

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. HON. JUDGE MARTIN S. VILLARAMA, JR., REGIONAL TRIAL COURT, BRANCH 165, PASIG CITY; ROBERTO SWIFT; RODRIGO DOMINGO; AND SPECIAL MASTE...

G.R. No. 117733. September 05, 1997

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This is a special civil action for certiorari under Rule 65 of the Rules of Court to reverse the 2 November 1994 Order [1] of the Regional Trial Court, Branch 156, Pasig City (hereafter, probate court), in Special Proceedings No. 10279 entitled “In the Matter of the Probate of the Will of Ferdinand E. Marcos/Petition for Issuance of Letters of Administration.” The assailed order lifted the temporary restraining order issued on 25 October 1994, and denied petitioner's (1) petition for the issuance of a writ of preliminary injunction and (2) motion to cite Mr. Robert Swift, Atty. Rodrigo Domingo, and other persons in contempt of court.

Petitioner Republic of the Philippines is the petitioner in Special Proceedings No. 10279. The petition, filed on 16 October 1992, alleged that during his exile the late President Ferdinand E. Marcos executed his last will and testament [2] in Hawaii, United States of America, with his wife Imelda Trinidad R. Marcos and son Ferdinand R. Marcos II as executors. Petitioner justified its action in filing the petition by claiming neglect on the part of the testator's heirs to initiate testate proceedings and the need to protect the interest of the Philippine government in assessing and collecting the taxes due the estate. It moved that Mrs. Marcos and Ferdinand II be declared incompetent as executors and prayed that letters of administration be issued in favor of petitioner's nominee.

Mrs. Imelda Marcos and Ferdinand Marcos II filed an Opposition/ Comment on the petition. [3]

On 7 June 1993, petitioner sent a notice [4] of Commencement of Probate Proceedings in Philippine Court to the United States (U.S.) District Court of Hawaii, where a class action [5] docketed as MDL No. 840 was previously filed against former President Marcos. [6] The action sought damages against the latter for human rights violations he allegedly committed during his authoritarian rule.

After establishing the jurisdictional facts and concluding its presentation of evidence in the probate court, petitioner filed an Urgent Motion for Appointment of Special Administrator/s [7] citing the following grounds in support thereof:

- (1) The probate court has failed to appoint an administrator of the estate since the filing of the petition.
- (2) The US District Court of Hawaii awarded in favor of the claimants the amount of US\$1.2 Billion as exemplary damages against the estate of Ferdinand E. Marcos.
- (3) In its order of 19 November 1991 the said court granted a preliminary injunction against the estate to prevent any transfer, encumbrance, conversion, or disposition of the funds and assets of the estate.

(4) On the premise that no probate proceeding was pending anywhere, said Court modified on 16 November 1992 its preliminary injunction to include certain Swiss Banks.

(5) In July 1994, the plaintiffs in MDL No. 840 filed with the Hawaii District Court a motion to further modify the preliminary injunction “to identify the Republic of the Philippines as agent, representative, aide, and abettor of the defendant Estate,” notice of which was received by the Office of the Solicitor General on 25 July 1994.

(6) There was a need to preserve the estate, considering that it was the subject of protracted litigation both here and abroad. Petitioner nominated Commissioner of Internal Revenue Liwayway Vinzons-Chato as administrator of the estate.

Ferdinand R. Marcos II opposed the motion claiming that the Commissioner of Internal Revenue was not a suitable person to act as administrator of the estate.

In its Order [8] of 9 September 1994, the probate court, per public respondent Judge Villarama, granted the motion and appointed Commissioner Liwayway Vinzons-Chato as Special Administrator of the estate of Ferdinand E. Marcos. Citing Section 1 of Rule 73 of the Rules of Court, the order also declared that upon the filing of the petition for probate of the will, the probate court acquired jurisdiction over the estate to the exclusion of all other courts; and that the U.S. District Court of Hawaii “cannot assert its jurisdiction over the assets of the estate and exclude the jurisdiction already vested in [the probate court].” He directed that a copy of the order be furnished the U.S. District Court of Hawaii through the Department of Foreign Affairs.

On 24 October 1994, petitioner filed in the probate court a Petition for the Issuance of a Writ of Preliminary Injunction with Urgent Ex-Parte Motion for a Temporary Restraining Order. [9] It alleged that in the class action the U.S. District Court of Hawaii issued sometime in October 1994 a Reference Order [10] appointing special masters for the purpose of obtaining depositions in the Philippines on the following matters: (1) whether the victims identified in the claim forms suffered torture, summary execution, or disappearance; and (2) the extent of damages sustained. The Reference Order prescribed the procedure, including the availment of local court reporters and interpreters as might be required. Petitioner asserted that the Reference Order impinged on the exclusive jurisdiction of the probate court and disregarded the claim of the Philippine government against the Marcos estate. It also contended that the claim against the estate should be filed before the probate court and that the Philippine government should be accorded first preference in the priority list of the estate’s creditors.

