

**THELMA M. ARANAS, PETITIONER, VS. TERESITA V. MERCADO,
FELIMON V. MERCADO, CARMENCITA M. SUTHERLAND, RICHARD V.
MERCADO, MA. TERESITA M. ANDERSON, AND FRANKLIN L.
MERCADO, RESPO...**

G.R. No. 156407. January 15, 2014

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

The probate court is authorized to determine the issue of ownership of properties for purposes of their inclusion or exclusion from the inventory to be submitted by the administrator, but its determination shall only be provisional unless the interested parties are all heirs of the decedent, or the question is one of collation or advancement, or the parties consent to the assumption of jurisdiction by the probate court and the rights of third parties are not impaired. Its jurisdiction extends to matters incidental or collateral to the settlement and distribution of the estate, such as the determination of the status of each heir and whether property included in the inventory is the conjugal or exclusive property of the deceased spouse.

Antecedents

Emigdio S. Mercado (Emigdio) died intestate on January 12, 1991, survived by his second wife, Teresita V. Mercado (Teresita), and their five children, namely: Allan V. Mercado, Felimon V. Mercado, Carmencita M. Sutherland, Richard V. Mercado, and Maria Teresita M. Anderson; and his two children by his first marriage, namely: respondent Franklin L. Mercado and petitioner Thelma M. Aranas (Thelma).

Emigdio inherited and acquired real properties during his lifetime. He owned corporate shares in Mervir Realty Corporation (Mervir Realty) and Cebu Emerson Transportation Corporation (Cebu Emerson). He assigned his real properties in exchange for corporate stocks of Mervir Realty, and sold his real property in Badian, Cebu (Lot 3353 covered by Transfer Certificate of Title No. 3252) to Mervir Realty.

On June 3, 1991, Thelma filed in the Regional Trial Court (RTC) in Cebu City a petition for the appointment of Teresita as the administrator of Emigdio's estate (Special Proceedings No. 3094-CEB).[1] The RTC granted the petition considering that there was no opposition. The letters of administration in favor of Teresita were issued on September 7, 1992.

As the administrator, Teresita submitted an inventory of the estate of Emigdio on December 14, 1992 for the consideration and approval by the RTC. She indicated in the inventory that at the time of his death, Emigdio had "left no real properties but only personal properties" worth P6,675,435.25 in all, consisting of cash of P32,141.20; furniture and fixtures worth P20,000.00; pieces of jewelry valued at P15,000.00; 44,806 shares of stock of Mervir Realty worth P6,585,585.80; and 30 shares of stock of Cebu Emerson worth P22,708.25.[2]

Claiming that Emigdio had owned other properties that were excluded from the inventory, Thelma moved that the

RTC direct Teresita to amend the inventory, and to be examined regarding it. The RTC granted Thelma's motion through the order of January 8, 1993.

On January 21, 1993, Teresita filed a compliance with the order of January 8, 1993,[3] supporting her inventory with copies of three certificates of stocks covering the 44,806 Mervir Realty shares of stock;[4] the deed of assignment executed by Emigdio on January 10, 1991 involving real properties with the market value of P4,440,651.10 in exchange for 44,407 Mervir Realty shares of stock with total par value of P4,440,700.00;[5] and the certificate of stock issued on January 30, 1979 for 300 shares of stock of Cebu Emerson worth P30,000.00.[6]

On January 26, 1993, Thelma again moved to require Teresita to be examined under oath on the inventory, and that she (Thelma) be allowed 30 days within which to file a formal opposition to or comment on the inventory and the supporting documents Teresita had submitted.

On February 4, 1993, the RTC issued an order expressing the need for the parties to present evidence and for Teresita to be examined to enable the court to resolve the motion for approval of the inventory.[7]

On April 19, 1993, Thelma opposed the approval of the inventory, and asked leave of court to examine Teresita on the inventory.

With the parties agreeing to submit themselves to the jurisdiction of the court on the issue of what properties should be included in or excluded from the inventory, the RTC set dates for the hearing on that issue.[8]

Ruling of the RTC

After a series of hearings that ran for almost eight years, the RTC issued on March 14, 2001 an order finding and holding that the inventory submitted by Teresita had excluded properties that should be included, and accordingly ruled:

WHEREFORE, in view of all the foregoing premises and considerations, the Court hereby denies the administratrix's motion for approval of inventory. The Court hereby orders the said administratrix to re-do the inventory of properties which are supposed to constitute as the estate of the late Emigdio S. Mercado by including therein the properties mentioned in the last five immediately preceding paragraphs hereof and then submit the revised inventory within sixty (60) days from notice of this order.

