

JULIO A. VIVARES and MILA G. IGNALING, Petitioners, vs. ENGR. JOSE J. REYES, Respondent.

G.R. No. 155408. February 13, 2008

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

The Case

The kernel dispute in this petition under Rule 45 is the legality of the May 22, 2001 Resolution[1] of the Camiguin Regional Trial Court (RTC), Branch 28 in Civil Case No. 517, which placed the estate of Severino Reyes under receivership. The Court of Appeals (CA) saw it differently in CA-G.R. SP No. 67492—its June 18, 2002 Decision[2] recalled the RTC directive on the appointment of the receiver, prompting Julio Vivares and Mila Ignaling to file the petition at bar to convince the Court to reinstate the receivership.

The Facts

Severino Reyes was the father of respondent Jose Reyes and Torcuato Reyes. Upon the death of Severino, respondent and Torcuato came upon their inheritance consisting of several properties. They had an oral partition of the properties and separately appropriated to themselves said properties.

On May 12, 1992, Torcuato died with a last will and testament executed on January 3, 1992. In *Reyes v. Court of Appeals*,[3] we affirmed the November 29, 1995 CA Decision, admitting the will for probate.

Petitioner Vivares was the designated executor of Torcuato's last will and testament, while petitioner Ignaling was declared a lawful heir of Torcuato.

Believing that Torcuato did not receive his full share in the estate of Severino, petitioners instituted an action for Partition and Recovery of Real Estate before the Camiguin RTC, Branch 28 entitled *Julio A. Vivares, as executor of the estate of Torcuato J. Reyes and Mila R. Ignaling, as heir v. Engr. Jose J. Reyes* and docketed as Civil Case No. 517. With the approval of the trial court, the parties agreed that properties from the estate of Severino, which were already transferred in the names of respondent and Torcuato prior to the latter's death on May 12, 1992, shall be excluded from litigation. In short, what was being contested were the properties that were still in the name of Severino.

On November 24, 1997, for the purpose of collating the common properties that were disputed, the trial court directed the formation of a three-man commission with due representation from both parties, and the third member, appointed by the trial court, shall act as chairperson. The disputed properties were then annotated with notices of *lis pendens* upon the instance of petitioners.

On March 15, 2000, petitioners filed a Motion to Place Properties in Litigation under Receivership[4] before the trial court alleging that to their prejudice respondent had, without prior court approval and without petitioners' knowledge, sold to third parties and transferred in his own name several common properties. Petitioners also

averred that respondent fraudulently antedated, prior to May 12, 1992, some conveyances and transfers to make it appear that these were no longer part of the estate of Severino under litigation. They further claimed that respondent was and is in possession of the common properties in the estate of Severino, and exclusively enjoying the fruits and income of said properties and without rendering an accounting on them and turning over the share pertaining to Torcuato. Thus, petitioners prayed to place the entire disputed estate of Severino under receivership. They nominated a certain Lope Salantin to be appointed as receiver.

On March 23, 2000, respondent filed his Opposition to Place the Estate of Severino Reyes under Receivership,[5] denying that he had fraudulently transferred any property of the estate of Severino and asserting that any transfer in his name of said properties was a result of the oral partition between him and Torcuato that enabled the latter as well to transfer several common properties in his own name.

On May 24, 2000, petitioners filed their Offer of Exhibits in support of their motion for receivership. On the same date, the trial court issued an Order[6] granting petitioners' motion and appointed Salantin as receiver conditioned on the filing of a PhP 50,000 bond. Respondent filed a motion for reconsideration, contending that the appointment of a receiver was unduly precipitate considering that he was not represented by counsel and thus was deprived of due process.

On August 4, 2000, the trial court allowed respondent to present his evidence to contest petitioners' grounds for the appointment of a receiver, and the trial court set the reception of respondent's evidence for September 4, 2000. However, on August 24, 2000, respondent filed a motion for postponement of the September 4, 2000 scheduled hearing on the ground that he was in the United States as early as July 23, 2000 for medical examination. On September 5, 2000, the trial court denied respondent's motion for postponement and reinstated its May 24, 2000 Order.

On September 19, 2000, respondent filed a Manifestation with Motion to Discharge Receiver, reiterating the circumstances which prevented him from attending the September 4, 2000 hearing and praying for the discharge of the receiver upon the filing of a counterbond in an amount to be fixed by the court in accordance with Section 3, Rule 59 of the 1997 Revised Rules on Civil Procedure. On October 10, 2000, petitioners filed their undated Opposition to Motion to Discharge Receiver.

