

LEONARDO LIM DE MESA, PETITIONER, VS. HON. COURT OF APPEALS, HON. RODRIGO V. COSICO, AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BIÑAN, LAGUNA; ROGELIO S. MOLINA, BRANCH SHE...

G.R. No. 109387. April 25, 1994

Ponente: REGALADO, J.

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REGALADO, J.:

In a resolution promulgated on March 4, 1993 in CA-G.R. SP No. 29818, entitled "Leonardo Lim de Mesa vs. Hon. Rodrigo V. Cosico, etc., et al.," respondent court denied due course to the petition for certiorari which sought the nullification of three orders of the Regional Trial Court, Branch 24, Biñan, Laguna which were issued as incidents of Civil Case No. B-1942 thereof. Petitioner is now before us impugning the aforesaid resolution.[1]

The case stemmed from an action for partition filed by herein private respondents against their eldest brother, herein petitioner Leonardo Lim de Mesa, and his sister Leticia Lim de Mesa, which suit was docketed in the Regional Trial Court of Laguna, Branch 24, as Civil Case No. B-1942. Private respondents prayed therein for the partition of the property left by their parents, Manuel de Mesa and Lucia Lim, consisting of a house and lot in Sta. Rosa Estate Subdivision, Laguna and a funeral parlor; that petitioner Leonardo de Mesa be compelled to render an accounting of the income of the funeral parlor business from October 24, 1980, the date when the mother of the parties died; and that private respondent Rogelio Lim de Mesa be declared the owner of eight-tenths (8/10) of the entire estate, as the other heirs had assigned their interests to him.

In his answer, petitioner admitted that their deceased parents left the house and lot described in the complaint, but claimed that the funeral parlor, known as Lim de Mesa Memorial Chapel, was solely owned by him. Petitioner also alleged that their deceased parents left other properties and businesses which are in the possession and under the management of the two other plaintiffs therein.

After trial, the court rendered the following judgment:

"WHEREFORE, in view of all the foregoing considerations, judgment is hereby rendered as follows:

1. Ordering the partition of the estate of the deceased spouses Manuel de Mesa and Lucia Lim described in paragraph 1 of the complaint as Lot No. 329 of the Sta. Rosa Estate Subdivision with a residential house of strong material(s) and a funeral business therein, all located at Sta. Rosa, Laguna, among the following surviving heirs in the following proportions;

1. Rogelio Lim de Mesa - 9.8787872/13 shares representing the sum total of his participations plus all the shares sold to him by co-heirs Alfredo, Numeriano, Zenaida, Yolanda, Olivia, Benjamin, and Teresita, all surnamed Lim de Mesa
2. Leonardo Lim de Mesa - 0.6515151/13 share

3. Leticia Lim de Mesa - 1.818181/13 share

4. Wilson Lim de Mesa - 0.6515151/13 share

as regards the property of the estate, namely, Lot No. 329 and the residential house of strong material(s) erected therein, and?

1. Rogelio Lim de Mesa - 8/11 shares

2. Leonardo Lim de Mesa - 1/11 shares

3. Leticia Lim de Mesa - 1/11 shares

4. Wilson Lim de Mesa - 1/11 shares

as regards the proceeds from the funeral business from November 1980 up to the present after an accounting thereof to be rendered by Leonardo Lim de Mesa.

2. Ordering the defendants Leonardo Lim de Mesa and Leticia Lim de Mesa and plaintiff Wilson Lim de Mesa to execute a deed of confirmation of the Extra-Judicial Partition with Sale (Exhibit 'H') and 'Reformation of Instrument' (Exhibit 'I') dated January 27, 1983 and November 12, 1984, respectively.

3. Ordering defendant Leonardo Lim de Mesa to render an accounting of the operation and management of the funeral business from November 1980 up to the present within thirty (30) days from the date this decision becomes final.

4. Ordering the defendants to pay the plaintiffs the amount of P30,000.00 as moral damages and the amount of P20,000.00 as reimbursement for attorney's fees.

