

SY CHIN, SY HEN, TANG TUBI, TANG ANDRES, TANG FELINO, NIEVES KE TEK TANG, ANNIE KE TEK TANG, PENNIE CHUA TANG, LENIE TANG, ZENNIE KE TEK TANG, FELICIA KE TEK TANG, ONG SO HUA, J...

G.R. No. 136233. November 23, 2000

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

The instant case stemmed from a petition for dissolution and liquidation of the partnership filed by the petitioners with the Securities and Exchange Commission (SEC) on February 5, 1991. The problem is how the partnership properties and the profits derived therefrom should be divided among the partners and their successors-in-interest.

The antecedent facts are as follows:

Sometime in 1952, the brothers Tang Chin, Feliciano Tang, Ricardo Alonzo a.k.a. Tang Kong Suy, Tang Chin Heng and William Tang a.k.a. Tang Kong Sia formed a partnership under the name of Tan Chin Heng & Company. The partnership had a term of existence of 25 years counted from January 1, 1953.

After the death of Tang Chin, Feliciano Tang and Tang Kong Suy, conflicts arose from their heirs (herein petitioners) and the surviving partners (private respondents) because of the company's failure to render an accounting and non-distribution of profits. In order to settle their differences, the parties agreed to refer the matter to the Federation of Filipino Chinese Chamber of Commerce. On March 11, 1975, an agreement was executed which reads:

KNOW ALL MEN BY THESE PRESENTS:

THIS AGREEMENT, made and entered into this 11[th] day of March, 1975 at the City of Manila, Philippines, by and among -

TANG CHIN HING, of legal age, married and a resident of 1100 C.M. Recto Ave., Manila;

WILLIAM TANG, of legal age, married, and a resident of 1100 C.M. Recto, Manila;

NIEVES KE TEK, of legal age, widow of Feliciano Tang, and a resident of 41 Quezon Blvd. Ext., Quezon City;

CO SIOK ENG YAP, of legal age, widow of Tang Shing, and a resident of 968 Severino Reyes St., Manila; and

ONG SO HUA, of legal age, widow of Ricardo T. Alonzo, and a resident of 41 Quezon Blvd. Ext., Quezon City;

THAT WHEREAS, the above-named parties are all closely related -- Tang Chin Hing and William Tang being

full-blood brothers while Nieves Ke Tek, Co Siok Eng Yap, and Ong So Hua are the widows of Feliciano Tang, Tang Shing, and Ricardo T. Alonzo, respectively, all of whom were blood brothers of Tang Chin Hing and William Tang;

WHEREAS, the above parties are the common owners of the following properties, both real and personal, although the titles thereto may have been placed in the names of one or more of them, to wit:

- 1) A parcel of land, together with all the building and improvements existing thereon, situated at 1100 C.M. Recto Avenue, Manila; with an area of 1,105 square meters, more or less, and covered by Transfer Certificate of Title No. 49002 in the name of Feliciano Tang;
- 2) A parcel of land situated at 1100 C.M. Recto Avenue, Manila, with an area of 26.90 square meters, more or less, and covered by Transfer Certificate of Title No. 70215 in the name of Feliciano Tang;
- 3) A parcel of land, together with all the improvements existing thereon, situated at 41 Quezon Blvd. Ext., Quezon City, with an area of 1,385.6 square meters, more or less, and covered by Transfer Certificate of Title No. 38807 in the name of Feliciano Tang; and
- 4) All the automotive parts, electrical supplies, and general merchandise of the Tang Chin Hing & Co., with office at 1100 C.M. Recto, Manila;

WHEREAS, the above-named parties have now agreed to divide the above-described properties, both real and personal, among themselves in as just, fair, and equitable manner as possible but somehow have encountered difficulties in their efforts to do so; and

WHEREAS, in a sincere desire to settle their differences once and for all, they have unanimously decided to refer the same to the Federation of Filipino-Chinese Chambers of Commerce, in whose sense of justice and fairness they repose absolute and complete confidence;

NOW, THEREFORE, for and in consideration of the foregoing premises and of the covenants hereinafter appearing, the above-named parties have agreed, the one with the other, to refer to the Federation of Filipino-Chinese Chambers of Commerce the settlement of their differences insofar as the distribution and division of the properties above-described are concerned and further bind themselves, their heirs, administrators and assigns, to accept as final and irrevocable whatever decision the Federation of Filipino-Chinese Chambers of Commerce may deem fair, just, and equitable in the premises.[1]

On February 5, 1991, considering the death of the three original partners and the expiration of the life of the partnership, the petitioners filed a petition for dissolution and liquidation of the partnership with the SEC. This was docketed as SEC Case No. 3946. Since what remained to be done was the liquidation of the partnership assets and business, the petitioners prayed that the manager, Tang Chin Heng render an accounting, and that a receiver be appointed in order to administer, manage and dispose of the partnership assets and thereafter take charge of distributing the profits due them.