The Court also directs the said administratrix to render an account of her administration of the estate of the late Emigdio S. Mercado which had come to her possession. She must render such accounting within sixty (60) days from notice hereof.

SO ORDERED.[9]

On March 29, 2001, Teresita, joined by other heirs of Emigdio, timely sought the reconsideration of the order of March 14, 2001 on the ground that one of the real properties affected, Lot No. 3353 located in Badian, Cebu, had already been sold to Mervir Realty, and that the parcels of land covered by the deed of assignment had already come into the possession of and registered in the name of Mervir Realty.[10] Thelma opposed the motion.

On May 18, 2001, the RTC denied the motion for reconsideration,[11] stating that there was no cogent reason for the reconsideration, and that the movants' agreement as heirs to submit to the RTC the issue of what properties should be included or excluded from the inventory already estopped them from questioning its jurisdiction to pass upon the issue.

Decision of the CA

Alleging that the RTC thereby acted with grave abuse of discretion in refusing to approve the inventory, and in

ordering her as administrator to include real properties that had been transferred to Mervir Realty, Teresita, joined by her four children and her stepson Franklin, assailed the adverse orders of the RTC promulgated on March 14, 2001 and May 18, 2001 by petition for certiorari, stating:

I

THE HONORABLE RESPONDENT JUDGE HAS COMMITTED GRAVE ABUSE OF JURISDICTION (sic) AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN HOLDING THAT THE REAL PROPERTY WHICH WAS SOLD BY THE LATE EMIGDIO S. MERCADO DURING HIS LIFETIME TO A PRIVATE CORPORATION (MERVIR REALTY CORPORATION) BE INCLUDED IN THE INVENTORY OF THE ESTATE OF THE LATE EMIGDIO S. MERCADO.

II

THE HONORABLE RESPONDENT JUDGE HAS COMMITTED GRAVE ABUSE OF JURISDICTION (sic) AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN HOLDING THAT REAL PROPERTIES WHICH ARE IN THE POSSESSION OF AND ALREADY REGISTERED IN THE NAME (OF) PRIVATE CORPORATION (MERVIR REALTY CORPORATION) BE INCLUDED IN THE INVENTORY OF THE ESTATE OF THE LATE EMIGDIO S. MERCADO.

III

THE HONORABLE RESPONDENT JUDGE HAS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN HOLDING THAT PETITIONERS ARE NOW ESTOPPED FROM QUESTIONING ITS JURISDICTION IN PASSING UPON THE ISSUE OF WHAT PROPERTIES SHOULD BE INCLUDED IN THE INVENTORY OF THE ESTATE OF THE LATE EMIGDIO MERCADO.[12]

On May 15, 2002, the CA partly granted the petition for certiorari, disposing as follows:[13]

WHEREFORE, FOREGOING PREMISES CONSIDERED, this petition is GRANTED partially. The assailed Orders dated March 14, 2001 and May 18, 2001 are hereby reversed and set aside insofar as the inclusion of parcels of land known as Lot No. 3353 located at Badian, Cebu with an area of 53,301 square meters subject matter of the Deed of Absolute Sale dated November 9, 1989 and the various parcels of land subject matter of the Deeds of Assignment dated February 17, 1989 and January 10, 1991 in the revised inventory to be submitted by the administratrix is concerned and affirmed in all other respects.

SO ORDERED.

The CA opined that Teresita, et al. had properly filed the petition for certiorari because the order of the RTC directing a new inventory of properties was interlocutory; that pursuant to Article 1477 of the Civil Code, to the effect that the ownership of the thing sold “shall be transferred to the vendee” upon its “actual and constructive delivery,” and to Article 1498 of the Civil Code, to the effect that the sale made through a public instrument was equivalent to the delivery of the object of the sale, the sale by Emigdio and Teresita had transferred the ownership of Lot No. 3353 to Mervir Realty because the deed of absolute sale executed on November 9, 1989 had been notarized; that Emigdio had thereby ceased to have any more interest in Lot 3353; that Emigdio had assigned the parcels of land to Mervir Realty as early as February 17, 1989 “for the purpose of saving, as in avoiding taxes with the difference that in the Deed of Assignment dated January 10, 1991, additional seven (7) parcels of land were included”; that as to the January 10, 1991 deed of assignment, Mervir Realty had been “even at the losing end considering that such parcels of land, subject matter(s) of the Deed of Assignment dated February 12, 1989, were again given monetary consideration through shares of stock”; that even if the assignment had been based on the deed of assignment dated January 10, 1991, the parcels of land could not be included in the inventory

“considering that there is nothing wrong or objectionable about the estate planning scheme”; that the RTC, as an intestate court, also had no power to take cognizance of and determine the issue of title to property registered in the name of third persons or corporation; that a property covered by the Torrens system should be afforded the presumptive conclusiveness of title; that the RTC, by disregarding the presumption, had transgressed the clear provisions of law and infringed settled jurisprudence on the matter; and that the RTC also gravely abused its discretion in holding that Teresita, et al. were estopped from questioning its jurisdiction because of their agreement to submit to the RTC the issue of which properties should be included in the inventory.

