

CECILIA GASTON, PETITIONER, VS. COURT OF APPEALS, HON. REYNALDO M. ALON, AS JUDGE, REGIONAL TRIAL COURT OF SILAY CITY, BRANCH 40, AND GERTRUDES MEDEL, RESPONDENTS.

G.R. No. 116340. June 29, 2000

Ponente: BUENA, J.

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BUENA, J.:

This is a petition for review of the Decision[1] dated December 16, 1993 of the Court of Appeals in CA-G.R. SP No. 29987 which dismissed, for lack of merit, petitioner's petition for certiorari which sought to annul the Order dated January 17, 1992 of the Regional Trial Court of Silay City, Branch 40 in Civil Case No. 569 entitled "Gertrudes Medel, plaintiff, versus Sofia de Oca Vda. De Gaston, et al., defendants," allegedly for having been issued with grave abuse of discretion.

The undisputed antecedents are as follows:

In 1972, herein private respondent Gertrudes Medel filed a complaint before the Regional Trial Court of Silay City, Branch 40, docketed as Civil Case No. 569, against petitioner Cecilia Gaston's mother Sofia de Oca vda. De Gaston and other defendants for recovery of her share over the therein mentioned lots, claiming that, as her mother, Gliceria de Oca, is the daughter of Mariano de Oca by his first marriage to Sebastiana Vicentino, she (Gertrudes Medel) is entitled to the properties left by Mariano de Oca; that the said court rendered judgment dismissing said Civil Case No. 569; that upon appeal, the Court of Appeals, in CA-G.R. CV No. 11904, reversed the trial court's decision and entered another one, the dispositive portion thereof stating[2] -

"WHEREFORE, in view of the foregoing, the decision of the court a quo is hereby REVERSED and another one is hereby rendered declaring TCT Nos. RT-1412, RT-1874 and RT-1875, covering Lots Nos. 771-B, 759-A and 1205 all of Talisay Cadastre, null and void and ordering the Register of Deeds concerned to issue new Titles covering Lots 771-B, 759-A and 1205, inclusive of the share of plaintiff-appellant in said properties, after the defendants-appellees shall have partitioned the properties to include the share of the appellant, as they are hereby directed to do so, within sixty (60) days from the finality of this decision. Costs against the defendants-appellants (sic)."[3];

that a petition for review on certiorari of the said decision of the Court of Appeals filed by Sofia de Oca Vda. De Gaston, et al. in this Court was dismissed and final judgment was entered on January 14, 1991; that on November 27, 1991, Gertrudes Medel filed with the Regional Trial Court of Silay City, in Civil Case No. 569, a "Motion to Require Defendants to Submit Project of Partition and to Cite Them in Contempt" principally alleging that:

"2. Despite the lapse of sixty (60) days from the finality of the aforesaid judgment, defendants failed and refused and disobeyed to comply thereof without any justification;

"3. Several representations were made with defendants' counsel to hasten the submission of the required project of partition, however, nothing has been done by the defendants up to the present despite the letter-request of plaintiff's counsel dated November 12, 1991. x x x;

"4. It is therefore imperative that defendants shall be required by this Honorable Court to submit the project of partition in this case within five (5) days, otherwise they should be cited in contempt `motu proprio'. "[4]

that the respondent court in its order of December 3, 1991 directed counsel for the defendants "to comment on the Motion to Require Defendants to Submit Project of Partition and to Cite Them in Contempt filed by the plaintiff thru counsel, within five (5) days from receipt of the Order, otherwise this Court will partition the property"; and that on January 17, 1992, the Regional Trial Court of Silay City issued its Order, to wit:

"Acting on the ex-parte motion to partition property filed by the plaintiff and finding the same to be well-taken, considering the Order of this Court dated December 3, 1991, said motion is hereby granted and Geodetic Engineer Hernando B. Guillen is hereby commissioned to conduct a survey of the boundaries of Lot 771-B covered by Transfer Certificate of Title RT-1412 (34083) and to segregate therefrom a portion of .8121 hectare which shall be titled and registered in the name of plaintiff Gertrudes Medel; and, the Register of Deeds of Negros Occidental is hereby ordered to cancel Transfer Certificate of Title No. RT-1874 (34082) with an area of 6.9595 hectares and to issue in lieu thereof a new title in the name of Gertrudes Medel, pursuant to the decision of the Court of Appeals dated March 30, 1990.

"SO ORDERED.

