

MANUEL REFUERZO AND MELCHOR JULOYA, PETITIONERS, VS. HEIRS OF THE LATE FRANCISCO REFUERZO, SR., RESPONDENTS.

G.R. NO. 162442. October 23, 2006

Ponente: GARCIA, J.

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GARCIA, J.:

Assailed and sought to be set aside in this petition for review under Rule 45 of the Rules of Court is the February 24, 2004 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 69874 affirming the orders issued by Branch 31 of the Regional Trial Court (RTC) of Agoo, La Union in its Civil Case No. A-1978, granting execution pending appeal in favor of the herein respondent Heirs of the Late Francisco Refuerzo, Sr.

The main case - Civil Case No. A-1978 - from whence sprung the affirmed orders of execution pending appeal is an action for Recovery of Ownership and Possession, Annulment of Deeds, Titles and Tax Declarations and Damages filed by the respondent heirs against the herein petitioners Manuel Refuerzo and Melchor Juloya. Involved in that suit is a parcel of land of about eighteen thousand four hundred and eight (18,408) square meters located at San Eugenio Aringay, La Union and covered by Original Certificate of Title (OCT) No. RO-3184 (8325) in the name of Francisco Refuerzo, Sr. The respondent heirs claimed ownership of the same land as the legal heirs of its registered owner, the late Francisco Refuerzo, Sr.

In their complaint, the heirs, as plaintiffs, alleged that petitioner Manuel Refuerzo, under the pretense of being the son of the late Francisco Refuerzo, Sr., deceitfully and maliciously executed an Affidavit of Adjudication adjudicating unto himself the one-half (½) southern portion of the property subject of the suit and thereafter sold said portion to his co-petitioner Melchor Juloya via a Deed of Sale of Real Property dated October 19, 1995, even as Juloya knew that the land was registered in the name of respondent heirs; and that of December 19, 1995, Manuel again executed a deed of sale, this time disposing of a western portion of the property in favor of Gina R. Parentila and Edna P. Gatchalian. The plaintiff heirs alleged that in all these transactions, the respective transferees knew that they (the heirs) were the registered owners of the property sold, hence all the aforementioned conveyances were null and void, the buyers being purchasers in bad faith.

In the same complaint, the respondent heirs further claim that the issuance of tax declarations in favor of the transferees and the cancellation of OCT No. RO-3184 (8325) and the resulting Transfer Certificates of Title Nos. T-46214, T-46215 and T-46216 issued in the name of the transferees were null and void, and that despite demands to restore possession and ownership of the land in question, petitioners Manuel Refuerzo and Melchor Juloya refused to surrender possession or to effect the cancellation of all the derivative titles, deeds of conveyances and tax declarations, thereby depriving the respondent heirs of their beneficial use of the property in dispute.

On the other hand, the petitioners, as defendants a quo, countered that Manuel Refuerzo is the surviving son and legal heir of the late Francisco Refuerzo, Sr. Hence, upon the demise of Francisco Refuerzo, Sr., Manuel succeeded and became the owner of the subject property which he thereafter adjudicated unto himself in good

faith; and that as new owner of the property, he sold the same to Melchor Juloya who subsequently caused the subdivision thereof and transferred the subdivided portions for value to the other transferees who are buyers in good faith.

In a decision dated October 31, 2001, the trial court rendered judgment for the respondent heirs. In substance, the court found Manuel to be a mere grandson of the late Francisco Refuerzo, Sr., who, with his second wife Maria Rulloda, merely took Manuel as a "tagibe" or a ward. It was the trial court's finding that Manuel was the son of Romeo Refuerzo (admittedly a son of Francisco Refuerzo, Sr.) and Josefina Aspiras. As such, Manuel is merely a brother of the other sons of Romeo, namely, Mario, Julios and Teodoro, all surnamed Refuerzo. Because Manuel is not a legitimate child or primary heir of the late Francisco Refuerzo, Sr., the trial court ruled that the affidavit of adjudication executed by Manuel cannot present a valid claim on the land registered in the names of the respondent heirs, the same affidavit having been executed by Manuel in bad faith, misrepresentation and fraud of the legal title and absolute ownership of the respondent heirs. In the same decision, the trial court also annulled all documents flowing from the nullified affidavit of adjudication and all tax declarations and certificates of titles issued to the transferees, and ordered the restoration of OCT No. RO-3184 (8325). We quote the dispositive portion of the trial court's decision.

WHEREFORE, this Court renders judgment in favor of plaintiffs and against defendants.

This Court declares the Affidavit of Adjudication dated August 10, 1995 null and void.

Consequently, it is ordered that all documents executed, issued or made flowing from said herein-nullified affidavit of adjudication are also annulled. This includes the Deed of Sale of Portion of Land dated December 19, 1995, the Deed of Donation of Parcel of Land dated October 10, 1996, the Transfer Certificates of Titles No. T-46214, T-46215, T-46216 and all tax declarations relating to them like Tax Declarations Nos. 15117, 15118, 15119, 15189, 93-014-15296 and 15859.