As prayed for, Atty. Joaquin Garaygay was appointed Receiver of the company.

On February 9, 1993, the Hearing Officer of the SEC rendered a decision. Based on the report of the Receiver, he affirmed that the following are partnership properties which shall be distributed to the partners/heirs in proportion to their contribution in accordance to the Articles of the Partnership:

Real Estate:

- 1) Four (4) Storey concrete building and lot situated at 1100 Claro M. Recto Ave., Manila with a land area of 1,105 square meters under TCT No. 49002.
- 2) A parcel of land situated at 1100 C.M. Recto Ave., Manila with an area of 26.90 square meters under TCT

No. 70215.

3) Four (4) storey house and lot located at 41 Quezon Blvd. Ext., Quezon City with an area of 1,385.6 square meters under TCT No. 38807.

Personal Property:

Automobile parts, electrical supplies and general merchandising of Tang Chin Heng & Co.; xxx[2]

The petitioners moved for a partial reconsideration of the decision. They averred that the properties should be divided equally among the partners or their heirs and assigns in accordance with the 1975 Agreement. The motion was denied by the hearing officer in an Order dated August 11, 1993.[3]

The petitioners filed a Notice of Appeal but this was not perfected due to their failure to file the Memorandum on Appeal and to pay the docket fees within the period provided for by the Revised Rules of Procedure of the SEC.

Consequently, a motion for execution was filed by the private respondents on October 28, 1993 which was granted by the hearing officer on January 5, 1994.[4] Petitioners filed an opposition thereto asserting that there was a need to check/investigate the information that some of the partnership properties were already adjudicated to Feliciano Tang's heirs in an Intestate Proceeding before the then Court of First Instance of Manila in 1964. The Opposition was denied.

Thus, petitioners went up to the Commission En Banc. Private respondents filed an opposition asserting that the SEC no longer had jurisdiction over the case considering that the decision of the hearing officer had already become final and executory.

The SEC, nonetheless, took cognizance of the case and disposed it in this wise:

Since the alleged CFI adjudication in the Intestate Proceeding has not, as yet, been duly established however, and this appeal, having been treated as an action to annul the questioned orders of the hearing officer, we are constrained, as we HEREBY RESOLVE to remand the case to the department of origin for proper action. All other motions filed in relation herewith are, by this DECISION, likewise referred to the Securities Investigation and Clearing Department of (sic) its disposition.

SO ORDERED.[5]

A Motion for Reconsideration/Clarification was filed by the private respondents but this was denied by the SEC Commission en banc.

A petition for certiorari was consequently filed with the Court of Appeals assailing the SEC decision. On August 18, 1998, the CA ruled that the SEC acted in excess of its jurisdiction. The dispositive portion of the decision reads as follows:

WHEREFORE, finding merit in the petition, the Court issues the writ of certiorari and annuls the Decision dated December 6, 1995 and the Resolution dated July 25, 1997 of the respondent Commission.[6]

The subsequent motion for reconsideration was, likewise, denied. Hence, this petition.

In the instant petition, the following issues were raised:

- THAT THE HONORABLE COURT OF APPEALS DID NOT ACQUIRE JURISDICTION ON PRIVATE RESPONDENTS' PETITION FOR CERTIORARI;
- THAT THE HONORABLE COURT OF APPEALS ERRED WHEN IT TREATED PRIVATE RESPONDENTS' PETITION FOR CERTIORARI AS AN APPEAL FROM THE DECISION OF THE

SECURITIES AND EXCHANGE COMMISSION (SEC);

- III. THAT THE RESPONDENT COURT OF APPEALS FAILED TO COMPREHEND THAT THE SEC ACTING EN BANC DID NOT MODIFY, ALTER, CHANGE OR OTHERWISE AMEND ITS DECISION BUT MERELY REFER IT BACK TO THE ARBITER TO DETERMINE WHETHER THE PROPERTIES TO BE DISTRIBUTED BELONG TO THE PARTNERSHIP OR NOT;

- THAT THE RESPONDENT COURT OF APPEALS ERRED WHEN IT FAILED TO DISMISS AND/OR DENY DUE COURSE TO PRIVATE RESPONDENTS' PETITION;[7]

There is no merit in the petition.

