

## **SOTERO A. PUNONGBAYAN, PETITIONER, VS. DANILO G. PUNONGBAYAN, RESPONDENT.**

*G.R. No. 156842. December 10, 2004*

Ponente: PUNO, J.

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### **PUNO, J.:**

Assailed in this petition for review is the Decision dated August 9, 2002[1] of the Court of Appeals (CA) in CA-G.R. SP No. 63002[2] which granted the special civil action for certiorari and mandamus filed by herein respondent, as well as its Resolution dated January 14, 2003[3] which denied petitioner's motion for reconsideration.

The antecedent facts are as follows:

On July 31, 1969, Escolastica Punongbayan-Paguio died intestate leaving behind considerable properties in Misamis Oriental, Iligan City, and Bulacan. She was survived by her husband, Miguel Paguio; brothers Nicolas (now deceased) and SOTERO (herein petitioner), sisters Leonila and Leonora (both now deceased), all surnamed Punongbayan; nephews DANILO (herein respondent), Restituto, Perfecto, and Alfredo, and nieces Brigida, Lilia, Marilou, Adeluisa, and Grace, who were the children of Escolastica's brother, Perfecto Punongbayan, Sr., who predeceased her. Proceedings for the settlement of her estate were initiated in the then Court of First Instance of Misamis Oriental, docketed as Special Proceedings No. 1053.[4] Miguel Paguio was appointed administrator and later, DANILO, as co-administrator to represent the interests of the Punongbayan family.

On September 30, 1974, the above-mentioned heirs executed a compromise agreement distributing among themselves the estate of the decedent consisting of forty-one (41) parcels of land in Misamis Oriental, Iligan City, and Bulacan. They likewise authorized the administrator to sell five (5) parcels of land to pay the liabilities of the estate. The intestate court approved the agreement on June 7, 1976. Intestate proceedings, however, were left dormant from 1976 to 1993. On August 4, 1994, SOTERO, Leonila and Leonora (both now deceased) moved for the immediate distribution of the estate in accordance with the Compromise Agreement of 1974. They asked that DANILO be ordered to deposit the proceeds from the sales of estate properties with the Clerk of Court and to render an accounting of his administration for the past twenty (20) years. [5]

The intestate court granted the motion in an Order dated February 1, 1995 and directed DANILO to –

- Effect the immediate distribution of the Estate in accordance with the Compromise Agreement dated September 30, 1974 approved by this Honorable Court in its Order of June 7, 1976;
- Deposit with the Clerk of Court the proceeds of the sale of whatever properties [were] already sold; and
- Render an accounting of his administration of the estate for the last twenty (20) years or from the time he assumed as administrator up to the present, within sixty (60) days from receipt of this Order.

DANILO assailed[6] the order in a special civil action for certiorari with the CA[7] which, however, dismissed

the same. We affirmed the dismissal in G. R. No. 128928,[8] there being no reversible error on the part of the CA.[9] After the decision became final and executory, the corresponding writ of execution was issued by the intestate court on March 30, 1998. The writ was served upon DANILO's wife but not upon DANILO himself as he was always absent from his residence and place of work whenever the sheriff came to serve the writ. A warrant of arrest was issued against him. DANILO filed an urgent motion to recall the warrant which was denied. Consequently, he assailed the order in a petition for certiorari before the CA, docketed as CA-G.R. SP No. 57754.[10] During the pendency of the petition, DANILO was arrested but was later on released from custody by the CA upon his manifestation that he will comply with the intestate court's writ of execution, copy of which was served upon him in open court, and that he will attend the next hearing to submit the certificates of placement of the proceeds from the sales of a substantial portion of the estate under his administration. Respondent did not appear during said hearing which prompted the CA to recall his release order and to direct the National Bureau of Investigation to arrest him. On October 19, 2000, the CA dismissed the petition for utter lack of merit, ruling that DANILO's clear and contumacious refusal to obey the intestate court's writ of execution for several years should no longer be countenanced.[11]

Meanwhile, SOTERO moved for his appointment as co-administrator of the estate in June 2000 on the grounds that DANILO failed to discharge his duties as administrator, to render an accounting of his administration, and to turn over P25,000,000.00 in proceeds from the sales of a substantial portion of the estate, as required in the Order dated February 1, 1995. The motion was granted and SOTERO took his oath as co-administrator of the estate on August 30, 2000.