The Register of Deeds of La Union, the Provincial Assessor of La Union and the Municipal Assessor of ARINGAY, La Union are hereby directed to effect the cancellation of all transfer certificates of titles and tax declarations herein mentioned.

Original Certificate of Title No. Ro-3184 (8325) should be restored. The Register of Deeds is ordered to do so.

The newly-issued duplicate copy thereof is voided.

Defendants Melchor Juloya and Manuel Refuerzo are ordered to pay plaintiff's (sic) attorney's fees in the amount of FIFTY THOUSAND PESOS (P50,000.00). They are also ordered to pay TWENTY THOUSAND PESOS (P20,000.00) in litigation expenses. In addition, the two (2) defendants mentioned (Melchor Juloya and Manuel Refuerzo) are ordered to pay plaintiffs jointly and severally the amount of FIFTY THOUSAND (P50,000.00) in moral damages.

SO ORDERED.

On November 23, 2001, the petitioners, through their new counsel, Atty. Raul dela Cruz, filed a motion for reconsideration of the trial court's aforementioned decision on the following grounds:

- That the trial court has no jurisdiction over the original case;
- That the issue of filiation of Manuel Refuerzo was never raised in the complaint and thus the trial court erred in disputing his legitimacy;
- That the property right of Francisco Refuerzo was automatically transmitted upon his death in favor of Manuel;

- That the court erred in declaring that Manuel is not a son of Francisco; that being a legitimate son of Francisco, the conveyances made in favor of third persons were valid and effective;
- That upon the death of the mother of the plaintiffs (children of the first marriage with Francisco), the conjugal partnership was terminated that resulted to ½ share to Francisco and the other ½ to the children of the first marriage; and
- That the second marriage of Francisco to Maria Rulloda created a new conjugal property relationship and out of the marriage, Manuel was born who automatically succeeded to said properties decreed in OCT No. RO-3184.

In an order dated December 18, 2001, the trial court denied the petitioners' motion for reconsideration, to wit:

In the determination of whether the deeds or instruments have to be annulled, specifically the Affidavit of Adjudication, the issue as to whether Manuel Refuerzo is a legitimate child of Francisco Refuerzo and Maria Rulloda has to be passed upon. It appears, as was found by the Court, that Manuel Refuerzo is the son of Romeo Refuerzo and therefore a grandson of Francisco Refuerzo Sr.

The Motion for Reconsideration is DENIED.

Moreover, as observed by Atty. Pablo M. Olarte, this Motion for Reconsideration was filed by a counsel purporting to be a co-counsel when in fact as a matter of record, Atty. Lazaro C. Gayo, is still the chief counsel on record, without the latter's approval or conformity for orderly representation.

Atty. Olarte argued that the Motion filed by Atty. Raul dela Cruz is a mere scrap of paper.

SO ORDERED.

Alleging that they received a copy of the aforequoted order only on January 4, 2002, the petitioners, through Atty. Dela Cruz, filed with the lower court a Notice of Appeal on January 8, 2002.

Meanwhile, in an Order dated December 19, 2001, the trial court, on motion of the respondent heirs, granted execution pending appeal due to petitioners' disposal of parts or portions of the subject property to the prejudice of the general public, especially potential buyers of portions thereof. The order of execution reads:

Let a writ of execution issue in accordance with the dispositive portion of the decision of this Court dated October 31, 2001 with the exception of the award of attorney's fees, litigation expenses and moral damages. Such part of the dispositive portion of the decision (award of attorney's fees, litigation expenses and moral damages) may be executed when the decision has become final.

SO ORDERED.

On January 5, 2002, the petitioners filed a Motion for Reconsideration of the aforequoted Order of execution pending appeal, which motion was denied by the trial court in its subsequent Order of January 23, 2002.

Petitioners, alleging that the trial court gravely abused its discretion in issuing its orders of December 19, 2001 and January 23, 2002, went on certiorari to the CA in CA-G.R. SP No. 69874, assailing the said orders of the trial court.

As stated at the outset thereof, the CA, in its decision of February 24, 2004, dismissed the petition in CA-G.R. SP No. 69874 and affirmed in toto the assailed orders of December 19, 2001 and January 23, 2002 of the trial court, thus:

WHEREFORE, the foregoing considered, the petition is DISMISSED and the assailed orders of public respondent AFFIRMED in toto.

SO ORDERED.

Hence, petitioners' present recourse raising the following issues:

- Whether the CA overstepped its jurisdiction in affirming the issuance of the contested writ of execution pending appeal committed by the RTC without passing judgment upon the issue of jurisdiction and propriety of the action raised by petitioner;
- Whether the RTC and CA erred in declaring petitioner Manuel Refuerzo as not the son of the deceased Francisco Refuerzo, Sr., married to the late Maria Rulloda although he (sic) has no authority or jurisdiction to do so;
- Whether or not the RTC and CA have jurisdiction or authority to declare the birth certificate of petitioner as null and void;
- Whether Article 170 of the New Civil Code bars respondents from impugning the legitimacy of petitioner Manuel Refuerzo;
- Whether the RTC and CA erred in not dismissing the complaint considering that the nature of the case was that of an intestate estate proceeding; and
- Whether the RTC and CA erred in declaring all adjudication and deeds of sale as null and void ab initio considering that he (sic) has no authority.