The respondent court did not commit reversible error when it ruled that it was not legally justifiable for the SEC to take cognizance of petitioner's "appeal" to the Order granting the Motion for Execution as a "direct attack against the orders of the hearing officer, the purpose of which is to annul the same." [8]

As can be gleaned from the records, the Decision of the Hearing Officer rendered on February 9, 1993 to which a timely motion for partial reconsideration was filed had already become final and executory for petitioner's failure to perfect their appeal to the SEC en banc. We quote the respondent court's finding on this matter:

The most critical incidents that transpired in the respondent Commission were these: The SEC Hearing Officer rendered on February 9, 1993 a Decision to which the private respondents timely filed a Motion for Partial Reconsideration. On August 24, 1993, within the reglementary period, private respondents filed their Notice of Appeal (sic) said Decision and Order denying the Motion for Partial Reconsideration to the SEC en banc. However, they failed to pay the docket fee and file a Memorandum on Appeal. Section 3, Rule XVI of the Revised Rules of Procedure of the SEC states:

Section 3. How Appeal is Taken: When Perfected - Appeal may be taken by filing with the Hearing Officer who promulgated the decision, order or ruling within thirty (30) days from notice thereof, and serving upon the adverse party, notice of appeal and a memorandum on appeal and paying the corresponding docket fee therefor. The appeal shall be considered perfected upon the filing of the memorandum on the appeal and payment of the docket fee within the period hereinabove fixed. (Amended).

In the light of said rule, it is as clear as a dew that the appeal to the SEC en banc was not perfected and resultantly, the Decision of February 9, 1993 has become final and executory. There was, therefore, nothing for the SEC en banc to review. The latter implicitly conceded that the appeal was not perfected but it nonetheless took cognizance of it upon the justification that the same can be treated as a "direct attack against the orders of the hearing officer, the purpose of which is to annul the same.

Obviously, the respondent Commission took cognizance of the case and acted upon it as a petition for review on certiorari under Sec. 1, Rule XII of its Rules. This is for certain because aside from an appeal treated in Rule XVI and petition for review on certiorari under Rule XV, there is no other way to elevate a decision or order of a hearing officer to the Commission en banc. Was there any legal justification for the respondent Commission en banc in doing so? What it did was no more than a procedural dribble which is unacceptable. Sec. 1, Rule XV of the SEC Rules in reference to a petition for certiorari with the Commission en banc requires that there must be a verified petition alleging facts with certainty and praying that judgment be rendered annulling or modifying the questioned order or ruling as the law requires. Sec. 2 thereof requires the payment of a docket fee. In the case at bench, there was no such a verified petition nor payment of docket fees. This Court rules that under the circumstances, the Commission en banc acted without jurisdiction or at least in excess of jurisdiction when it rendered the Decision on December 6, 1995 and Resolution dated July 25, 1997.

xxx.[9]

It is the well-established rule that the perfection of an appeal in the manner and within the period prescribed by

law is not only mandatory but jurisdictional and the failure to perfect the appeal has the effect of rendering the judgment final and executory.[10] As such, execution shall issue as a matter of right to the winning party. Rule 39, Section 1 of the 1997 Rules on Civil Procedure explicitly provides that "Execution shall issue as a matter of right, on motion, upon a judgment or order that disposes of the action or proceeding, upon the expiration of the period to appeal therefrom if no appeal has been duly perfected." Pursuant to this rule, it was proper for the Hearing Officer to have granted the respondents' motion for a writ of execution on January 5, 1995 after the petitioners have failed to perfect their appeal.

It must be noted that petitioners' appeal to the Commission en banc was an appeal on the order of execution which is not permissible under the rules. The order granting the motion for writ of execution is not appealable as provided under Rule 41, Section 1 which states:

SECTION 1. Subject of appeal. - An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

xxx

(f) An order of execution.