5. Ordering defendants to pay costs of suits."^[2]

On appeal, the Court of Appeals affirmed the aforesaid judgment with some modifications, that is, by deleting those portions thereof directing therein defendants Leonardo and Leticia Lim de Mesa, aside from plaintiff Wilson Lim de Mesa, to execute a deed confirming the extrajudicial partition with sale and the reformation of instrument, and to pay the awards for moral damages and attorney's fees.^[3] Not satisfied therewith, petitioners further sought relief from this Court which, however, denied their appeal in a resolution dated January 27, 1992. On June 4, 1992, entry of said judgment was made, thereby making the judgment of the lower court, as modified by respondent Court of Appeals, final and executory.

Thereafter, private respondents filed a motion for execution which was granted by the lower court.^[4] A writ of execution was issued, but the same was returned unsatisfied on September 21, 1992 due to petitioner's refusal to comply with the same. Private respondents then filed a motion to enforce judgment which was granted by the lower court in its order dated October 14, 1992.^[5]

Subsequently, petitioner filed a motion to be furnished copies of the basic pleadings and/or orders. Private respondents filed their opposition thereto, arguing that petitioner was not entitled to the relief prayed for since private respondents were entitled to execution as a matter of right, and that all incidental matters flowing therefrom may be resolved motu proprio without prior notice and hearing to petitioner. The court a quo acted on petitioner's motion by an order, dated November 13, 1992, directing private respondent Rogelio Lim de Mesa to furnish petitioner a copy of the deed of partition and such documents as the latter would specify.^[6]

Private respondents then filed a motion to resolve the incident subject of the order of October 14, 1992 and this, in turn, led to the issuance of the lower court's order dated November 18, 1992.^[7] Upon motion filed by private respondents, the lower court issued another order, dated November 25, 1992, granting the former's motion for a

writ of possession and delineation of property lines.[8] Petitioner thereafter moved for the reconsideration of the orders dated November 18 and 25, 1992, contending that the same were issued in violation of Section 4, Rule 15 of the Rules of Court, as these were issued ex parte.[9] In its order dated December 23, 1992, the court below denied the motion for reconsideration.[10]

A petition for certiorari was then filed by petitioner in the Court of Appeals assailing, on the same grounds, the following orders of the trial court, to wit:

- "1. ORDER dated October 14, 1992 designating Atty. Luzod, Jr. to sign the deed of partition for and in behalf of Leonardo Lim de Mesa, petitioner, to enforce the judgment, and ordering petitioner to explain within 10 days from notice why he should not be cited (for) contempt of court pursuant to Sec. 3 (a) in relation to Sec. 6 and 7, Rule 71 of the Revised Rules of Court;
2. ORDER dated November 18, 1992, giving petitioner an extension of 15 days to render an accounting and in case of failure, to cite him (for) contempt of court (for) violation of Sec. 3(b) in relation to Sec. 6, (Rule 71), Rules of Court, and if he continues to disobey, the public respondent may be constrained to order his imprisonment.
3. ORDER dated November 25, 1992, granting a writ of possession directing the respondent Sheriff to place private respondent Rogelio Lim de Mesa in possession of the property pertaining to him by virtue of ANNEXES 'X', 'A', to 'A-4'." [11]

In its resolution of March 4, 1993, as stated at the outset, respondent Court of Appeals ruled against therein petitioner,[12] hence the instant petition with the following assignment of errors:

- "1. The Court of Appeals erred in applying Rule 39 of the Rules of Court and, therefore, in concluding that the judgment in the action for partition in Civil Case No. B-1942 became final and executory as of June 4, 1992 and the prevailing party is entitled to a writ of execution the issuance of which is a ministerial duty of the court.
2. The Court of Appeals also erred in holding that the three (3) assailed orders in Civil Case No. B-1942 were issued consequent to the execution of a judgment that has already become final and executory.
3. The Court of Appeals finally erred in holding that the three (3) assailed orders in Civil Case No. B-1942 having been issued ex-parte is of no moment where the execution is a matter of right and the losing party need not be given advance notice of hearing of such motion." [13]

It is from the foregoing perceptions that the main thrust of herein petitioner's arguments postulates the supposed nullity of the writ of execution issued by the trial court since the same was issued without prior notice and hearing. We disagree.