The CA further opined as follows:

In the instant case, public respondent court erred when it ruled that petitioners are estopped from questioning its jurisdiction considering that they have already agreed to submit themselves to its jurisdiction of determining what properties are to be included in or excluded from the inventory to be submitted by the administratrix, because actually, a reading of petitioners’ Motion for Reconsideration dated March 26, 2001 filed before public respondent court clearly shows that petitioners are not questioning its jurisdiction but the manner in which it was exercised for which they are not estopped, since that is their right, considering that there is grave abuse of discretion amounting to lack or in excess of limited jurisdiction when it issued the assailed Order dated March 14, 2001 denying the administratrix’s motion for approval of the inventory of properties which were already titled and in possession of a third person that is, Mervir Realty Corporation, a private corporation, which under the law possessed a personality distinct and separate from its stockholders, and in the absence of any cogency to shred the veil of corporate fiction, the presumption of conclusiveness of said titles in favor of Mervir Realty Corporation should stand undisturbed.

Besides, public respondent court acting as a probate court had no authority to determine the applicability of the doctrine of piercing the veil of corporate fiction and even if public respondent court was not merely acting in a limited capacity as a probate court, private respondent nonetheless failed to adjudge competent evidence that would have justified the court to impale the veil of corporate fiction because to disregard the separate jurisdictional personality of a corporation, the wrongdoing must be clearly and convincingly established since it cannot be presumed.[14]

On November 15, 2002, the CA denied the motion for reconsideration of Teresita, et al.[15]

Issue

Did the CA properly determine that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction in directing the inclusion of certain properties in the inventory notwithstanding that such properties had been either transferred by sale or exchanged for corporate shares in Mervir Realty by the decedent during his lifetime?

Ruling of the Court

The appeal is meritorious.

I

Was certiorari the proper recourse to assail the questioned orders of the RTC?

The first issue to be resolved is procedural. Thelma contends that the resort to the special civil action for certiorari to assail the orders of the RTC by Teresita and her co-respondents was not proper.

Thelma’s contention cannot be sustained.

The propriety of the special civil action for certiorari as a remedy depended on whether the assailed orders of the RTC were final or interlocutory in nature. In *Pahila-Garrido v. Tortogo*,^[16] the Court distinguished between final and interlocutory orders as follows:

The distinction between a final order and an interlocutory order is well known. The first disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing more to be done except to enforce by execution what the court has determined, but the latter does not completely dispose of the case but leaves something else to be decided upon. An interlocutory order deals with preliminary matters and the trial on the merits is yet to be held and the judgment rendered. The test to ascertain whether or not an order or a judgment is interlocutory or final is: does the order or judgment leave something to be done in the trial court with respect to the merits of the case? If it does, the order or judgment is interlocutory; otherwise, it is final.

The order dated November 12, 2002, which granted the application for the writ of preliminary injunction, was an interlocutory, not a final, order, and should not be the subject of an appeal. The reason for disallowing an appeal from an interlocutory order is to avoid multiplicity of appeals in a single action, which necessarily suspends the hearing and decision on the merits of the action during the pendency of the appeals. Permitting multiple appeals will necessarily delay the trial on the merits of the case for a considerable length of time, and will compel the adverse party to incur unnecessary expenses, for one of the parties may interpose as many appeals as there are incidental questions raised by him and as there are interlocutory orders rendered or issued by the lower court. An interlocutory order may be the subject of an appeal, but only after a judgment has been rendered, with the ground for appealing the order being included in the appeal of the judgment itself.

The remedy against an interlocutory order not subject of an appeal is an appropriate special civil action under Rule 65, provided that the interlocutory order is rendered without or in excess of jurisdiction or with grave abuse of discretion. Then is certiorari under Rule 65 allowed to be resorted to.

The assailed order of March 14, 2001 denying Teresita's motion for the approval of the inventory and the order dated May 18, 2001 denying her motion for reconsideration were interlocutory. This is because the inclusion of the properties in the inventory was not yet a final determination of their ownership. Hence, the approval of the inventory and the concomitant determination of the ownership as basis for inclusion or exclusion from the inventory were provisional and subject to revision at anytime during the course of the administration proceedings.