On 25 October 1994, respondent Judge Villarama issued a temporary restraining order [11] against the special masters and persons acting in their stead, and set for hearing the petition for the preliminary injunction. The sheriff’s return [12] indicated that service of the order was attempted upon the resident manager of New World Hotel, Makati City, where Mr. Swift and the other “special masters” were billeted. However, the sheriff was referred to the guest services manager, who refused to accept a copy of the order.

Before the hearing on the preliminary injunction could take place, petitioner filed an urgent ex-parte motion [13] to cite herein private respondents, Mr. Robert Swift, Atty. Rodrigo Domingo, and other “concerned” persons in contempt of court based on media reports that they vowed to continue the taking of depositions notwithstanding the issuance of a temporary restraining order. Petitioner also questioned the legal practice in the Philippines of Mr. Swift, an American counsel who had no special work permit and license to practice.

On 28 October 1994, respondent Judge Villarama issued an order [14] directing private respondents to comment on petitioner’s motion and to show cause why they should not be cited for contempt. The sheriff’s return [15] confirmed that the order was served upon Mr. Swift through the senior guest services officer of the New World Hotel, Makati City, and personally upon Atty. Domingo at his office.

In the meantime, the Movement of Attorneys for Brotherhood, Integrity and Nationalism, Inc., (MABINI) filed in SP Proc. No. 10279 a petition for leave to intervene as amicus curiae and pro se ex abundanti cautela. [16] It noted the hostile, if not indifferent, attitude the Philippine government continued to display towards its citizens whose human rights were violated; and just when the victims had been vindicated by the ruling of the U.S. Court District of Hawaii, it was the Philippine government which would serve as an obstruction to their attainment of justice by suppressing their freedom to express the ordeal they had suffered. MABINI underscored that the taking of the depositions was a compassionate remedy granted to the Filipino victims, who were spared the burden of testifying in a foreign court.

Likewise, the Samahan ng Mga Ex-Detainees Laban sa Detensyon at Para sa Amnestiya (SELDA), a human rights non-government organization, filed its special appearance with motion to dissolve the temporary restraining order and to deny writ of preliminary injunction. [17]

In his Opposition [18] Atty. Domingo asserted that the real motive of petitioner was to prevent the human rights victims from recovering what was due them and that it forgot or conveniently chose not to remember that in February 1987, it asked the U.S. Court of Appeals for the Ninth Circuit to allow the human rights suits against Marcos to proceed to trial. He also contended that the motion for issuance of a writ of preliminary injunction was grossly insufficient both in form and substance, since it was not verified and was deficient and baseless; and that petitioner's reliance on Section 1, Rule 73 of the Rules of Court is misplaced. The words "exclusive jurisdiction" found therein should be limited to proceedings concerning the probate of the will and settlement of the estate of the decedent and should not include other litigation for or against the estate. He argued that MDL No. 840 is an action for recovery of damages arising out of the late President's tortuous violation of international law. The action is totally unrelated to the probate proceedings. He reasoned that the probate court is of limited jurisdiction and that it can only exercise jurisdiction over the property of the estate in the Philippines. Moreover, the probate court failed to acquire jurisdiction over the special masters, since they were never properly summoned.

Anent petitioner's motion to cite them in contempt of court, Atty. Domingo alleged that said motion, which was litigious in nature, was a useless scrap of paper for lack of the three-day notice for hearing. Besides, the temporary restraining order could not be directed to him because he was neither a special master nor a representative thereof. He was a lawyer for the human rights claimants.

In his pleading [19] Mr. Swift joined Atty. Domingo in the latter's opposition and further alleged that the petition for preliminary injunction became moot and academic, as the special masters voluntarily left the country on 26 October 1994, without having been served a copy of the temporary restraining order. He also raised the settled principle of comity, which required the probate court to avoid interference in the conduct of judicial proceedings in a foreign country; warned that petitioner was courting danger in encouraging the probate court to collaterally attack the jurisdiction of the U.S. District Court of Hawaii in violation of said principle; and claimed that the temporary restraining order could not be directed to him, since he was neither a special master nor a representative thereof but a counsel of the human rights victims.

