

CIRIACO P. GARCIA, PETITIONER, VS. HON. JOSE P. FLORES IN HIS CAPACITY AS JUDGE OF THE COURT OF FIRST INSTANCE OF ALBAY, JUAN GARCIA, AND BALDOMERA GARCIA, ET AL., RESPONDENTS.*G. R. No. 10392. June 28, 1957*

Ponente: MONTEMAYOR, J.

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This is a petition for certiorari and mandamus filed by Ciriaco P. Garcia against respondents Jose P. Flores, who at one time presided over the Court of First Instance of Albay, Juan Garcia, Baldomera Garcia, and Paula Garcia, brother and sisters of petitioner Ciriaco, and Martin Garcia and Mercedes B. Garcia, his nephew and niece, respectively, to set aside certain orders issued by the trial judge in Civil Case No. 38 of the Albay court, and to compel said trial judge to order some things done in connection with the proceedings in said civil case. The petition was given due course and respondents filed their answers, and later, their memorandum in lieu of oral argument.

The facts in the case as revealed by the pleadings and their annexes may be briefly stated as follows: On July 21, 1880, Martin Garcia, a Catholic Chinese, married Hilaria Pordesimo in Guinobatan, Albay. They had six children named Albina Pordesimo alias Albina Garcia, Pedro Pordesimo alias Juan Garcia; Paula, Baldomera, Ciriaco and Ignacia alias Rosario, all surnamed Garcia. It is said that the first two were natural children of Hilaria by an unknown father, but it is equally claimed that said two children were natural children of both Hilaria and Martin Garcia, who were subsequently legitimated by their subsequent marriage.

On July 6, 1904, Martin Garcia died intestate in Guinobatan, Albay, leaving as his heirs his widow Hilaria and their six children. It would appear that on May 16, 1912, said heirs executed an extra judicial partition, evidenced by Annex A of Juan Garcia's original and amended answers, dividing among themselves the properties left by Martin Garcia. On August 1, 1924, Hilaria the widow died intestate. Then on June 23, 1949, that is, about thirty-seven years after the alleged extra judicial partition, one of the heirs, Paula Garcia, assisted by her husband, Felipe Palencia, commenced Civil Case No. 38 of the Albay court already mentioned, against Juan, Baldomera, Ciriaco, Martin, and Mercedes, all surnamed Garcia, for partition of real and personal properties, referring apparently to the same hereditary estate previously partitioned among herself and her co-heirs in 1912, and for damages. As the defendants in said case filed their respective answers on or about August, 1949, except herein petitioner Ciriaco who filed his answer on October 24, 1949.

On June 16, 1952, plaintiffs in said case filed an unverified petition for the appointment of an administrator or receiver, under Rule 61 of the Rules of Court. The petition was opposed by the defendants, except the herein petitioner Ciriaco, on the ground that the action being one for partition, no administration was necessary, and that the appointment of a receiver would be irregular; that the petition was unverified and did not contain allegations sufficient to warrant the appointment of a receiver under Rule 61 of the Rules of Court; that, furthermore, an application for a receiver should be made not by motion but by a petition under oath supported by affidavits. On

the bases of the opposition, the trial court by order of March 14, 1953 denied the petition to appoint an administrator or receiver. On March 24, 1953, the plaintiffs and herein petitioner Ciriaco moved for a reconsideration of the order of denial and the motion was denied by order of March 28, 1953.

On January 20, 1954, that is, almost five years after the defendants, including their co-defendant Ciriaco, had filed their answers to the complaint, Ciriaco filed a motion for a bill of particulars and production of documents, praying that his co-defendants amend their respective answers by making more particular certain allegations in their answer, and to include therein certain documents proving their title or ownership of the lands involved in the action for partition. On February 1, 1954, the trial court granted the motion for a bill of particulars.

On February 23, 1954, that is, about one year after the trial court had denied the motion for the appointment of an administrator or a receiver, defendant Ciriaco filed another motion for the appointment of an administrator, which motion was heard on February 27, without opposition because his co-defendants failed to receive a copy of the motion on time. On the same date, and based on the absence of any opposition, the motion was granted and one Melencio O. Orbase was appointed administrator.