Jurisprudentially entrenched is the rule that a judgment ordering partition with damages is final and duly appealable, notwithstanding the fact, which petitioner seeks to capitalize on, that further proceedings will still have to take place in the trial court.[14]

There are two stages involved in the special civil action of judicial partition and accounting under Rule 69 of the Rules of Court.

The first stage of an action for judicial partition and/or accounting is concerned with the determination of whether or not a co-ownership in fact exists and a partition is proper, that is, it is not otherwise legally proscribed and may be made by voluntary agreement of all the parties interested in the property. This phase may end in a declaration that plaintiff is not entitled to the desired partition either because a co-ownership does not exist or a partition is legally prohibited. It may also end, on the other hand, with an adjudgment that a co-ownership does in truth exist,

that partition is proper in the premises, and that an accounting of rents and profits received by the defendant from the real estate in question is in order. In the latter case, "the parties may, if they are able to agree, make partition among themselves by proper instruments of conveyance, and the court shall confirm the partition so agreed upon by all the parties." [15] In either case, whether the action is dismissed or partition and/or accounting is decreed, the order is a final one and may be appealed by any party aggrieved thereby. [16]

The second stage commences when the parties are unable to agree upon the partition ordered by the court. In that event, partition shall be effected for the parties by the court with the assistance of not more than three (3) commissioners. This second phase may also deal with the rendition of the accounting itself and its approval by the Court after the parties have been accorded the opportunity to be heard thereon, and an award for the recovery by the party or parties thereto entitled of their just shares in the rents and profits of the real estate in question. Such an order is, to be sure, also final and appealable. [17]

In the decision ordering partition, the execution of that part of the judgment which will not necessitate any further proceedings may be enforced. Further proceedings, such as the appointment of commissioners to carry out the partition and the rendition and approval of the accounting, may be had without prejudice to the execution of that part of the judgment which needs no further proceedings. Thus, it has been held that execution was entirely proper to enforce the defendant's obligation to render an accounting and to exact payment of the money value of the plaintiffs' shares in the personal property and attorney's fees due defendants, as well as the costs of the suit and damages. [18]

In the present case, the decision ordering partition and the rendition of accounting had already become final and executory. The execution thereof thus became a matter of right on the part of the plaintiffs, herein private respondents, and is a mandatory and ministerial duty on the part of the court. Once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right, and the judgment debtor need not be given advance notice of the application for execution nor be afforded prior hearings thereon. [19]

On the bases of the foregoing considerations, therefore, the Court of Appeals acted correctly in holding that the failure to serve a copy of the motion for execution on petitioner is not a fatal defect. In fact, there was no necessity for such service.

However, notwithstanding our aforesaid observations, the orders of the trial court dated October 14, 1992 and November 25, 1992, respectively directing Atty. Luzod, Jr. to sign the deed of partition for and in behalf of petitioner and granting the writ of possession, must be set aside for having been rendered in excess of jurisdiction.

The trial court cannot compel herein petitioner to sign the extrajudicial deed of partition prepared solely by private respondents. Concomitantly, it cannot issue a writ of possession pursuant to the said extrajudicial partition.

An action for partition, which is typically brought by a person claiming to be the owner of a specified property against a defendant or defendants whom the plaintiff recognizes to be his co-owners, may readily be seen to simultaneously present two principal issues. Firstly, there is the issue of whether the plaintiff is indeed a co-owner of the property sought to be partitioned. Secondly, assuming that the plaintiff successfully hurdles the first issue, there is the secondary issue of how the property is to be divided between the plaintiff and the defendants, that is, what portion should go to which co-owner. [20]