We DENY.

First and foremost, it must be emphatically made clear herein that what the petitioners assail in these proceedings is the CA decision affirming the RTC's orders granting execution pending appeal, and not the very decision itself dated October 31, 2001 of the RTC on the merits of the main case.

It is, therefore, misplaced and procedurally improper for the petitioners to inject into this petition arguments which undoubtedly pertain to the trial court's main decision of October 31, 2001 in the basic case, Civil Case No. A-1978.

In this connection, we note that an appeal was precisely taken to the CA by the petitioners from the trial court's main decision of October 31, 2001. Unfortunately, the appeal thus taken, docketed in the CA as CA-G.R. CV No. 7641, was declared abandoned and consequently dismissed by the appellate court in its resolution[2] of September 25, 2003 on account of the petitioners' failure to file their appellants' brief within the reglementary period. In fact, an entry of judgment[3] in CA-G.R. CV No. 7641 was already made by the appellate court on September 25, 2003.

In resolving this petition, we shall, therefore, confine our discussion on the propriety of the trial court's Order of December 19, 2001 granting execution pending appeal, as reiterated in its subsequent Order of January 23, 2002 denying the petitioners' motion for reconsideration of the first.

We rule and so hold, as did the CA, that the challenged orders of the trial court were issued very much within its jurisdiction and pursuant to Rule 39, Section 2 of the Rules of Court which reads:

Section 2. Discretionary execution. -

(a) Execution of a judgment or a final order pending appeal - On motion of the prevailing party with notice to the adverse party filed in the trial court while it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to

appeal.

After the trial court has lost jurisdiction, the motion for execution pending appeal may be filed in the appellate court.

Discretionary execution may be granted by the court while it has jurisdiction over the case and is still in possession of the original records thereof. At the time the RTC issued the questioned orders, that court still had jurisdiction over the main case since the petitioners, at the time the challenged orders were issued, had not yet perfected their appeal from the October 31, 2001 decision of the same court. Petitioners filed their Notice of Appeal only on January 8, 2002, whereas the order of execution pending appeal was issued way back on December 19, 2001, as reiterated in the Order of January 23, 2002 denying the petitioners' motion for reconsideration of the first.

Moreover, when those orders were issued, the records of the case were still in the possession or custody of the trial court. Rule 41, Section 9 of the Rules of Court states:

Section 9. Perfection of appeal; effect thereof. - A party's appeal by notice of appeal is deemed perfected as to him upon the filing of the notice of appeal in due time.

A party's appeal by record on appeal is deemed perfected as to him with respect to the subject matter thereof upon the approval of the record on appeal filed in due time.

In appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties.

In appeals by record on appeal, the court loses jurisdiction only over the subject matter thereof upon the approval of the records on appeal filed in due time and the expiration of the time to appeal of the other parties.

In either case, prior to the transmittal of the original record or the record on appeal, the court may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, approve compromises, permit appeals of indigent litigants, order execution pending appeal in accordance with Section 9 of Rule 39, and allow withdrawal of the appeal. [Emphasis supplied.]

Clearly, prior to the transmittal of the records to the appellate court, the trial court may issue orders for the protection and preservation of the rights of the parties, among which is to order execution pending appeal. Hence, the RTC acted within its discretion in issuing the order of execution pending appeal and in denying the petitioners' motion for reconsideration thereof. As stated earlier, the trial court issued its order of execution pending appeal on December 19, 2001 on motion of the respondent heirs due to the petitioners' disposal of parts or portions of the property subject of the litigation. In fine, the CA committed no error in affirming the said errors of the trial court. Indeed, for the petitioners to stay execution pending appeal, their remedy would have been to post a supersedeas bond under Section 3, Rule 39 of the Rules of Court. This, they failed to do.

To stress, the only issue validly raised in this petition relates to the order of execution pending appeal. With the reality that the petitioners' appeal from the main of the trial court was dismissed by the CA in CA-G.R. CV No. 7641 and a corresponding entry of judgment already made thereon, the petitioners' challenge against the trial court's order of execution pending appeal is now purely academic. We are thus inclined to believe that the petitioners resorted to this recourse in a bid to revive their lost appeal, which must have explained why they injected in this petition arguments relative to the merits of the trial court's decision of October 31, 2001. There is thus merit in the respondents' submission that the petitioners had thereby embarked in the pernicious practice of forum shopping.

WHEREFORE, the instant petition is DENIED and the assailed CA decision is AFFIRMED.

With treble costs against the petitioners.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Corona, and Azcuna, JJ., concur.

[1] Penned by Associate Justice Josefina Guevara Salonga, with Associate Justices Salvador J. Valdez, Jr. (ret.) and Arturo P. Brion (now Secretary of Labor and Employment), concurring; Rollo, pp. 26-38.

[2] Id. at 87.

[3] Id. at 88.

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