Subsequently, respondent filed a Motion to Cancel Notice of Lis Pendens which was annotated on Tax Declaration (TD) No. 112 covering Lot No. 33 allegedly belonging exclusively to him. Respondent asserted in the motion that an adjacent property to Lot No. 33, particularly a portion of Lot No. 35, which is owned by a certain Elena Unchuan, was erroneously included in Lot No. 33 and, consequently, was subjected to the notice of lis pendens. Petitioners filed their Opposition to the Motion to Cancel Lis Pendens.

Consequently, on May 22, 2001, the trial court issued a Resolution, denying respondent's motions to discharge receiver and cancel the notice of lis pendens in TD No. 112. Respondent seasonably filed a partial motion for reconsideration of the May 22, 2001 Resolution, attaching copies of deeds of sale executed by Torcuato covering several common properties of the estate of Severino to prove that he and Torcuato had indeed made an oral partition of the estate of their father, Severino, and thus allowing him and Torcuato to convey their respective shares in the estate of Severino to third persons.

On October 19, 2001, the trial court heard respondent's motion for partial reconsideration, and on the same date issued an Order denying the motion for partial reconsideration on the ground that respondent failed to raise new matters in the motion but merely reiterated the arguments raised in previous pleadings.

Aggrieved, respondent filed a Petition for Certiorari before the CA, assailing the May 22, 2001 Resolution and

October 19, 2001 Order of the RTC.

The Ruling of the Court of Appeals

On June 18, 2002, the CA rendered the assailed Decision, sustaining respondent's position and granted relief, thus:

WHEREFORE, premises considered, the Petition is hereby GRANTED. The Resolution dated 22 May 2001 of the Regional Trial Court of Camiguin, Branch 28 in Civil Case No. 517 is hereby reversed and set aside. The court-appointed receiver, Lope Salantin, is discharged upon the posting by petitioner of a counterbond in the amount of P100,000.00. The notice of lis pendens in Tax Declaration 112, in so far as it covers the property of Elena Unchuan, is cancelled. Let this case be remanded to the court a quo for further proceedings.[7]

In reversing the trial court, the CA reasoned that the court a quo failed to observe the well-settled rule that allows the grant of the harsh judicial remedy of receivership only in extreme cases when there is an imperative necessity for it. The CA thus held that it is proper that the appointed receiver be discharged on the filing of a counterbond pursuant to Sec. 3, Rule 59 of the 1997 Revised Rules on Civil Procedure.

Moreover, the CA ratiocinated that respondent has adequately demonstrated that the appointment of the receiver has no sufficient basis, and further held that the rights of petitioners over the properties in litigation are doubly protected through the notices of lis pendens annotated on the titles of the subject properties. In fine, the appellate court pointed out that the appointment of a receiver is a delicate one, requiring the exercise of discretion, and not an absolute right of a party but subject to the attendant facts of each case. The CA found that the trial court abused its discretion in appointing the receiver and in denying the cancellation of the notice of lis pendens on TD No. 112, insofar as it pertains to the portion owned by Unchuan.

Aggrieved, petitioners in turn interposed a Motion for Reconsideration that was denied through the assailed September 24, 2002 CA Resolution.

Thus, this petition for review on certiorari is before us, presenting the following issues for consideration:

I

WHETHER OR NOT THE ANNOTATION OF A NOTICE OF LIS PENDENS PRECLUDES THE APPOINTMENT OF A RECEIVER WHEN THERE IS A NEED TO SAFEGUARD THE PROPERTIES IN LITIGATION.

II

WHETHER OR NOT A DULY APPOINTED RECEIVER OF PROPERTIES IN LITIGATION SHOULD BE DISCHARGED SIMPLY BECAUSE THE ADVERSE PARTY OFFERS TO POST A COUNTERBOND.

III

WHETHER OR NOT THE CANCELLATION OF A NOTICE OF LIS PENDENS ANNOTATED ON TAX DECLARATION NO. 112 IS CONTRARY TO LAW.[8]

The Court's Ruling

The petition must be denied. Being closely related, we discuss the first and second issues together.

Receivership not justified

We sustain the CA ruling that the trial court acted arbitrarily in granting the petition for appointment of a receiver as "there was no sufficient cause or reason to justify placing the disputed properties under receivership."