On 2 November 1994, public respondent Judge Villarama issued the assailed Order [20] lifting the 25 October 1995 Temporary Restraining Order and denying the motion for the issuance of a writ of preliminary injunction on the ground that petitioner has failed to show by convincing proof the existence of a clear and positive right which should be protected. The said order also denied, on equity considerations, the motion to cite private respondents in contempt of court.

Petitioner no longer sought a reconsideration of the Order for the following reasons: (a) such motion would serve no useful purpose because it would raise the same points stated in the rejected motions; (b) the error committed by

respondent Judge was grave and patent as to make the questioned order void; (c) the relief sought in this petition is extremely urgent because the Special Masters or the persons acting in their stead were taking the depositions in furtherance and in implementation of the foreign court's directive; and (d) the issue raised is purely a question of law. [21]

Instead, petitioner filed the instant petition for certiorari alleging that the trial court committed grave abuse of discretion in failing to consider that the issuance and implementation of the reference order of the Hawaii court violated the sovereignty of the Philippines and impinged on the exclusive jurisdiction of the probate court.

In support thereof, petitioner invokes Section 1 of Rule 73 of the Rules of Court, which provides in part as follows:

SEC. 1. Where estate of deceased person settled. xxx The court first taking cognizance of the settlement of the estate of the decedent shall exercise jurisdiction to the exclusion of all other courts. The jurisdiction assumed by a court, so far as it depends on the place of residence of the decedent, or of the location of his estate, shall not be contested in a suit or proceeding, except in an appeal from that court, in the original case, or when the want of jurisdiction appears on the record.

It raises a contradiction in public respondent Judge Villarama's actuation in that in his Order of 9 September 1994 he declared that the U.S. District Court of Hawaii could not assert its jurisdiction over the assets of the estate and exclude the jurisdiction vested in the probate court. Said respondent was aware that the purpose of the reference order was to determine the amount of compensatory damages to be charged against the estate; however, he chose to ignore that it is the probate court which exercises exclusive jurisdiction over the estate. He cannot, therefore, claim that petitioner failed to prove "a clear and positive right which should be protected."

Anent the issue of contempt, petitioner argues that the following documentary evidence presented before the probate court proved that Messrs. Swift and Domingo and other concerned persons defied the probate court's temporary restraining order: (1) Special Master Order No. 4 issued by the Supervising Special Master, which confirmed notice of the probate court's temporary restraining order; and (2) letters [22] of Mr. Swift to Mr. James Linn, American counsel of Mrs. Marcos (a) indicating that the plaintiffs in MDL No. 840 would proceed with the taking of the depositions on 27 October 1994 at the office of Atty. Domingo and the New World Hotel, (b) giving notice that he would take the depositions of some class members on 28 October 1994, and (c) notifying the continuation of his taking of the depositions on 29 October 1994. These notwithstanding, respondent Judge denied petitioner's motion to cite Messrs. Swift and Domingo and other concerned persons in contempt of court due to equity considerations. The denial was tainted with grave abuse of discretion.

In his comment filed on his behalf and as counsel for the other private respondents, Atty. Domingo argues that the petition is moot and academic and without merit. The act primarily sought to be restrained, which was the taking of the depositions, was accomplished as of 27 November 1994; and the transcripts had been submitted to the U.S. District Court of Hawaii. Furthermore, the probate court had no jurisdiction to adjudicate matters which had no reference or bearing to the probate, such as MDL No. 840. Besides, there was no law which prohibited the taking of depositions in the Philippines for evidentiary use in a pending case abroad. The estate of Ferdinand E. Marcos even financed the taking of the depositions. Lastly, Atty. Domingo reiterated that he could not be cited for contempt for not having been served a copy of the temporary restraining order.

Mrs. Marcos subsequently filed a motion for leave to intervene and to admit its petition in intervention, citing that petitioner failed to defend the interest of the estate of her late husband. She claims that the proceeding undertaken by the special masters by virtue of the reference order was a continuation of the trial of MDL No. 840, considering that (1) a reference is the trial and determination of questions arising in litigation by a person

appointed for that purpose by the court wherein the case is pending; [23] (2) a special master is an officer of the appointing court; and (3) the applicable law pertaining to a reference and a master is Section 53 of the U.S. Rules of Civil Procedure for the District Courts. Public respondent Judge then erred in considering the proceeding as one for deposition as a mode of discovery. Accordingly, in denying the petition for injunction he abdicated the jurisdiction of the probate court in favor of the U.S. District Court of Hawaii; he even made a turn-about since earlier, in his 9 September 1994 Order, he ruled that the Hawaii Court could not assert jurisdiction over the Marcos assets.

