

FIDEL FERNANDEZ, ET AL., PETITIONERS, VS. THE HON. GREGORIO D. MONTEJO, JUDGE OF THE COURT OF FIRST INSTANCE OF ZAMBOANGA CITY, ET AL., RESPONDENTS.*G.R. No. 15327. September 30, 1960*

Ponente: REYES, J. B. L., J.

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Petition for prohibition seeking to restrain the enforcement of the orders, of the respondent judge dated February 21, 1959 and March 14, 1959, issued in Special Proceeding No. 109 of the Court of First Instance of Zamboanga City.

Petitioners are heirs of the decedent Gregoria Malcampo, whose estate is pending settlement in the special proceeding above referred to. By order of October 18, 1958, respondent judge approved the project of partition for the distribution of the estate, at the same time ordering that Lot No. 5, Expediente No. 7880, covered by Certificate of Title No. 735 of the Register of Deeds of Zamboanga City, should be sold to the highest bidder "subject to whatever valid and subsisting liens there may be in accordance with law, and the proceeds thereof to be distributed among the heirs." Respondent judge, in the same order, directed the respondent administrator to make the distribution of the estate in accordance with said Project of Partition, except as to Lot 5 which was to be sold. On November 10, 1958, petitioners filed a motion seeking to direct respondent administrator to comply with the order of the Court dated October 18, 1958, which motion was granted by the court by an order dated November 15, 1958, Pursuant thereto, all the properties of the estate were distributed among the heirs, except Lot No. 5 abovementioned.

On December 17, 1958, respondent administrator, manifesting to the Court that prospective buyers of Lot No. 5 were reluctant to make their offers openly, petitioned for authority to advertise said property for sale through sealed bids, the same to be submitted and opened before the court not later than 10:00 a.m. of January 17, 1959 (Appendix "B", petition). Despite petitioners opposition thereto (App. "C", petition), the court below granted the petition authorizing respondent administrator to advertise Lot No. 5 for sale through sealed bids. In due course, the bidding was held as scheduled, and on February 14, 1959, the court declared respondent Philippine International Development Co., Inc. as the highest and most acceptable bidder, with its bid of P118,500.

On February 16, 1959, petitioners filed in Court an offer to purchase the lot, buying out the shares of respondent administrator and the rest of the heirs, on the basis of the bid of P118,500. The administrator opposed it on the ground that there were obligations in the form of estate and inheritance taxes, income tax and attorneys' fees which were still unpaid. However, the court issued an order dated February 21, 1959 giving petitioners priority in the purchase of Lot No. 5, by depositing with the court or with the administrator, within 15 days from date, a sum equal to the highest bid. On an urgent motion filed by petitioners on March 7, 1959, asking for 15 days from date to gather certain facts relating to estate and inheritance taxes and other obligations due against the estate, the probate court issued the order dated March 14, 1959, giving petitioners an extension of 30 days within which to

exercise their preference in the purchase of Lot No. 5, by depositing with the court or with the administrator, within said period, a sum equal to that of the highest bid, failing which the International Development Co., Inc. was to be given preference.

It further appears that petitioners failed to exercise their preference in purchasing Lot No. 5 in accordance with the terms of the orders of the court, so that the Philippine International Development Co., Inc., after paying the price, asked the Court to order the administrator to execute the, corresponding deed of sale. The deed of sale was executed on April 15, 1959 in favor of the corporation which, since then, it would seem, has been in possession of the lot in question.

Petitioners maintain that respondent judge committed a grave abuse of discretion in imposing, as a condition of their purchase of Lot No. 5, that they pay an amount equal to the highest bid, without immediately deducting their shares therefrom, instead of an amount just sufficient to meet the debts of the estate, the shares of respondent administrator and the rest of the other heirs, considering that they allegedly represent 8/9 of the estate, and in denying their offer to purchase; in denying their motion of March 7, 1958 asking for time to gather data on the amount of estate and inheritance taxes and other obligations due against the estate.