On September 1, 2000, DANILO filed a "Motion to Order Sotero Punongbayan to Render an Accounting"[12] alleging that SOTERO appropriated five (5) lots of the estate to the exclusion of the other heirs; that two (2) of the five lots were illegally sold to third persons while two (2) others were illegally transferred in his own name; and, that the fifth lot was leased to a third person without turning over lease rentals to the estate. DANILO alleged that he encountered difficulties in rendering an accounting of estate income and properties because of the illegal sales and lease made by SOTERO. Hence, DANILO alleged that SOTERO should be made to account first for the income derived from such illegal transfers and lease before he (DANILO) could render the full accounting required by the intestate court.

The motion was denied in an Order dated September 15, 2000[13] as well as a subsequent motion for reconsideration thereof.[14] DANILO again filed a special civil action for certiorari and mandamus with the CA to assail the order.[15]

On August 9, 2002, the CA rendered its decision, the dispositive portion of which reads –

WHEREFORE, there being grave abuse of discretion in the issuance of the Orders dated September 15, 2000 and November 10, 2000, this petition is GRANTED and said Orders are hereby NULLIFIED and SET ASIDE and in lieu thereof, an Order is hereby issued ordering private respondent Sotero Punongbayan to render an accounting of all the properties and monies belonging to the estate that came into his possession and to deposit with the probate (sic) court the proceeds of the sale of the estate properties.

SO ORDERED.[16]

SOTERO's motion for reconsideration was denied.[17] Hence, this petition for review.

Respondent raised certain procedural infirmities in his comment which allegedly warrant the outright dismissal of the petition.[18] We find no merit in them, [19] hence, proceed to resolve this petition on the merits.

Two substantial issues confront us: First, whether the intestate court's Order dated September 15, 2000 was a

final order which should have been appealed by respondent, or an interlocutory one which was properly assailed in a petition for certiorari with the CA on the ground of grave abuse of discretion. Second, whether the CA erred in granting the writ of certiorari.

A court order is final in character if it puts an end to the particular matter resolved, or settles definitely the matter therein disposed of, such that no further questions can come before the court except the execution of the order.[20] On the other hand, a court order is merely interlocutory if it is provisional and leaves substantial proceeding to be had in connection with its subject.[21]

In the instant case, the Order dated September 15, 2000, which denied respondent's motion for petitioner to render an accounting was an interlocutory order. The motion was filed under Section 8, Rule 85 of the Rules of Court, which provides –

Every executor or administrator shall render an account of his administration within one (1) year from the time of receiving letters testamentary or of administration, unless the court otherwise directs because of extensions of time for presenting claims against, or paying the debts of, the estate, or of disposing of the estate; and he shall render such further accounts as the court may require until the estate is wholly settled.

and Sec. 7, Rule 87, of the same Rules, which provides –

The court, on complaint of an executor or administrator, may cite a person entrusted by an executor or administrator with any part of the estate of the deceased to appear before it, and may require such person to render a full account, on oath, of the money, goods, chattels, bonds, accounts, or other papers belonging to such estate as came to his possession in trust for such executor or administrator, and of his proceedings thereon; and if a person so cited refuses to appear to render such account, the court may punish him for contempt as having disobeyed a lawful order of the court.