In *Valero Vda. De Rodriguez v. Court of Appeals*,^[17] the Court, in affirming the decision of the CA to the effect that the order of the intestate court excluding certain real properties from the inventory was interlocutory and could be changed or modified at anytime during the course of the administration proceedings, held that the order of exclusion was not a final but an interlocutory order "in the sense that it did not settle once and for all the title to the San Lorenzo Village lots." The Court observed there that:

The prevailing rule is that for the purpose of determining whether a certain property should or should not be included in the inventory, the probate court may pass upon the title thereto but such determination is not conclusive and is subject to the final decision in a separate action regarding ownership which may be instituted by the parties (3 Moran's Comments on the Rules of Court, 1970 Edition, pages 448-9 and 473; *Lachenal vs. Salas*, L-42257, June 14, 1976, 71 SCRA 262, 266).^[18] (Bold emphasis supplied)

To the same effect was *De Leon v. Court of Appeals*,^[19] where the Court declared that a "probate court, whether in a testate or intestate proceeding, can only pass upon questions of title provisionally," and reminded, citing *Jimenez v. Court of Appeals*, that the "patent reason is the probate court's limited jurisdiction and the principle that questions of title or ownership, which result in inclusion or exclusion from the inventory of the property, can only be settled in a separate action." Indeed, in the cited case of *Jimenez v. Court of Appeals*,^[20] the Court pointed out:

All that the said court could do as regards the said properties is determine whether they should or should not be included in the inventory or list of properties to be administered by the administrator. If there is a dispute as to the ownership, then the opposing parties and the administrator have to resort to an ordinary action for a final determination of the conflicting claims of title because the probate court cannot do so. (Bold emphasis supplied)

On the other hand, an appeal would not be the correct recourse for Teresita, et al. to take against the assailed orders. The final judgment rule embodied in the first paragraph of Section 1, Rule 41, Rules of Court,[21] which also governs appeals in special proceedings, stipulates that only the judgments, final orders (and resolutions) of a court of law “that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable” may be the subject of an appeal in due course. The same rule states that an interlocutory order or resolution (interlocutory because it deals with preliminary matters, or that the trial on the merits is yet to be held and the judgment rendered) is expressly made non-appealable.

Multiple appeals are permitted in special proceedings as a practical recognition of the possibility that material issues may be finally determined at various stages of the special proceedings. Section 1, Rule 109 of the Rules of Court enumerates the specific instances in which multiple appeals may be resorted to in special proceedings, viz:

Section 1. Orders or judgments from which appeals may be taken. - An interested person may appeal in special proceedings from an order or judgment rendered by a Court of First Instance or a Juvenile and Domestic Relations Court, where such order or judgment:

- (a) Allows or disallows a will;
- (b) Determines who are the lawful heirs of a deceased person, or the distributive share of the estate to which such person is entitled;
- (c) Allows or disallows, in whole or in part, any claim against the estate of a deceased person, or any claim presented on behalf of the estate in offset to a claim against it;
- (d) Settles the account of an executor, administrator, trustee or guardian;
- (e) Constitutes, in proceedings relating to the settlement of the estate of a deceased person, or the administration of a trustee or guardian, a final determination in the lower court of the rights of the party appealing, except that no appeal shall be allowed from the appointment of a special administrator; and
- (f) Is the final order or judgment rendered in the case, and affects the substantial rights of the person appealing, unless it be an order granting or denying a motion for a new trial or for reconsideration.

Clearly, the assailed orders of the RTC, being interlocutory, did not come under any of the instances in which multiple appeals are permitted.

II

Did the RTC commit grave abuse of discretion in directing the inclusion of the properties in the estate of the decedent?

In its assailed decision, the CA concluded that the RTC committed grave abuse of discretion for including properties in the inventory notwithstanding their having been transferred to Mervir Realty by Emigdio during his lifetime, and for disregarding the registration of the properties in the name of Mervir Realty, a third party, by applying the doctrine of piercing the veil of corporate fiction.

Was the CA correct in its conclusion?

The answer is in the negative. It is unavoidable to find that the CA, in reaching its conclusion, ignored the law and the facts that had fully warranted the assailed orders of the RTC.

Under Section 6(a), Rule 78 of the Rules of Court, the letters of administration may be granted at the discretion of the court to the surviving spouse, who is competent and willing to serve when the person dies intestate. Upon issuing the letters of administration to the surviving spouse, the RTC becomes duty-bound to direct the preparation and submission of the inventory of the properties of the estate, and the surviving spouse, as the administrator, has the duty and responsibility to submit the inventory within three months from the issuance of letters of administration pursuant to Rule 83 of the Rules of Court, viz:

Section 1. Inventory and appraisal to be returned within three months. – Within three (3) months after his appointment every executor or administrator shall return to the court a true inventory and appraisal of all the real and personal estate of the deceased which has come into his possession or knowledge. In the appraisement of such estate, the court may order one or more of the inheritance tax appraisers to give his or their assistance.