First, petitioners asseverate that respondent alienated several common properties of Severino without court approval and without their knowledge and consent. The fraudulent transfers, they claim, were antedated prior to May 12, 1992, the date of Torcuato's death, to make it appear that these properties no longer form part of the assets of the estate under litigation in Civil Case No. 517.

Petitioners' position is bereft of any factual mooring.

Petitioners miserably failed to adduce clear, convincing, and hard evidence to show the alleged fraud in the transfers and the antedating of said transfers. The fact that the transfers were dated prior to the demise of Torcuato on May 12, 1992 does not necessarily mean the transfers were attended by fraud. He who alleges fraud has the burden to prove it.

Moreover, respondent has adduced documentary proof that Torcuato himself similarly conveyed several lots in the estate of Severino based on the oral partition between the siblings. To lend credence to the transfers executed by Torcuato but distrust to those made by respondent would be highly inequitable as correctly opined by the court *a quo*.

Indeed, receivership is a harsh remedy to be granted only in extreme situations. As early as 1914, the Court already enunciated the doctrinal pronouncement in *Velasco & Co. v. Gochuico & Co.* that courts must use utmost circumspection in allowing receivership, thus:

The power to appoint a receiver is a delicate one and should be exercised with extreme caution and only under circumstances requiring summary relief or where the court is satisfied that there is imminent danger of loss, lest the injury thereby caused be far greater than the injury sought to be averted. The court should consider the consequences to all of the parties and the power should not be exercised when it is likely to produce irreparable injustice or injury to private rights or the facts demonstrate that the appointment will injure the interests of others whose rights are entitled to as much consideration from the court as those of the complainant.[9]

Petitioners cannot now impugn the oral partition entered into by Torcuato and respondent and hence cannot also assail the transfers made by respondent of the lots which were subject of said agreement, considering that Torcuato also sold properties based on said verbal arrangement. Indeed, the parties agreed that the civil action does not encompass the properties covered by the oral partition. In this factual setting, petitioners cannot convince the Court that the alleged fraudulent transfers of the lots made by respondent, which purportedly form part of his share in Severino's estate based on the partition, can provide a strong basis to grant the receivership.

Second, petitioner is willing to post a counterbond in the amount to be fixed by the court based on Sec. 3, Rule 59 of the 1997 Rules of Civil Procedure, which reads:

Sec. 3. Denial of application or discharge of receiver.—The application may be denied, or the receiver discharged, when the adverse party files a bond executed to the applicant, in an amount to be fixed by the court, to the effect that such party will pay the applicant all damages he may suffer by reason of the acts, omissions, or other matter specified in the application as ground for such appointment. The receiver may also be discharged if it is shown that his appointment was obtained without sufficient cause.

Anchored on this rule, the trial court should have dispensed with the services of the receiver, more so considering that the alleged fraud put forward to justify the receivership was not at all established.

Petitioners advance the issue that the receivership should not be recalled simply because the adverse party offers to post a counterbond. At the outset, we find that this issue was not raised before the CA and therefore proscribed by the doctrine that an issue raised for the first time on appeal and not timely raised in the proceedings in the lower court is barred by estoppel.[10] Even if we entertain the issue, the contention is nevertheless devoid of

merit. The assailed CA decision supported the discharge of the receiver with several reasons including the posting of the counterbond. While the CA made a statement that the trial court should have discharged the appointed receiver on the basis of the proposed counterbond, such opinion does not jibe with the import of Sec. 3, Rule 59. The rule states that the “application may be denied or the receiver discharged.” In statutory construction, the word “may” has always been construed as permissive. If the intent is to make it mandatory or ministerial for the trial court to order the recall of the receiver upon the offer to post a counterbond, then the court should have used the word “shall.” Thus, the trial court has to consider the posting of the counterbond in addition to other reasons presented by the offeror why the receivership has to be set aside.

Third, since a notice of lis pendens has been annotated on the titles of the disputed properties, the rights of petitioners are amply safeguarded and preserved since “there can be no risk of losing the property or any part of it as a result of any conveyance of the land or any encumbrance that may be made thereon posterior to the filing of the notice of lis pendens.”[11] Once the annotation is made, any subsequent conveyance of the lot by the respondent would be subject to the outcome of the litigation since the fact that the properties are under custodia legis is made known to all and sundry by operation of law. Hence, there is no need for a receiver to look after the disputed properties.