In a Comment submitted on 5 September 1995 in compliance with our resolution, petitioner offered no objection to the intervention of Mrs. Marcos.

On 4 December 1995, we required the parties to submit their respective memoranda on why this petition should not be dismissed for having become moot and academic considering that the taking of the depositions by the special masters appointed pursuant to the Reference Order issued by the District Court of Hawaii had been completed on 27 November 1994.

Petitioner filed its Memorandum urging us to decide this case on the merits even if the act to be enjoined had already been consummated in view of the transcendental importance of the issues involved: “sovereignty of the Philippines and the exclusive jurisdiction of the probate court of the Philippines.” There is a “compelling need to seek an incisive ruling from the highest tribunal of the land to uphold the exclusive jurisdiction of the probate court and to protect this nation’s sovereignty from foreign transgressions and preserve the same as supreme and inviolable.” To buttress its plea, it cites *Salonga v. Cruz Pano* [24] where we resolved the case on its merits even if the issue raised had become moot and academic.

Private respondents in their memorandum, reiterate that the petition for the issuance of a writ of preliminary injunction lacked the verification required under Section 4, Rule 58 of the Rules of Court. They likewise submit that aside from the undisputed fact that the act sought to be enjoined had already been completed, the judgment in MDL No. 840 became final on 27 January 1995 and that the estate of Ferdinand E. Marcos was adjudged to pay close to US\$2 billion in damages.

We dismiss the petition not only on the ground of mootness which, generally, would justify dismissal. [25] We dismiss it also for lack of merit.

It is settled that where the ground invoked in a special civil action for certiorari under Rule 65 of the Rules of Court is abuse of discretion --as in this case -- the abuse must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility; or, it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. [26] This remedy then is extraordinary, and its use is restricted to truly extraordinary cases. [27]

The pleadings of the parties in this case and the record of SP. Proc. No. 10279 fail to show that respondent Judge Villarama had, as charged by petitioner, committed grave abuse of discretion in denying the petition for a writ of preliminary injunction against the special masters.

In the first place, the petition for a writ of preliminary injunction was not verified. Section 4 of Rule 58 of the Rules of Court is very explicit in its requirement that a preliminary injunction may be granted only when the complaint is verified. Absence of verification makes an application or petition for preliminary injunction patently insufficient both in form and substance. [28]

In the second place, even if we disregard the requirement of verification or consider the adverse parties in

estoppel from raising the issue when they allowed the petitioner to present evidence on the petition, we find that respondent Judge Villarama committed no error in holding that petitioner failed to prove that it had a clear and positive right to be protected.

Section 3, Rule 58 of the Rules of Court enumerates the grounds for the issuance of a preliminary injunction:

- (a) That the plaintiff is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the acts complained of, or in the performance of an act or acts, either for a limited period or perpetually;
- (b) That the commission or continuance of some act complained of during the litigation or the non-performance thereof would probably work injustice to the plaintiff; or
- (c) That the defendant is doing, threatens, or is about to do, or is procuring or suffering to be done, some act probably in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.

Under this rule, a clear and positive right especially calling for judicial protection must be shown. Injunction is not a remedy to protect or enforce contingent, abstract, or future rights; it will not issue to protect a right not in esse and which may never arise, or to restrain an act which does not give rise to a cause of action. There must exist an actual right. [29]

We fail to comprehend what clear and positive right petitioner has which may be violated by the issuance and implementation of the Reference Order by the District Court of Hawaii. Petitioner seeks to establish such a “right” by claiming that since the probate court was the first to take cognizance of the settlement of the Marcos estate then pursuant to Section 1 of Rule 73 of the Rules of Court, it exercises jurisdiction thereon to the exclusion of all other courts; and that, accordingly, the District Court of Hawaii cannot assert jurisdiction over the assets of said estate. The argument is like a loose cannon ball – way off its target.

For one, petitioner is unable to distinguish between the exclusive “right” on jurisdiction of the probate court and the right contemplated by the law on injunction. For another, Section 1 of Rule 73 refers to courts in the Philippines and simply means that once a special proceeding for the settlement of the estate of a decedent is filed in one of such courts, that court has exclusive jurisdiction over said estate and no other special proceedings involving the same subject matter may be filed before any other court. Since foreign courts are not contemplated in Section 1, in no way then can it be validly maintained that the District Court of Hawaii has encroached upon, or “impinged on,” the jurisdiction of the probate court by the issuance of the Reference Order. The Reference Order cannot be construed as concerning or affecting the Marcos estate within the exclusive jurisdiction of the probate court. The duties of the special masters as defined in the Reference Order were “to prepare written findings for submission to the jury regarding (a) whether the victims identified in the claim forms suffered torture, summary execution or disappearance, and (b) the extent of the damages sustained.” No extravagant imagination can lead us to a conclusion that such duties do not involve any issue cognizable by the probate court.