The usage of the word all in Section 1, supra, demands the inclusion of all the real and personal properties of the decedent in the inventory.[22] However, the word all is qualified by the phrase which has come into his possession or knowledge, which signifies that the properties must be known to the administrator to belong to the decedent or are in her possession as the administrator. Section 1 allows no exception, for the phrase true inventory implies that no properties appearing to belong to the decedent can be excluded from the inventory, regardless of their being in the possession of another person or entity.

The objective of the Rules of Court in requiring the inventory and appraisal of the estate of the decedent is “to aid the court in revising the accounts and determining the liabilities of the executor or the administrator, and in making a final and equitable distribution (partition) of the estate and otherwise to facilitate the administration of the estate.”[23] Hence, the RTC that presides over the administration of an estate is vested with wide discretion on the question of what properties should be included in the inventory. According to *Peralta v. Peralta*,[24] the CA cannot impose its judgment in order to supplant that of the RTC on the issue of which properties are to be included or excluded from the inventory in the absence of “positive abuse of discretion,” for in the administration of the estates of deceased persons, “the judges enjoy ample discretionary powers and the appellate courts should not interfere with or attempt to replace the action taken by them, unless it be shown that there has been a positive abuse of discretion.”[25] As long as the RTC commits no patently grave abuse of discretion, its orders must be respected as part of the regular performance of its judicial duty.

There is no dispute that the jurisdiction of the trial court as an intestate court is special and limited. The trial court cannot adjudicate title to properties claimed to be a part of the estate but are claimed to belong to third parties by title adverse to that of the decedent and the estate, not by virtue of any right of inheritance from the decedent. All that the trial court can do regarding said properties is to determine whether or not they should be included in the inventory of properties to be administered by the administrator. Such determination is provisional and may be still revised. As the Court said in *Agtarap v. Agtarap*: [26]

The general rule is that the jurisdiction of the trial court, either as a probate court or an intestate court, relates only to matters having to do with the probate of the will and/or settlement of the estate of deceased persons, but does not extend to the determination of questions of ownership that arise during the proceedings. The patent rationale for this rule is that such court merely exercises special and limited jurisdiction. As held in several cases, a probate court or one in charge of estate proceedings, whether testate or intestate, cannot adjudicate or determine title to properties claimed to be a part of the estate and which are claimed to belong to outside parties, not by virtue of any right of inheritance from the deceased but by title adverse to that of the deceased and his estate. All that the said court could do as regards said properties is to determine whether or not they should be included in the inventory of properties to be administered by the administrator. If there is no

dispute, there poses no problem, but if there is, then the parties, the administrator, and the opposing parties have to resort to an ordinary action before a court exercising general jurisdiction for a final determination of the conflicting claims of title.

However, this general rule is subject to exceptions as justified by expediency and convenience.

First, the probate court may provisionally pass upon in an intestate or a testate proceeding the question of inclusion in, or exclusion from, the inventory of a piece of property without prejudice to final determination of ownership in a separate action. Second, if the interested parties are all heirs to the estate, or the question is one of collation or advancement, or the parties consent to the assumption of jurisdiction by the probate court and the rights of third parties are not impaired, then the probate court is competent to resolve issues on ownership. Verily, its jurisdiction extends to matters incidental or collateral to the settlement and distribution of the estate, such as the determination of the status of each heir and whether the property in the inventory is conjugal or exclusive property of the deceased spouse.^[27] (*Italics in the original; bold emphasis supplied*)

It is clear to us that the RTC took pains to explain the factual bases for its directive for the inclusion of the properties in question in its assailed order of March 14, 2001, viz:

In the first place, the administratrix of the estate admitted that Emigdio Mercado was one of the heirs of Severina Mercado who, upon her death, left several properties as listed in the inventory of properties submitted in Court in Special Proceedings No. 306-R which are supposed to be divided among her heirs. The administratrix admitted, while being examined in Court by the counsel for the petitioner, that she did not include in the inventory submitted by her in this case the shares of Emigdio Mercado in the said estate of Severina Mercado. Certainly, said properties constituting Emigdio Mercado's share in the estate of Severina Mercado should be included in the inventory of properties required to be submitted to the Court in this particular case.