On the issue of lis pendens, petitioners argue that the mere fact that a notice of lis pendens was annotated on the titles of the disputed properties does not preclude the appointment of a receiver. It is true that the notice alone will not preclude the transfer of the property pendente lite, for the title to be issued to the transferee will merely carry the annotation that the lot is under litigation. Hence, the notice of lis pendens, by itself, may not be the “most convenient and feasible means of preserving or administering the property in litigation.” However, the situation is different in the case at bar. A counterbond will also be posted by the respondent to answer for all damages petitioners may suffer by reason of any transfer of the disputed properties in the future. As a matter of fact, petitioners can also ask for the issuance of an injunctive writ to foreclose any transfer, mortgage, or encumbrance on the disputed properties. These considerations, plus the finding that the appointment of the receiver was without sufficient cause, have demonstrated the vulnerability of petitioners’ postulation.

Fourth, it is undisputed that respondent has actual possession over some of the disputed properties which are entitled to protection. Between the possessor of a subject property and the party asserting contrary rights to the properties, the former is accorded better rights. In litigation, except for exceptional and extreme cases, the possessor ought not to be deprived of possession over subject property. Article 539 of the New Civil Code provides that “every possessor has a right to be respected in his possession; and should he be disturbed therein he shall be protected in or restored to said possession by the means established by the laws and the Rules of Court.” In *Descallar v. Court of Appeals*, we ruled that the appointment of a receiver is not proper where the rights of the parties, one of whom is in possession of the property, are still to be determined by the trial court.[12]

In view of the foregoing reasons, we uphold the CA ruling that the grant of the receivership was without sufficient justification nor strong basis.

Anent the third issue that the cancellation of the notice of lis pendens on TD No. 112 is irregular as Lot No. 33 is one of the disputed properties in the partition case, petitioners’ position is correct.

The CA made a factual finding that the property of Unchuan was erroneously included in Lot No. 33, one of the disputed properties in Civil Case No. 517. It then ruled that the annotation of lis pendens should be lifted.

This ruling is bereft of factual basis.

The determination whether the property of Unchuan is a part of Lot No. 33 and whether that portion really

belongs to Unchuan are matters to be determined by the trial court. Consequently, the notice of lis pendens on TD No. 112 stays until the final ruling on said issues is made.

WHEREFORE, the petition is PARTLY GRANTED. The June 18, 2002 CA Decision in CA-G.R. SP No. 67492 is AFFIRMED with MODIFICATION insofar as it ordered the cancellation of the notice of lis pendens in TD No. 112. As thus modified, the appealed CA Decision should read as follows:

WHEREFORE, premises considered, the Petition is hereby PARTLY GRANTED. The Resolution dated 22 May 2001 of the Regional Trial Court of Camiguin, Branch 28 in Civil Case No. 517 is hereby reversed and set aside. The court-appointed receiver, Lope Salantin, is discharged upon the posting by petitioner of a counterbond in the amount of PHP 100,000. The notice of lis pendens in TD No. 112, including the portion allegedly belonging to Elena Unchuan, remains valid and effective. Let this case be remanded to the court a quo for further proceedings in Civil Case No. 517.

No costs.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio-Morales, and Tinga, JJ., concur.

[1] Rollo, pp. 94-95. Penned by Presiding Judge Noli T. Catli.

[2] Id. at 19-29. Penned by Associate Justice Wenceslao I. Agniri, Jr. and concurred in by Associate Justices B.A. Adefuin-De la Cruz (Chairperson) and Regalado E. Maambong.

[3] G.R. No. 124099, October 30, 1997, 281 SCRA 277.

[4] Rollo, pp. 32-39.

[5] Id. at 40-41.

[6] Id. at 67-68. Penned by Judge-Designate Antonio A. Orcullo.

[7] Supra note 2, at 28.

[8] Rollo, pp. 212-213.

[9] 28 Phil. 39, 41 (1914).

[10] Philippine Banking Corporation v. Court of Appeals, G.R. No. 127469, January 15, 2004, 419 SCRA 487, 503-504.

[11] Medelo v. Gorospe, No. L-41970, March 25, 1988, 159 SCRA 248, 254.

[12] G.R. No. 106473, July 12, 1993, 224 SCRA 566, 569.

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