"Silay City, January 17, 1992." [5]

By virtue of the said Order dated January 17, 1992, Transfer Certificate of Title No. T-160133 for Lot 759-A was issued in the name of Gertrudes Medel and Transfer Certificate of Title No. T-161312 for Lot 771-B-2-A was likewise issued in her name. [6]

On August 7, 1992, petitioner filed with the Court of Appeals a petition for certiorari docketed as CA-G.R. SP No. 29987, assailing the above quoted Regional Trial Court's Order dated January 17, 1992, and seeking its nullification on the ground that the trial court, in the issuance thereof, allegedly gravely abused its discretion because -

- 1.) the partitioning of Lot No. 771-B was without a project of partition signed by the parties and without observance of the procedure set forth in Sections 2 to 7 of Rule 69 of the Revised Rules of Court, and
- 2.) the ordering of the cancellation of Transfer Certificate of Title No. RT-1874 for Lot No. 759-A as well as the ordering of the Register of Deeds concerned to issue a new title in lieu thereof without a project of partition is allegedly contrary to the said decision of the Court of Appeals in CA-G.R. CV No. 11904.

On December 16, 1993, the Court of Appeals rendered the herein assailed Decision in CA-G.R. SP No. 29987, the dispositive portion of which reads:

"WHEREFORE, the amended petition is DISMISSED for lack of merit."

Petitioner's motion for reconsideration of the said Decision was denied by the Court of Appeals in its Resolution dated June 22, 1994. [7]

Hence, the instant petition for review filed by petitioner on the ground that -

"The respondent Court of Appeals has decided the case in a manner not in accord with law and with applicable decision of this Honorable Court."

and raising the following issues:

1. Whether or not the order dated January 17, 1992 is null and void as far as it affects the final judgment.
2. Whether or not the petition for nullification of the questioned order has already prescribed.

On the first issue, petitioner alleges that contrary to the final judgment, the questioned order had conveyed the subject lots to respondent Medel without first having the subject lots partitioned, resulting to exceeding the areas conveyed to respondent Medel and deprivation of the shares of petitioner over Lot 759-A; that the final judgment is clear that before conveying the subject lots to the parties, it must firstly be partitioned by the defendants in order to determine exact areas to be conveyed to the parties; that contrary thereto, respondent RTC Judge, in the questioned order, had conveyed the whole Lot 759-A to respondent Medel when it ordered the Register of Deeds of Negros Occidental to cancel TCT No. RT-1874 and to issue a new title in lieu thereof in the name of respondent Medel, thus resulting in the deprivation of the right of inheritance of petitioner's mother over the aforesaid lot, and altering what is in a final judgment; and that, when a decision has become final and executory, the court no longer has the power and jurisdiction to alter, amend or revoke; that the questioned order, therefore, had rendered the final judgment invalid, as it produces the effect that the final judgment is nothing but a snare and a delusion, protecting nobody; and that the questioned order is null and void, and should be nullified.

The Court finds petitioner's contentions to be untenable.

On this point, the respondent Court of Appeals, in its assailed Decision, correctly ratiocinated, and we quote:

"A fact of note in the case at bar is that in the said Court of Appeals decision in CA-G.R. CV No. 11904, the defendants-appellees therein (among whom was Sofia de Oca vda. De Gaston) the mother of the herein petitioner, were ordered to partition the properties involved to include the share of herein private respondent Gertrudes Medel within sixty (60) days from the finality of the said decision. As the said defendants had not complied with the said order of the Court of Appeals, despite the lapse of the period indicated therein and inspite of representations made by Gertrudes Medel to the defendants to submit the project of partition, the private respondent filed with the respondent court on November 27, 1991, the aforesaid motion to require the defendants to submit a project of partition. Acting on the private respondent's said motion, the respondent court in its order of December 3, 1991, required the defendants' counsel to comment thereon within five (5) days from receipt thereof, with warning `otherwise the court will partition'.

"The defendants also ignored the said order of the respondent court.

"Thus, the respondent court acted on the ex-parte motion of the herein private respondent to partition the properties.

"Such disregard by the defendants of the order of the Court of Appeals in its decision in CA-G.R. CV No. 11904 and of the respondent court's order of December 3, 1991, manifests a clear and deliberate intention on the part of the defendants to deprive the private respondent of her share in the properties of the deceased Mariano de Oca. Clearly, they have themselves only to blame for the lack of a project of partition. They did not submit the same as required by the Court of Appeals and neither did they comment on the private respondent's motion to submit such project as required in the respondent court's order of December 3, 1991. There was, therefore, no exercise of grave abuse of discretion by the respondent court in the issuance of its January 17, 1992 order." [8]

Moreover, the Court of Appeals, in its Decision in CA-G.R. CV No. 11904 which has become final and executory, ordered the partition of three lots, [9] viz.: 1.) Lot 771-B (42.0482 hectares); 2.) Lot 759-A (6.9595 hectares); and 3.) Lot 1205 (13.1655 hectares). Considering petitioner's allegations, she should have at least shown how much share each of the heirs is supposed to get from the subject lot(s) in order to support her claim that the trial court gravely abused its discretion in ordering that .8121 hectare of Lot 771-B covered by TCT RT-1412 (34083) be segregated and registered in the name of private respondent, and that the whole of lot 759-A covered by TCT No. 34082 with an area of 6.9595 hectares be transferred in the name of private respondent.