In the second place, the administratrix of the estate of Emigdio Mercado also admitted in Court that she did not include in the inventory shares of stock of Mervir Realty Corporation which are in her name and which were paid by her from money derived from the taxicab business which she and her husband had since 1955 as a conjugal undertaking. As these shares of stock partake of being conjugal in character, one-half thereof or of the value thereof should be included in the inventory of the estate of her husband.

In the third place, the administratrix of the estate of Emigdio Mercado admitted, too, in Court that she had a bank account in her name at Union Bank which she opened when her husband was still alive. Again, the money in said bank account partakes of being conjugal in character, and so, one-half thereof should be included in the inventory of the properties constituting as estate of her husband.

In the fourth place, it has been established during the hearing in this case that Lot No. 3353 of Pls-657-D located in Badian, Cebu containing an area of 53,301 square meters as described in and covered by Transfer Certificate of Title No. 3252 of the Registry of Deeds for the Province of Cebu is still registered in the name of Emigdio S. Mercado until now. When it was the subject of Civil Case No. CEB-12690 which was decided on October 19, 1995, it was the estate of the late Emigdio Mercado which claimed to be the owner thereof. Mervir Realty Corporation never intervened in the said case in order to be the owner thereof. This fact was admitted by Richard Mercado himself when he testified in Court. x x x So the said property located in Badian, Cebu should be included in the inventory in this case.

Fifthly and lastly, it appears that the assignment of several parcels of land by the late Emigdio S. Mercado to Mervir Realty Corporation on January 10, 1991 by virtue of the Deed of Assignment signed by him on the said day (Exhibit N for the petitioner and Exhibit 5 for the administratrix) was a transfer in contemplation of death. It was made two days before he died on January 12, 1991. A transfer made in contemplation of death is one prompted by the thought that the transferor has not long to live and made in place of a testamentary disposition (1959 Prentice Hall, p. 3909). Section 78 of the National Internal Revenue Code of 1977 provides that the

gross estate of the decedent shall be determined by including the value at the time of his death of all property to the extent of any interest therein of which the decedent has at any time made a transfer in contemplation of death. So, the inventory to be approved in this case should still include the said properties of Emigdio Mercado which were transferred by him in contemplation of death. Besides, the said properties actually appeared to be still registered in the name of Emigdio S. Mercado at least ten (10) months after his death, as shown by the certification issued by the Cebu City Assessor's Office on October 31, 1991 (Exhibit O).[28]

Thereby, the RTC strictly followed the directives of the Rules of Court and the jurisprudence relevant to the procedure for preparing the inventory by the administrator. The aforementioned explanations indicated that the directive to include the properties in question in the inventory rested on good and valid reasons, and thus was far from whimsical, or arbitrary, or capricious.

Firstly, the shares in the properties inherited by Emigdio from Severina Mercado should be included in the inventory because Teresita, et al. did not dispute the fact about the shares being inherited by Emigdio.

Secondly, with Emigdio and Teresita having been married prior to the effectivity of the Family Code in August 3, 1988, their property regime was the conjugal partnership of gains.[29] For purposes of the settlement of Emigdio's estate, it was unavoidable for Teresita to include his shares in the conjugal partnership of gains. The party asserting that specific property acquired during that property regime did not pertain to the conjugal partnership of gains carried the burden of proof, and that party must prove the exclusive ownership by one of them by clear, categorical, and convincing evidence.[30] In the absence of or pending the presentation of such proof, the conjugal partnership of Emigdio and Teresita must be provisionally liquidated to establish who the real owners of the affected properties were,[31] and which of the properties should form part of the estate of Emigdio. The portions that pertained to the estate of Emigdio must be included in the inventory.

Moreover, although the title over Lot 3353 was already registered in the name of Mervir Realty, the RTC made findings that put that title in dispute. Civil Case No. CEB-12692, a dispute that had involved the ownership of Lot 3353, was resolved in favor of the estate of Emigdio, and Transfer Certificate of Title No. 3252 covering Lot 3353 was still in Emigdio's name. Indeed, the RTC noted in the order of March 14, 2001, or ten years after his death, that Lot 3353 had remained registered in the name of Emigdio.

Interestingly, Mervir Realty did not intervene at all in Civil Case No. CEB-12692. Such lack of interest in Civil Case No. CEB-12692 was susceptible of various interpretations, including one to the effect that the heirs of Emigdio could have already threshed out their differences with the assistance of the trial court. This interpretation was probable considering that Mervir Realty, whose business was managed by respondent Richard, was headed by Teresita herself as its President. In other words, Mervir Realty appeared to be a family corporation.

