MARYWIN ALBANO-SALES, PETITIONER, VS. MAYOR REYNOLAN T. SALES AND COURT OF APPEALS, RESPONDENTS.

G.R. No. 174803. July 13, 2009

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

The instant petition for review assails the Decision[1] dated July 26, 2006, of the Court of Appeals in CA-G.R. CV No. 82869. The Court of Appeals had set aside the Orders dated November 28, 2003[2] and April 12, 2004[3] of the Regional Trial Court (RTC) of Quezon City, Branch 102 in Civil Case Nos. Q-94-19236 and Q-97-32303, and remanded the case to the RTC for further hearing in accordance with the RTC Order[4] dated September 3, 2003.

The present controversy stemmed from Civil Case No. Q-94-19236 filed by Marywin Albano Sales against her husband, Mayor Reynolan T. Sales, for the dissolution of the conjugal partnership and separation of properties, and Civil Case No. Q-97-32303 filed by Mayor Reynolan T. Sales for the declaration of nullity of their marriage. The two cases were consolidated and tried jointly.

On January 4, 2000, the RTC rendered judgment[5] declaring the marriage of Marywin and Reynolan void on the ground of mutual psychological incapacity. It also ordered the dissolution of their conjugal partnership. The fallo of the decision reads:

> WHEREFORE, judgment is hereby rendered as follows:
>
> 1) The marriage between plaintiff/defendant Reynolan Sales and defendant/plaintiff Marywin Albano Sales is hereby declared void ab initio on the ground of mutual psychological incapacity of the parties pursuant to Article 36 of the Family Code;
>
> 2) The parties Reynolan Sales and Marywin Albano Sales are hereby directed to liquidate, partition and distribute their common property as defined in Article 147 of the Family Code within sixty (60) days from receipt of this decision, and to comply with the provisions of Articles 50, 51 and 52 of the Family Code insofar as they may be applicable;
>
> 3) Reynolan Sales and Marywin Sales shall share in the expenses for the support and education of their only child Maindryann Sales in proportion with their respective resources.
>
> x x x x
>
> SO ORDERED.[6]

On June 16, 2003, after the decision became final, Marywin filed a motion for execution and a manifestation listing her assets with Reynolan for the purpose of having them partitioned. Reynolan opposed the motion arguing that the RTC Decision had ordered the distribution of their common properties without specifying what they were. He also claimed that Marywin has no share in the properties she specified because said properties were the fruits solely of his industry. He added that their property relations should not be governed by the rules of co-ownership

because they did not live together as husband and wife. He also alleged that Marywin appropriated the rentals of his properties and even disposed one of them without his consent, in violation of Article 147[7] of the Family Code. Accordingly, he prayed for the deferral of the resolution of the motion for execution, maintaining that no partition of properties can be had until after all the matters he raised are resolved after due notice and hearing.

In an Order dated September 3, 2003, the RTC set the case for hearing on September 25, 2003 and ordered the reception of evidence on the parties' respective claims. The hearing was reset twice to November 13, 2003 and January 22, 2004. The November 13, 2003 hearing was cancelled due to the absence of the presiding judge who was on a seminar at Tagaytay during that time. But the minutes of the session that day shows that the counsels for both parties signed for the next hearing on January 22, 2004.

On November 24, 2003, Marywin filed a reiterative motion for execution to implement the decision and to order partition of their common properties.[8] She brought to the attention of the court the 12 units of townhouses at Xavierville Subdivision, Quezon City, four units of which were sold, leaving eight units for disposition between her and Reynolan. She proposed to give out two units to their son Maindryann and equally divide the remaining six units between her and Reynolan. She also alleged that she tried to obtain Reynolan's approval on the proposed partition of properties, but to no avail.

The reiterative motion was set for hearing on November 28, 2003 with the words at the foot of the last page "copy furnished Atty. Oscar G. Raro", Reynolan's counsel and a rubber stamped imprint showing receipt. Said stamp imprint reads, "Raro Palomique Pagunuran Acosta and Villanueva, RECEIVED, date: 24 Nov. 2003, Time: 11:45 am, By: Amy."[9]

On November 28, 2003, the reiterative motion was heard in the absence of Reynolan and his counsel. On the same date, the RTC issued an order approving the proposed project of partition since the proposal appears to be reasonable and there has been no opposition or appearance from Reynolan despite several resetting of hearings. Consequently, the branch clerk of court was ordered to execute the necessary deeds of conveyance to distribute the eight townhouse units in accordance with the motion.