Clearly, therefore, the SEC committed grave abuse of discretion tantamount to lack of jurisdiction when it entertained petitioners' appeal and treated it as a direct attack against the orders of the hearing officer. This in effect re-opened the case that has already become final and executory. Time and again, this Court has made the pronouncement that there must be an end to every litigation. Once a judgment becomes final, executory and unappealable, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party.[11]

Petitioners maintained that the SEC did not in fact alter the decision of the hearing officer. It merely remanded the case to the department of origin for the purpose of determining whether it has jurisdiction over the properties which are sought to be distributed to the heirs. This was due to the fact that "it came to their (petitioners) knowledge very recently that the real properties in Manila and Quezon City had already been adjudicated to the heirs of Feliciano Tang in the Intestate Estate Proceeding before the then CFI of Manila in 1964" and there was a need to "conduct an investigation to check the veracity thereof." [12] This contention is untenable.

A careful perusal of the records reveal that the list of partnership properties was never an issue in this case. From the decision of the Hearing Officer dated February 9, 1993, petitioners moved for a partial reconsideration of the decision as regards to the manner of distribution of the partnership assets only. No one questioned the list of properties or asserted that some of the properties belong to any of the heirs particularly to the heirs of Feliciano Tang. In the March 11, 1975 Agreement executed before the Federation of Filipino-Chinese Chamber of Commerce and notarized by Atty. Eriberto H. Decena, the parties acknowledged that the properties listed therein are partnership assets commonly owned by the partners although the titles thereto may have been placed in the names of one or more of them. The prefatory clause of said agreement reads as follows:

xxx

WHEREAS, the above parties are the common owners of the following properties, both real and personal, although the titles thereto may have been in the names of one or more of them.

xxx

Nieves Ke Tek, the widow of Feliciano Tang was a signatory to this agreement. This agreement which was

executed ten (10) years after the 1964 CFI decision served as an acknowledgment that the subject properties were not part of the estate of Feliciano Tang but belonged to the partnership. Apparently, titles of the subject properties were allowed by the other partners to be registered under Feliciano Tang's name. The 1975 Agreement was never questioned by any of the petitioners. Neither was the report of the receiver assailed when he found the same properties to be belonging to the partnership. Petitioners can not now claim that there must have been a mistake in including among the list certain properties that allegedly belong to the heirs of Feliciano Tang.

Moreover, it is quite inconceivable that "such information has reached the petitioners only recently" as to warrant the annulment of the order of the hearing officer. The project of partition of the intestate estate of Feliciano Tang was submitted to the trial court in 1964. The agreement executed by the heirs and the surviving partners before the Filipino-Chinese Chamber of Commerce acknowledging the properties to be commonly owned by the partners commenced in 1975. The decision of the hearing officer declaring the list of properties as belonging to the partnership was rendered in 1993. It was only after the order granting the writ of execution was issued in 1995 that the petitioners questioned the list of properties. This issue which was belatedly raised can not be countenanced. It was obviously an afterthought considering that petitioners have lost their cause after the decision adverse to them became final and executory for their failure to perfect their appeal on time. The law cannot protect those who sleep on their rights.[13]

Finally, the petitioners aver that the respondent court should have outrightly dismissed the petition for certiorari for failure to comply with the requirements on non-forum shopping. While it is true that the petition may have been flawed as the certificate of non-forum shopping was signed only by counsel and not by the party, suffice it to say that this procedural lapse may be overlooked in the interest of substantial justice. Given the facts and circumstances of the case, we likewise find no reversible error with the respondent court's evaluation that there is prima facie merit in the petition.

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals dated August 18, 1998 is AFFIRMED.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Pardo, and Ynares-Santiago, JJ., concur.

[1] Rollo, p. 73-74

[2] Id., at 41

[3] Id., at 44.

[4] Id., at 47

[5] Id., at 53. 5

[6][6]Id., at 31.

[7] Id., at 120.

[8] Rollo, p.29

[9] Id., at 29-30.

[10] Laza v. Court of Appeals, 269 SCRA 654 (1997).

[11] Nasser v. Court of Appeals, 245 SCRA 20 (1995).

[12] Rollo, p. 51

[13] See Catholic Bishop of Balanga v. Court of Appeals, 264 SCRA 181 (1996); Arradaza vs. Court of Appeals, 170 SCRA 12 (1989).

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