Also, the fact that the deed of absolute sale executed by Emigdio in favor of Mervir Realty was a notarized instrument did not sufficiently justify the exclusion from the inventory of the properties involved. A notarized deed of sale only enjoyed the presumption of regularity in favor of its execution, but its notarization did not per se guarantee the legal efficacy of the transaction under the deed, and what the contents purported to be. The presumption of regularity could be rebutted by clear and convincing evidence to the contrary.[32] As the Court has observed in *Suntay v. Court of Appeals*: [33]

x x x. Though the notarization of the deed of sale in question vests in its favor the presumption of regularity, it is not the intention nor the function of the notary public to validate and make binding an instrument never, in the first place, intended to have any binding legal effect upon the parties thereto. The intention of the parties still and always is the primary consideration in determining the true nature of a contract. (Bold emphasis supplied)

It should likewise be pointed out that the exchange of shares of stock of Mervir Realty with the real properties owned by Emigdio would still have to be inquired into. That Emigdio executed the deed of assignment two days prior to his death was a circumstance that should put any interested party on his guard regarding the exchange, considering that there was a finding about Emigdio having been sick of cancer of the pancreas at the time.[34] In this regard, whether the CA correctly characterized the exchange as a form of an estate planning scheme remained to be validated by the facts to be established in court.

The fact that the properties were already covered by Torrens titles in the name of Mervir Realty could not be a valid basis for immediately excluding them from the inventory in view of the circumstances admittedly surrounding the execution of the deed of assignment. This is because:

The Torrens system is not a mode of acquiring titles to lands; it is merely a system of registration of titles to lands. However, justice and equity demand that the titleholder should not be made to bear the unfavorable effect of the mistake or negligence of the State's agents, in the absence of proof of his complicity in a fraud or of manifest damage to third persons. The real purpose of the Torrens system is to quiet title to land and put a stop forever to any question as to the legality of the title, except claims that were noted in the certificate at the time of registration or that may arise subsequent thereto. Otherwise, the integrity of the Torrens system shall forever be sullied by the ineptitude and inefficiency of land registration officials, who are ordinarily presumed to have regularly performed their duties.[35]

Assuming that only seven titled lots were the subject of the deed of assignment of January 10, 1991, such lots should still be included in the inventory to enable the parties, by themselves, and with the assistance of the RTC itself, to test and resolve the issue on the validity of the assignment. The limited jurisdiction of the RTC as an intestate court might have constricted the determination of the rights to the properties arising from that deed,[36] but it does not prevent the RTC as intestate court from ordering the inclusion in the inventory of the properties subject of that deed. This is because the RTC as intestate court, albeit vested only with special and limited jurisdiction, was still "deemed to have all the necessary powers to exercise such jurisdiction to make it effective." [37]

Lastly, the inventory of the estate of Emigdio must be prepared and submitted for the important purpose of resolving the difficult issues of collation and advancement to the heirs. Article 1061 of the Civil Code required every compulsory heir and the surviving spouse, herein Teresita herself, to "bring into the mass of the estate any property or right which he (or she) may have received from the decedent, during the lifetime of the latter, by way of donation, or any other gratuitous title, in order that it may be computed in the determination of the legitime of each heir, and in the account of the partition." Section 2, Rule 90 of the Rules of Court also provided that any advancement by the decedent on the legitime of an heir "may be heard and determined by the court having jurisdiction of the estate proceedings, and the final order of the court thereon shall be binding on the person raising the questions and on the heir." Rule 90 thereby expanded the special and limited jurisdiction of the RTC as an intestate court about the matters relating to the inventory of the estate of the decedent by authorizing it to direct the inclusion of properties donated or bestowed by gratuitous title to any compulsory heir by the decedent.[38]

The determination of which properties should be excluded from or included in the inventory of estate properties was well within the authority and discretion of the RTC as an intestate court. In making its determination, the RTC acted with circumspection, and proceeded under the guiding policy that it was best to include all properties in the possession of the administrator or were known to the administrator to belong to Emigdio rather than to exclude properties that could turn out in the end to be actually part of the estate. As long as the RTC commits no patent grave abuse of discretion, its orders must be respected as part of the regular performance of its judicial duty. Grave abuse of discretion means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board

evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction.[39]

In light of the foregoing, the CA's conclusion of grave abuse of discretion on the part of the RTC was unwarranted and erroneous.

WHEREFORE, the Court GRANTS the petition for review on certiorari; REVERSES and SETS ASIDE the decision promulgated on May 15, 2002; REINSTATES the orders issued on March 14, 2001 and May 18, 2001 by the Regional Trial Court in Cebu; DIRECTS the Regional Trial Court in Cebu to proceed with dispatch in Special Proceedings No. 3094-CEB entitled Intestate Estate of the late Emigdio Mercado, Thelma Aranas, petitioner, and to resolve the case; and ORDERS the respondents to pay the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-De Castro, Villarama, Jr., and Reyes, JJ., concur.