Verily, there was no abuse of discretion on the part of the trial court judge when he himself partitioned the lots

because the petitioner refused/failed to submit a project of partition despite the court's order to do so. But even assuming that there was abuse of discretion on the part of the judge in the sense that he gave to private respondent more than her share but the same nevertheless approximates her just share, then there is still no grave abuse of discretion. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, and mere abuse of discretion is not enough - it must be grave.[10]

At any rate, it is incumbent upon petitioner to show in what way the share of private respondent exceeded that of her just share, by virtue of the trial court's January 17, 1992 Order, or to what extent was petitioner deprived of her share from the inheritance, in order to support her claim that the trial court judge issued the said Order with grave abuse of discretion. This, petitioner failed to do.

With respect to the second issue, the Court also finds that the respondent Court of Appeals did not err in ruling that the petition for nullification of the Order dated January 17, 1992 was not filed within a reasonable time, thus:

"x x x The questioned order of the respondent court is dated January 17, 1992 but the petition was filed only on December 29, 1992 or almost a year after the issuance of the questioned order. The yardstick to measure the timeliness of a petition for certiorari is the reasonableness of the length of time that had expired from the commission of the actuation complained of up to the institution of the proceeding to amend the same. (Toledo vs. Pardo, 118 SCRA 566 cited in Ysmael, Jr. & Co. vs. Deputy Executive Secretary, 190 SCRA 673). Failure to file the certiorari petition within a reasonable time renders the petitioner susceptible to the adverse legal consequences of laches. (Municipality of Carcar vs. CFI of Cebu, 119 SCRA 392 cited in Ysmael, Jr. & Co., Inc. vs. Deputy Executive Secretary, supra).

The essence of laches is the failure, or neglect, for an unreasonable and unexplained length of time to do that which, by exercising due diligence, could or should have been done earlier; it is the negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.[11] This Court has ruled that an interval of seven (7) months after rendition of the last order sought to be set aside is definitely barred by laches.[12] A petition brought after ninety-nine (99) days is also barred by laches.[13] As early as January 20, 1992, this Court ruled in a Resolution in PHILEC Workers' Union v. Hon. Romeo A. Young (G.R. No. 101734) that the special civil action for certiorari under Rule 65 of the Rules of Court must be filed within a reasonable period of only three (3) months. In the case at bar, the petition for certiorari was filed with the Court of Appeals only on August 7, 1992, after more than seven (7) months from the time of the rendition of the Order dated January 17, 1992 sought to be set aside, thus the petition was already barred by laches.

WHEREFORE, for lack of merit, the petition for review is DISMISSED and the Decision dated December 16, 1993 of the Court of Appeals is hereby AFFIRMED.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and De Leon, Jr., JJ., concur.

[1] Penned by Justice Gloria C. Paras and concurred in by Justices Jainal D. Rasul and Ramon Mabutas, Jr.; Annex "A," Petition; Rollo, pp. 19-23.

[2] Annex "A," Petition, Rollo, p. 19.

[3] Court of Appeals Decision promulgated on March 30, 1990 in CA-G.R. CV No. 11904, Annex "C," Petition; Rollo, p. 38.

[4] Rollo, p. 20.

[5] Order dated January 17, 1992, Annex "D," Petition; Rollo, p. 39.

[6] Memorandum for Petitioner, Rollo, p. 105; Memorandum for Private Respondent, Rollo, p. 122.

[7] Annex "B," Petition; Rollo, p. 25.

[8] Decision, CA-G.R. SP No. 29987, p. 4; Rollo, p. 22.

[9] Decision, CA-G.R. CV No. 11904, pp. 6-7 and 13; Rollo, pp. 31-32 & 38.

[10] Tanada vs. Angara, 272 SCRA 18 (1997)

[11] Lim Tay vs. Court of Appeals, 293 SCRA 634 (1998); Santiago vs. Court of Appeals, 278 SCRA 98 (1997); Philgreen Trading Construction Corp. vs. Court of Appeals, 271 SCRA 719 (1997)

[12] People vs. Castaneda, 165 SCRA 327 (1988)

[13] Claridad vs. Santos, 120 SCRA 148 (1983)

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