After a judgment is rendered in an action for partition declaring that the property in question shall be divided among the parties thereto, the procedure provided by law thereafter is that, if the parties can agree among themselves, then the partition can be made by them through the proper instruments of conveyance which shall be submitted for approval of the court, and such partition with the court order confirming the same shall be recorded

in the office of the proper registry of deeds. But, if the parties are unable to agree upon the partition, the court shall by order appoint not more than three (3) competent and disinterested persons as commissioners to make the partition, commanding them to set off to the plaintiff and to each party in interest such part and proportion of the property as the court in such order shall direct.[21]

The decision in Civil Case No. B-1942 merely declares that partition is proper and forthwith specified therein the respective aliquot shares of the parties to the real estate and to the proceeds of the funeral business. Withal, it did not specifically state, by metes and bounds and by adequate description, the particular portion of the real estate to be assigned to each party. Actual partition is, therefore, necessary. Since the parties, however, cannot agree on the actual division and allocation of the property held in common, the trial court should order the appointment of commissioners to carry out the partition, as provided by Section 3 of Rule 69.

WHEREFORE, the assailed resolution of respondent Court of Appeals is hereby MODIFIED and the questioned orders of the trial court dated October 14, 1992 and November 25, 1992 are hereby SET ASIDE. The court a quo is directed to immediately appoint and constitute the necessary number of commissioners who shall expeditiously effect the partition of the subject property in accordance with Rule 69 of the Rules of Court.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Puno, JJ., concur.

[1] Penned by Justice Ricardo J. Francisco, with Justices Alicia Sempio-Diy and Consuelo Ynares-Santiago, concurring.

[2] Rollo, 67-69; per Judge Jose Mar Garcia.

[3] Ibid., 70-79.

[4] Rollo, CA-G.R. SP No. 29818, 66.

[5] Ibid., id., 16.

[6] Ibid., id., 76-77.

[7] Ibid., id., 17.

[8] Ibid., id., 18.

[9] Ibid., id., 80-82.

[10] Ibid., id., 83-84.

[11] Rollo, 2-3.

[12] Ibid., 29-32.

[13] Ibid., 19.

[14] Miranda, et al. vs. Court of Appeals, et al., L-33007, June 18, 1976, 71 SCRA 295; Municipality of Biñan vs. Garcia, etc., et al., G.R. No. 69260, December 22, 1989, 180 SCRA 576; Napilan, et al. vs. Intermediate Appellate Court, et al., G.R. No. 70025, March 14, 1990, 183 SCRA 126.

[15] Sec. 1, Rule 69.

[16] Procedurally, an order of partition is similar to an order of condemnation in expropriation proceedings under Rule 67. After the order of condemnation is rendered, there is still the substantial issue of just compensation to be litigated in and decided by the trial court. However, being determinative of the right to expropriate, such order of condemnation is a final order on that issue and is appealable (*Uriarte vs. Teodoro*, 86 Phil. 196). In like manner, an order of partition is determinative of the issues of the existence of co-ownership and the right to terminate the same, hence it is a final order on said issues even if the matter of actual partition and/or accounting still have to be resolved.

[17] *Municipality of Biñan vs. Garcia, et al.*, *supra*.

[18] *Arive, et al. vs. Ybañez, et al.*, 92 Phil. 1069 (1952); *Napilan, et al. vs. Intermediate Appellate Court, et al.*, *supra*.

[19] *Pamintuan, et al. vs. Muñoz, et al.*, L-26331, March 15, 1968, 22 SCRA 1109; *Far Eastern Surety & Insurance Co., Inc. vs. Vda. de Hernandez, et al.*, L-30359, October 3, 1975, 67 SCRA 256; *Development Bank of the Philippines vs. Court of Appeals, et al.*, G.R. No. 75964, December 1, 1987; 156 SCRA 84.

[20] *Roque vs. Intermediate Appellate Court, et al.*, G.R. No. 75886, August 30, 1988, 165 SCRA 118.

[21] Secs. 2 and 3, Rule 69, Rules of Court; *Honorio vs. Dunuan, etc., et al.*, L-38999, March 9, 1988, 158 SCRA 515.

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