[1] Instead of administratrix, the gender-fair term administrator is used.

[2] Rollo, p. 118.

[3] Id. at 125.

[4] Id. at 127-129.

[5] Id. at 130.

[6] Id. at 134.

[7] Id. at 56.

[8] Id. at 135.

[9] Id. at 140.

[10] Id. at 24.

[11] Id. at 156.

[12] Id. at 25.

[13] Id. at 21-34; penned by Associate Justice Mercedes Gozo-Dadole (retired), and concurred by Associate Justice Salvador J. Valdez, Jr. (retired/deceased) and Associate Justice Amelita G. Tolentino.

[14] Rollo, pp. 32-33.

[15] Rollo, p. 35.

[16] G.R. No. 156358, August 17, 2011, 655 SCRA 553, 566-567.

[17] No. L-39532, July 20, 1979, 91 SCRA 540.

[18] Id. at 545-546.

[19] G.R. No. 128781, August 6, 2002, 386 SCRA 216, 226-227.

[20] G.R. No. 75773, April 17, 1990, 184 SCRA 367, 372.

[21] Section 1, Rule 41 of the Rules of Court (as amended under A.M. No. 07-7-12-SC; effective December 27, 2007) provides:

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:

- (a) An order denying a petition for relief or any similar motion seeking relief from judgment;
- (b) An interlocutory order;
- (c) An order disallowing or dismissing an appeal;
- (d) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;
- (e) An order of execution;
- (f) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and
- (g) An order dismissing an action without prejudice.

In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action as provided in Rule 65.

[22] The word all means “every one, or the whole number of particular; the whole number” (3 Words and Phrases 212, citing *State v. Maine Cent. R. Co.*, 66 Me. 488, 510). Standing alone, the word all means exactly what it imports; that is, nothing less than all (*Id.* at 213, citing *In re Staheli’s Will*, 57 N.Y.S.2d 185, 188).

[23] *Siy Chong Keng v. Collector of Internal Revenue*, 60 Phil. 493, 500 (1934).

[24] 71 Phil. 66 (1940).

[25] *Id.* at 68.

[26] G.R. No. 177099, June 8, 2011, 651 SCRA 455.

[27] *Id.* at 471-473, citing, among others, *Coca v. Pizarra Vda. De Pangilinan*, No. L-27082, January 31, 1978, 81 SCRA 278, 283; *Alvarez v. Espiritu*, No. L-18833, August 14, 1965, 14 SCRA 892, 899; *Cunanan v. Amparo*, 80 Phil. 227 (1948); and *Pascual v. Pascual*, 73 Phil. 561 (1942).

[28] *Rollo*, pp. 139-140.

[29] See FAMILY CODE, Art. 105, 116.

[30] *Dewara v. Lamela*, G.R. No. 179010, April 11, 2011, 647 SCRA 483, 490, citing *Coja v. Court of Appeals*, G.R. No. 151153, December 10, 2007, 539 SCRA 517, 528.

[31] See *Alvarez v. Espiritu*, No. L-18833, August 14, 1965, 14 SCRA 892, 899.

[32] *San Juan v. Offril*, G.R. No. 154609, April 24, 2009, 586 SCRA 439, 445-446 citing *Nazareno v. Court of Appeals*, G.R. No. 138842, October 18, 2000, 343 SCRA 637, 652.

[33] G.R. No. 114950, December 19, 1995, 251 SCRA 430, 452-453, cited in *Nazareno v. Court of Appeals*, G.R. No. 138842, October 18, 2000, 343 SCRA 637, 652.

[34] Rollo, p. 138.

[35] Rabaja Ranch Development Corporation v. AFP Retirement and Separation Benefits System, G.R. No. 177181, July 7, 2009, 592 SCRA 201, 217, citing Republic v. Guerrero, G.R. No. 133168, March 28, 2006, 485 SCRA 424, 445.

[36] Reyes-Mesugas v. Reyes, G.R. No. 174835, March 22, 2010, 616 SCRA 345, 350, citing Pio Barretto Realty Development, Inc. v. Court of Appeals, No. L-62431-33, August 3, 1984, 131 SCRA 606.

[37] Pio Barretto Realty Development, Inc. v. Court of Appeals, *supra* at 621.

[38] Gregorio v. Madarang, G.R. No. 185226, February 11, 2010, 612 SCRA 340, 345.

[39] Delos Santos v. Metropolitan Bank and Trust Company, G.R. No. 153852, October 24, 2012, 684 SCRA 410, 422-423.

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