Applying Sec. 8, Rule 85, the intestate court denied the motion on the ground that it was premature considering that petitioner has been co-administrator for only one (1) day at the time it was filed. With the denial, petitioner's accountability as co-administrator was in no way settled as it did not preclude or forestall future accountings by him which, under said Sec. 8, he is obliged to render within one (1) year from receiving letters of administration, or as required by the court until the estate is settled. Neither an accounting or an examination of petitioner under Section 7, Rule 87, definitely settle the issue of his alleged illegal transfers and lease since a proceeding under this section, like that under Sec. 6[22] of the same Rule, is merely in the nature of fact-finding inquiries.[23] It is intended to elicit information or evidence relative to estate properties. The Regional Trial Court (RTC) of Cagayan de Oro City which has jurisdiction over the administration and settlement of the estate has limited jurisdiction and is without authority to resolve issues of ownership with finality especially when third persons are involved.[24] Separate actions should be instituted by the administrator for the purpose.[25] In fine, denial of respondent's motion for petitioner to render an accounting is an interlocutory order not subject to appeal but may be challenged before a superior court through a petition for certiorari under Rule 65.[26]

Be that as it may, we rule that the CA erred in granting the writ of certiorari.

Certiorari under Rule 65 will lie only where a grave abuse of discretion or an act without or in excess of jurisdiction is clearly shown.[27] The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[28]

The intestate court correctly denied respondent's motion for accounting. It is obvious that the motion was just another ploy of the respondent to delay his compliance with the court's Order dated February 1, 1995 directing him to render an accounting of his administration of the estate and to turn over the certificates of placement of the

proceeds from the sales of estate properties amounting to millions of pesos, which has long become final and executory with its affirmance by the CA in CA-G.R. SP No. 41156[29] and finally by this Court, in G.R. No. 128928.[30] Indeed, the ground resurrected by respondent in the motion, that petitioner should be made to account first for the alleged illegal transfers of estate properties made by him before he (respondent) could render his own accounting, was already passed upon and rejected by the CA in aforesaid CA-G.R. SP No. 41156, viz:

x x x [P]etitioner's argument that the intestate court should first declare illegal sales of estate properties made by Sotero Punongbayan and other heirs, is incorrect for two reasons: (1) the petitioner has already initiated cases for the annulment of the said sales x x x hence, the intestate court will be barred from entertaining and resolving the same controversies by the principle of *lis pendens*, and (2) questions of title to real property cannot be determined in testate or intestate proceedings.[31]

The issue of petitioner's alleged illegal transfers are, in fact, pending before the RTC of Malolos, Bulacan where cases[32] for their annulment have been filed by respondent. Respondent admits that they involve the very same properties in respect to which the motion for accounting was filed.[33] Thus, there is no more reason for respondent to further delay the accounting of his administration of the estate for even the petition for certiorari which he filed to question the warrant of arrest that had to be issued for his non-compliance was dismissed by the CA in CA-G.R. SP No. 57754[34] wherein his "clear and contumacious" refusal to obey court processes was condemned.

Clearly, respondent was not entitled to the writ of certiorari erroneously issued by the CA. Certiorari, being an equitable remedy, will not issue where the petitioner is in bad faith.[35]

IN VIEW WHEREOF, the petition is GRANTED. The assailed Decision dated August 9, 2002 of the Court of Appeals in CA-G.R. SP No. 63002, as well as its Resolution dated January 14, 2003, are REVERSED and SET ASIDE. The Order dated September 15, 2000 of the Regional Trial Court of Cagayan de Oro City, Branch 19, in Special Proceedings No. 1053 is REINSTATED.

### SO ORDERED.

Austria-Martinez, Callejo, Sr., Tinga, and Chico-Nazario, JJ., concur.

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[1] Rollo, pp. 55-63.

[2] Entitled "Danilo G. Punongbayan v. Hon. Anthony E. Santos, in his capacity as Presiding Judge of Branch 19, Regional Trial Court of Cagayan de Oro City, and Sotero A. Punongbayan."

[3] Rollo, pp. 65-66.

[4] Entitled "In the Matter of the Intestate Estate of the deceased Escolastica Punongbayan-Paguio."