On March 11, 1954, petitioner Ciriaco filed a motion for the striking out of certain allegations in his co-defendants' answers and for a judgment on the pleadings.

After receiving copy of the order of the trial court of February 27, 1954 appointing Orbase administrator, respondents filed a motion on March 20, 1954 to set aside said order on the ground that copy of the motion of Ciriaco for the appointment of an administrator was received by them two days after it was heard on February 27, 1954, besides the fact that the question of the appointment of an administrator had already been finally decided adversely by the court in its order of March 14, 1953.

On April 8, 1954, respondents also filed a motion to set aside the order of February 1, 1954, granting the motion for a bill of particulars, on the ground that they did not receive a copy of the motion for said bill of particulars before the same was heard, and that petitioner Ciriaco, being a defendant in Civil Case No. 38, was not the proper party and lacked legal personality to require his co-defendants to make more particular the allegations in their respective answers.

On June 5, 1954, the lower court reconsidered its order of February 27, 1954, appointing an administrator, on the ground that it had already and finally decided against said appointment of an administrator or receiver by its order of March 14, 1953.

On August 23, 1955, the lower court issued an order setting aside its orders of February 1, 1954, granting the motion for a bill of particulars, and denying Ciriaco's motion of March 11, 1954, praying for the striking out of certain allegations in his co-defendants' answers and for judgment on the pleadings.

On December 7, 1955, petitioner Ciriaco filed an amended motion for a new hearing and reconsideration of the order of August 23, 1955, but said motion was denied by an order dated December 19, 1955.

As already stated, the present petition for certiorari and mandamus seeks to declare the trial court's orders of June 5, 1954 and August 23, 1955 null and void as having been issued in excess of jurisdiction and with grave abuse of discretion, and to order respondent Judge to allow Orbase to resume his duties and functions as administrator of the properties involved in Civil Case No. 38; also to strike from the record all pleadings filed by Atty. Domingo D. Sison in said Civil Case No. 38, as well as those parts of the answers of his (Ciriaco's) co-defendants (Juan, Martin and Mercedes, all surnamed Garcia), which they failed to amend, as previously ordered by the trial court in its order of February 1, 1954, and for the trial court to render judgment on the pleadings.

Petitioner claims that once the trial court had authorized the appointment of Orbase as administrator by its order of February 27, 1954, and after the latter had assumed office, said trial court had lost control over the said appointment and it could not set aside the same even on motion by the proper party; and that furthermore, to set aside the order authorizing an appointment is equivalent to a removal of said administrator without cause. What was the nature and effect of the order appointing an administrator in said Civil Case No. 38? Was it a final or merely an interlocutory order?

Examining plaintiffs' reply to defendants' opposition to the appointment of an administrator or receiver, their memorandum in support thereof as well as Ciriaco's memorandum supporting the plaintiffs' petition for an appointment of an administrator or receiver, it will be seen that they all invoked the provisions of Rules 61 and 81 of the Rules of Court regarding receivership and special administration, respectively, meaning that what plaintiffs and petitioner herein really wanted was the appointment of either a receiver or special administrator. We hold that an order appointing a special administrator or a receiver is of interlocutory nature, merely incidental to judicial proceedings; that the court making the appointment retains control over it and that it may modify, rescind, or revoke the same on sufficient grounds at any time before final judgment; and that an order appointing a special administrator or a receiver is not appealable, for the reason that far from being final, it is merely interlocutory in nature. Such was our holding in the cases of *Samson vs Barrios* (63 Phil. 198), *Borja vs. Tan* 97 Phil., 872; 51 Off. Gaz., [11] 5588, and *Manila Electric Co. vs. Artiaga and Green* (50 Phil. 144). See also Section 4, Rule 61 of the Rules of Court, authorizing the trial court to discharge a receiver already appointed when convinced that such appointment was procured without sufficient cause; and Section 1, paragraph (e) of Rule 105, to the effect that an appointment of a special administrator is not appealable. From all this it is clear that the respondent Judge not only had jurisdiction to revoke his order appointing Orbase as administrator, but that he had authority to do so in the exercise of his sound discretion.