On December 16, 2003, Reynolan moved to reconsider the RTC's Order dated November 28, 2003, prayed for its reversal and the reinstatement of the RTC's previous Order dated September 25, 2003, which ordered the reception of evidence before resolving the proper partition of their properties. In his motion, he alleged that the sudden grant of Marywin's reiterative motion preempted the issues he previously raised, i.e., the alleged fraudulent sale and non-accounting of rentals of the townhouses, and whether their property relations is governed by the rules on co-ownership.

Marywin opposed Reynolan's motion and argued that the issues of alleged fraudulent sale and non-accounting of rentals were already waived by Reynolan when he failed to set them up as compulsory counterclaims in the case. She also contends that the court has ordered the liquidation and distribution of their common property; thus, the question on their property relations was already a resolved issue. Reynolan replied that the reiterative motion was itself superfluous because the RTC had ordered the reception of evidence in its September 3, 2003 Order.

On April 12, 2004, the RTC denied Reynolan's motion for reconsideration. It ruled that reception of evidence is no longer necessary because the parties were legally married prior to its nullification and the fact that they begot a son whom they raised together proved that their connubial relations were more than merely transient.

Aggrieved, Reynolan appealed to the Court of Appeals claiming that the RTC hastily and improvidently granted the reiterative motion without regard to its previous order calling for the reception of evidence before ordering the partition of their properties. He averred that there is a genuine need for a hearing to adjudicate the matters he

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raised because it is decisive of the proper liquidation and partition of their properties. He also alleged that there was no proof of notice to him of the reiterative motion.

In a Decision dated July 26, 2006, the Court of Appeals ruled in favor of Reynolan. The appellate court set aside the RTC Orders dated November 28, 2003 and April 12, 2004 and remanded the case to the lower court for reception of evidence in accordance with the RTC's Order dated September 3, 2003. The Court of Appeals held that the RTC's recall of its previous order for further reception of evidence deprives and violates Reynolan's constitutional right to property. While the RTC is not prohibited from setting aside an interlocutory order, the Court of Appeals said that due process must still be observed.

The Court of Appeals further held that the reiterative motion was an ingenious strategy to circumvent the September 3, 2003 Order of the RTC. It stated that there was nothing in the reiterative motion that calls for the review of the previous RTC order calling for further reception of evidence. Thus, when the RTC treated the reiterative motion as a motion for reconsideration when it was not such a motion, it had unwittingly denied Reynolan of his right to be heard which emanated from the RTC's September 3, 2003 Order. Accordingly, the Court of Appeals disposed of the case as follows:

> IN VIEW OF THE FOREGOING, the orders of November 28, 2003 and April 12, 2004 are SET ASIDE, and the case is remanded to the lower court for a hearing in accordance with its order of September 3, 2003.
>
> SO ORDERED.[10]

Hence, the instant petition, assigning the following as errors:

> I.
>
> THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT ENTERTAINED THE APPEAL FROM AN ORDER WHICH IS IN THE NATURE OF A WRIT OF EXECUTION.
>
> II.
>
> THE [HONORABLE] COURT OF APPEALS ABUSED ITS DISCRETION IN RENDERING JUDGMENT BASED ON MISAPPREHENSION OF FACTS, SPECULATIONS, SURMISES, CONJECTURES THAT ARE MANIFESTLY MISTAKEN AND ABSURD.
>
> III.
>
> THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT PETITIONER MANIPULATED THE ISSUANCE OF THE ORDER DATED 28 NOVEMBER 2003.[11]

Stated simply, the issue is: did the Court of Appeals err when it entertained respondent's appeal from an order granting the issuance of a writ of execution?

Petitioner contends that the Court of Appeals exceeded its jurisdiction when it decided respondent's appeal because under Section 1,[12] Rule 41 of the Rules of Court, no appeal can be taken from an order of execution. She further contends that respondent was not deprived of his right to due process when the RTC approved the project of partition of their common properties without prior hearing because the right to be heard does not only refer to the right to present verbal arguments in court, but also includes the right to be heard through one's pleadings. Respondent's right to due process was not violated as he was given sufficient opportunity to submit his written opposition but failed to do so.