The facts on record fail to show abuse of discretion committed by the probate court. It is not disputed that there are yet estate and inheritance taxes and other outstanding obligations due against the estate, the exact amount of which remains undetermined, while, except for Lot No. 5, all the assets of the estate have been distributed among the heirs. This being so, it was only proper that the probate court should act to provide funds with which to satisfy those obligations.

Petitioners' claim that they have offered to assume all the obligations of the estate and whatever valid liens there may be on Lot No. 5, apart from paying the share of respondent administrator and those of the other heirs who did not join them, is not clearly substantiated by the record. Not one of their pleadings in the probate court made such offer. Both their opposition, dated December 19, 1958, to the administrator's petition to advertise Lot No. 5 for sale, as well as their offer to purchase Lot No. 5, dated February 16, 1959, offered to pay only the share of respondent administrator and those of the other heirs.

It is averred that in open court, petitioners manifested their willingness to assume the payment of estate and inheritance taxes and other obligations due against the estate, plus whatever liens exist on Lot No. 5, aside from the shares of the other heirs. But it is revealing that even after they were given preference to buy Lot No. 5 by the order dated February 21, 1959, the petitioners filed a further urgent motion, dated March 7, 1959 in which, far from offering to assume the obligations of the estate, much less definitely offering a bond for the satisfaction thereof, they instead asked for time allegedly to find out the amount of estate and inheritance taxes and other obligations due against the estate, after which they allegedly would only submit "their say on the said order of this Honorable Court of February 21, 1959." In other words, as late as March 7, 1959, and after already being given preference to buy Lot No. 5, petitioners still showed a hesitant attitude on whether to proceed with the purchase of said lot. They apparently wanted yet to make sure that they would stand: to gain in such purchase, even if they were to pay the obligations of the estate, before committing themselves to really buying Lot No. 5. Under the circumstances, there would be nothing to prevent petitioners from later repudiating their alleged offers to pay those obligations, and claim that the estate should bear them. An offer by the heirs to assume the obligations of the estate should be shown indubitably, not merely presumed. In contrast to the vacillating attitude displayed by petitioners, respondent Philippine International Development Co., Inc., as highest bidder, was ready to pay the purchase price in cash, as in fact it later did. This is a significant fact since the obligations of the estate, still unliquidated, could only be satisfied from the proceeds of the sale of Lot No. 5.

Moreover, granting that petitioners have actually offered to assume said obligations, still the record does not disclose that they have offered to pay in cash or even offered to file a bond to secure the outstanding obligations of the estate. Under the circumstances, the court below hail ample reason to prefer the definite cash offer of the Development company.

Finally, this Court is inclined to believe 'respondents' claim that the order of October 18, 1958 as to the sale of Lot No. 5 was the result of agreement among all the heirs, since petitioners objected to said lot being assigned to them in a project of partition previously filed with the probate court. This is confirmed by petitioners' motion of November 10, 1958, in which they prayed, inter alia, "that the administrator be ordered to take the necessary steps to comply with the order of this Honorable Court with respect to Lot No. 5 * * *". When, pursuant thereto, the lot was about to be sold to a third party, they again apparently changed their mind and said they wanted to keep the property for themselves, alleging willingness to assume the obligations of the estate. When the probate court decided to give them preference, they again balked and instead wanted to find out first how much were the obligations of the estate. There is no assurance that petitioners would not further change their mind, whenever they believe it would suit their interests to do so. To indefinitely accommodate the indecisiveness of petitioners would be productive of further unwarranted delay, which could have been initially averted in the first place if petitioners had been more consistent in what they wanted.

Whether or not the sale of a property of an estate is proper should be governed by the interests not only of the heirs but also of creditors (see *Vda. de Cruz vs. Ilagan*, 81 Phil., 554); and a probate court should enjoy ample discretion ~in determining under what conditions a particular sale would be most beneficial to all parties interested, which should not be interfered with unless exercised with clear abuse. There is no such showing here.

Wherefore, the petition is hereby denied. Costs against petitioners.

Paras, C. J., Bengzon, Bautista Angela, Labrador, Concepcion, Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

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