As regards the setting aside by respondent Judge of his order of February 1, 1954, granting petitioner's motion for a bill of particulars from his co-defendants, it will be recalled that the reason for issuing said order of February 1, 1954 was because of the failure of the petitioner's co-defendants to oppose petitioner's motion for said bill of particulars. Later on, however, it turned out that said co-defendants were not served a copy of the motion before the hearing thereof, hence their failure to oppose the same. Moreover, petitioner, as a defendant in said Civil Case No. 88, was hardly the proper party to ask for a bill of particulars from his co-defendants. It was the plaintiffs who had such a right. Petitioner claims, however, that he was only a pro-forma plaintiff because his interests in the case were identified with those of the plaintiffs' and that his said interests were in conflict with those of his co-defendants. If that was the case, his remedy was to file a cross-claim against said co-defendants, which he failed to do. Furthermore, petitioner's motion for a bill of particulars from his co-defendants was filed rather belatedly, in 1954, that is, almost five years after said co-defendants had filed their respective answers way back in 1949, the same year when petitioner himself filed his own answer. Even assuming that petitioner were in a position and had the right to ask for a bill of particulars, according to Rule 16, Section 1, he had only ten days after receiving copies of his co-defendants' answers to ask them to make more specific the allegations in their answers. No reason or explanation was given by petitioner why he failed to file his motion for a bill of particulars within those ten days, but instead allowed years to pass. It is, therefore, evident that the trial court was fully justified in setting aside its order granting petitioner's motion for a bill of particulars, specially upon being convinced that said order was improvidently issued on the erroneous assumption that respondents herein were duly notified of the hearing of the motion.

Coming to the denial of petitioner's motion before the trial court to strike from the record the pleadings signed by Atty. Domingo C. Sison, particularly, the motion for reconsideration, in behalf of the defendants-respondents, which led to the setting aside of the order of February 27, 1954, ordering the appointment of an administrator,

petitioner contends that although Atty. Sison formerly represented the defendants, he had subsequently withdrawn his appearance for them; that at the time that he filed the pleadings sought to be stricken from the record, Atty. Sison no longer represented the defendants; and that the fact that he signed for Atty. Pio Duran, counsel for said defendants, did not make him (Sison) their attorney. It is true that by signing the pleadings for Atty. Pio Duran, that did not make him an attorney for the said defendants, but we find nothing wrong in Atty. Sison signing for Atty. Duran if he was duly authorized to do so, which in the absence of evidence to the contrary, should be presumed, so that pleading may be regarded as having been filed by Atty. Duran and, therefore, valid.

Finally, petitioner claims that respondent Judge abused his discretion in denying petitioner's motion for judgment on the pleadings. The record, however, shows that judgment on the pleadings at the time that petitioner prayed for the same was not called for, for the reason that the answers filed by the defendants to the complaint tendered an issue as well as specifically denied the material allegations of the complaint. For instance, while the complaint alleged that Albina Garcia and Juan Garcia were natural children of Hilaria Pordesimo by an unknown father, the answer stated that they were natural children of both Martin Garcia and Hilaria Pordesimo and were legitimated by their subsequent marriage; and as to the allegation in the complaint that the properties, real and personal, left by Martin Garcia were still owned in common because, although they were in the possession of Pedro Pordesimo alias Juan Garcia, the latter was merely holding them in trust for his co-heirs, the answer clearly stated that there had been no such trusteeship, but that in the year 1912, by means of an extrajudicial deed of partition, all said properties had been duly divided and allocated among all the heirs, including the widow Hilaria Pordesimo and the petitioner himself, Ciriaco Garcia.

We deem it unnecessary to touch upon and discuss the other points raised in the petition.

In view of the foregoing and finding the petition for certiorari and mandamus to be without merit, the same is hereby denied, with costs.

Paras, C. J., Bengzon, Padilla, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Felix, JJ., concur.

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