Respondent counters that the RTC should not have granted the reiterative motion to implement the decision and

order the partition of their common properties without prior hearing because its previous order calling for the reception of evidence had long become final and executory. He also posits that no partition can be had without proper accounting and determination of the extent of their common properties. He alleges that: (1) for 10 long years, petitioner had been collecting all the rentals from their townhouse units; (2) she had sold some units without his consent; and (3) she misappropriated the proceeds thereof.

After carefully considering the parties' contentions and submissions, we reject petitioner's claim that the Court of Appeals erred when it entertained respondent's appeal assailing the RTC Orders dated November 28, 2003 and April 12, 2004, which had reversed its previous Order dated September 3, 2003 and dispensed with the need for the reception of evidence before ordering the partition and liquidation of the parties' common properties.

To emphasize, what is being questioned by respondent was not really the January 4, 2000 Decision of the RTC declaring their marriage void ab initio on the ground of mutual psychological incapacity, but the Orders of the trial court dividing their common properties in accordance with the proposed project of partition without the benefit of a hearing. The issue on the validity of their marriage has long been settled in the main decision and may no longer be the subject of review.

Incidentally, however, there were matters of genuine concern that had to be addressed prior to the dissolution of the property relations of the parties as a result of the declaration of nullity of their marriage. Allegations regarding the collection of rentals without proper accounting, sale of common properties without the husband's consent and misappropriation of the proceeds thereof, are factual issues which have to be addressed in order to determine with certainty the fair and reasonable division and distribution of properties due to each party.

The extent of properties due to respondent is not yet discernible without further presentation of evidence on the incidental matters he had previously raised before the RTC. Since the RTC resolved these matters in its Orders dated November 28, 2003 and April 12, 2004, disregarding its previous order calling for the reception of evidence, said orders became final orders as it finally disposes of the issues concerning the partition of the parties' common properties. As such, it may be appealed by the aggrieved party to the Court of Appeals via ordinary appeal.[13]

WHEREFORE, the Decision dated July 26, 2006 of the Court of Appeals in CA-G.R. CV No. 82869 is hereby AFFIRMED. The instant case is remanded to the lower court for further reception of evidence in accordance with the RTC's Order dated September 3, 2003. No pronouncement as to costs.

SO ORDERED.

Carpio Morales, Chico-Nazario,[*] Leonardo-De Castro,[**] and Brion, JJ., concur.

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[*] Designated member of the Second Division per Special Order No. 658.

[**] Designated member of the Second Division per Special Order No. 635.

[1] Rollo, pp. 21-29. Penned by Associate Justice Mario L. Guariña III, with Associate Justices Roberto A. Barrios and Arcangelita Romilla-Lontok concurring.

[2] CA rollo, pp. 120-122.

[3] Id. at 146-147.

[4] Records, Vol. II, p. 661.

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[5] Rollo, pp. 147-174. Penned by Judge Perlita J. Tria Tirona.

[6] Id. at 173-174.

[7] Art. 147. When a man and a woman who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage, their wages and salaries shall be owned by them in equal shares and the property acquired by both of them through their work or industry shall be governed by the rules on co-ownership.

In the absence of proof to the contrary, properties acquired while they lived together shall be presumed to have been obtained by their joint efforts, work or industry, and shall be owned by them in equal shares. For purposes of this Article, a party who did not participate in the acquisition by the other party of any property shall be deemed to have contributed jointly in the acquisition thereof if the former's efforts consisted in the care and maintenance of the family and of the household.

Neither party can encumber or dispose by acts inter vivos of his or her share in the property acquired during cohabitation and owned in common, without the consent of the other, until after the termination of their cohabitation.

When only one of the parties to a void marriage is in good faith, the share of the party in bad faith in the co-ownership shall be forfeited in favor of their common children. In case of default of or waiver by any or all of the common children or their descendants, each vacant share shall belong to the respective surviving descendants. In the absence of descendants, such share shall belong to the innocent party. In all cases, the forfeiture shall take place upon termination of the cohabitation.

[8] Rollo, pp. 87-93.

[9] Id. at 93.

[10] Id. at 28-29.

[11] Id. at 11-12.

[12] 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:

x x x x

(f) An order of execution;

x x x x

[13] See Mercado-Fehr v. Fehr, G.R. No. 152716, October 23, 2003, 414 SCRA 288, 295.

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