Neither is there merit to the claim that the issuance and implementation of the Reference Order violated the sovereignty of the Philippines.

It is noteworthy that petitioner was aware of the pendency of MDL No. 840 of the District Court of Hawaii. In fact, it did not oppose the action; on the contrary, it urged the U.S. Court of Appeals for the Ninth District to allow the trial of the human rights litigation against the former strongman. Petitioner even exhorted the human rights victims to pursue the justice which has eluded them for many years. In its Amicus Curiae Brief [30] filed before the U.S. District Court of Hawaii, petitioner declared:

The government of the Republic of the Philippines support of their claims. Because the international law principles are clear and agreed upon by all nations, this judicial action does not have the capacity of disrupting foreign relations between the concerned countries. The Government of the Republic of the Philippines can state without hesitation or reservation that its foreign relations with the United States will not be adversely affected if these human rights claims against Ferdinand Marcos are heard in U.S. courts; and, in fact, relations may well be improved if Filipino citizens see that justice is available in U.S. courts. The Philippine Government has previously expressed its deep concern to the U.S. Government about the need for a just solution to the present suits against ex-President Marcos. See Opinion No. 34, s. 1986, Ministry of Justice, Republic of the Philippines, dated April 23, 1986, attached hereto as Exhibit A. The Philippine Government now respectfully requests this Honorable Court to allow the present suits to proceed to trial.

As regards the denial of the motion to cite Messrs. Swift and Domingo in contempt of court, we rule that the same was not tainted with grave abuse of discretion. It must be recalled that they were not served a copy of the temporary restraining order which they allegedly defied.

WHEREFORE, the petition is hereby DISMISSED and the Order of 2 November 1992 of the Regional Trial Court, Branch 156, Pasig City, is AFFIRMED in toto.

SO ORDERED.

Narvasa, C.J., (Chairman), Melo, Francisco, and Panganiban JJ., concur.

[1] Annex “E” of Petition; Rollo, 47-48. Per Judge Martin S. Villarama, Jr.

[2] Original Record (OR), Volume I, 11-15.

[3] OR, 108-116.

[4] Id., 212.

[5] Entitled: In Re Estate of Ferdinand E. Marcos, Human Rights Litigation, presided by Judge Manuel Real.

[6] Upon his death on 28 September 1989, he was substituted by his estate.

[7] OR, Volume I, 210-218.

[8] Annex “F” of Petition; Rollo, 49-53.

[9] OR, Volume I, 269-277.

[10] Annex “A” of Petition; Rollo, 27-30; OR, 280-283.

[11] OR, Volume I, 291.

[12] Id., 296.

[13] Id., 300-305.

[14] Id., 334.

[15] Id., 333.

[16] Id., 319-325.

[17] OR, 326-330.

[18] Id., 337-349.

[19] OR, 335-338.

[20] Supra, note 1.

[21] Citing Vda. De Sayman v. Court of Appeals, 121 SCRA 650[1983].

[22] Annexes “H,” “I,” and “J,” respectively, of the Petition; Rollo, 56-58.

[23] Citing 66 Am. Jur. 477.

[24] 134 SCRA 438[1985].

[25] People v. Mojica, 2 SCRA 1201[1961]; Paranpan v. Querubin, 18 SCRA 787[1966]; Meralco Workers Union v. Yatco, 19 SCRA 177[1967]; Lachica v. Yap, 25 SCRA 140[1968].

[26] Tavera-Luna, Inc. v. Nable, 67 Phil. 340, 344[1939]; Alafriz v. Nable, 72 Phil. 278, 280[1941]; Abig v. Constantino, 2 SCRA 299[1961]; F.S. Divinagracia Agro-Commercial, Inc. v. Court of Appeals, 104 SCRA 180, 190-191[1981]; Planters Products, Inc. v. Court of Appeals, 193 SCRA 563, 568[1991].

[27] De Castro v. Delta Motor Sales Corp., 57 SCRA 344, 346[1974].

[28] Prado v. Veridiano II, 204 SCRA 654, 669[1991].

[29] See Prado v. Veridiano, supra, note 28 at page 672, and the cases cited therein.

[30] Exhibit “1.”

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