preceding subdivisions of this section have been complied with, the court, by order stating such compliance, may authorize the executor or administrator to sell, mortgage, or otherwise encumber, in proper cases, 'such part of the estate as it deemed necessary, and in case of sale the court may authorize it to be public or private, as would be most beneficial to all parties concerned. The executor or administrator shall be furnished with a certified copy of such order. x x x.

[7] Go Ong vs. Court of Appeals, 154 SCRA 270 (1987).

[8] Vda. de Gil vs. Cancio, 14 SCRA 796 (1965).

[9] Article 533.

[10] Mendoza I vs. Court of Appeals, 199 SCRA 778 (1991); New Civil Code, Article 1078.

[11] Article 493.

[12] Reyes vs. Concepcion, 190 SCRA 171 (1990).

[13] PNB vs. The Honorable Court of Appeals, 98 SCRA 207 (1980); Mercado vs. Liwanag, 5 SCRA 472 (1962).

[14] 73 Phil. 628 (1942).

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