[5] Miguel Paguio relinquished his right to act as administrator after he received all his shares, conjugal as well as an heir, in the estate of his deceased wife in accordance with the Compromise Agreement of 1974. See Resolution dated August 14, 2000 of the RTC-Cagayan de Oro City, Branch 19, in Spec. Proc. No. 1053; CA Rollo, p. 228.

[6] He contended: (1) that Sotero Punongbayan and other heirs made unauthorized sales of estate properties in Bulacan which should first be declared illegal before a distribution of estate properties could be made; (2) that the proceeds from sales of estate properties were deposited in three banks in the name of the estate and it is better that they remain there; and (3) that he is still consolidating all income of the estate for purposes of accounting.

[7] Docketed as CA-G.R. SP No. 41156 and entitled "Danilo G. Punongbayan v. Hon. Anthony E. Santos and

Sotero Punongbayan.”

[8] Entitled “Danilo Punongbayan v. Court of Appeals, et al.”

[9] Resolution dated June 23, 1997.

[10] Entitled “Danilo G. Punongbayan v. Sotero A. Punongbayan.”

[11] CA Rollo, pp. 194-203.

[12] Id. at 108-111.

[13] Rollo, p. 93.

[14] Order dated November 10, 2000.

[15] Supra at Note 2.

[16] Rollo, p. 62.

[17] Resolution dated January 14, 2003.

[18] The grounds are: the Court of Appeals was erroneously impleaded as party-respondent in the petition; and, no affidavit of service was attached to the motion for extension of time to file petition and to the petition itself.

[19] Petitioner’s affidavits of service of the motion for extension of time to file petition and of the petition itself appear on pages 8 and 53, respectively, of the rollo of this case.

[20] Hydro Resources Contractors Corporation v. Court of Appeals, 204 SCRA 309, 318-319 (1991).

[21] Id. at 319.

[22] Sec. 6. Proceedings when property concealed, embezzled, or fraudulently conveyed. - If an executor or administrator, heir, legatee, creditor, or other individual interested in the estate of the deceased, complains to the court having jurisdiction of the estate that a person is suspected of having concealed, embezzled, or conveyed away any of the money, goods, or chattels of the deceased, or that such person has in his possession or has knowledge of any deed, conveyance, bond, contract, or other writing which contains evidence of or tends to disclose the right, title, interest, or claim of the deceased to real or personal estate, or the last will and testament of the deceased, the court may cite such suspected person to appear before it and may examine him on oath on the matter of such complaint and if the person so cited refuses to appear, or to answer on such examination or such interrogatories as are put to him, the court may punish him for contempt, and commit him to prison until he submits to the order of the court.

[23] Regalado, F., Remedial Law Compendium (2000), Vol. II, p. 79.

[24] See Valera v. Inserto, 149 SCRA 533 (1987), re Sec. 6, a similar fact-finding inquiry sanctioned under Rule 87 of the Rules of Court.

[25] Id.

[26] See Chua v. Absolute Management Corporation, 413 SCRA 547 (2003), re Sec. 6 of Rule 87.

[27] Palomado v. National Labor Relations Commission, 257 SCRA 680 (1996).

[28] Commissioner of Internal Revenue v. Court of Appeals, 257 SCRA 200 (1996); Paredes v. Civil Service Commission, 192 SCRA 84 (1990).

[29] Supra at Note 7.

[30] Supra at Note 8.

[31] CA Rollo, pp. 187-192.

[32] Civil Case No. 361-M-94 entitled “Danilo G. Punongbayan v. Sotero Punongbayan, et al.” and Civil Case No. 722-M-94 entitled “Danilo G. Punongbayan v. Sotero Punongbayan,” both for reconveyance; See Petition, p. 35, Rollo, p. 45; also respondent’s Comment, pp. 10-11, Id., pp. 225-226.

[33] See Comment, p. 11; Id., p. 226.

[34] Supra at Note 10.

[35] See *Manahan v. Cruz*, 61 SCRA 137 (1974).

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