

RICARDO S. SILVERIO, JR. PETITIONER, VS. COURT OF APPEALS (FIFTH DIVISION) AND NELIA S. SILVERIO-DEE, RESPONDENTS.

G.R. No. 178933. September 16, 2009

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

The Case

This Petition for Review on Certiorari under Rule 65 seeks the reversal of the May 4, 2007 Resolution[1] and July 6, 2007 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 98764, entitled *Nelia S. Silverio-Dee and Ricardo C. Silverio, Sr. (impleaded as necessary party) v. Reinato G. Quilala*, in his capacity as Presiding Judge of the RTC of Makati, Branch 57, Ricardo S. Silverio, Jr., Edmundo S. Silverio, represented by Nestor Dela Merced II, and Sheriff Villamor R. Villegas.

The assailed resolution granted private respondent's prayer for the issuance of a Temporary Restraining Order against public respondent Judge Quilala. On the other hand, the assailed decision set aside the Writ of Execution dated April 17, 2007 and the Notice to Vacate dated April 19, 2007 while directing the respondent lower court to give due course to the appeal of herein private respondent.

The Facts

The instant controversy stemmed from the settlement of estate of the deceased Beatriz Silverio. After her death, her surviving spouse, Ricardo Silverio, Sr., filed an intestate proceeding for the settlement of her estate. The case was docketed as SP. PROC. NO. M-2629 entitled *In Re: Estate of the Late Beatriz D. Silverio, Ricardo C. Silverio, Sr. v. Ricardo S. Silverio Jr., et al.* pending before the Regional Trial Court (RTC) of Makati City, Branch 57 (RTC).

On November 16, 2004, during the pendency of the case, Ricardo Silverio, Jr. filed a petition to remove Ricardo C. Silverio, Sr. as the administrator of the subject estate. On November 22, 2004, Edmundo S. Silverio also filed a comment/opposition for the removal of Ricardo C. Silverio, Sr. as administrator of the estate and for the appointment of a new administrator.

On January 3, 2005, the RTC issued an Order granting the petition and removing Ricardo Silverio, Sr. as administrator of the estate, while appointing Ricardo Silverio, Jr. as the new administrator.

On January 26, 2005, Nelia S. Silverio-Dee filed a Motion for Reconsideration of the Order dated January 3, 2005, as well as all other related orders.

On February 4, 2005, Ricardo Silverio Jr. filed an Urgent Motion for an Order Prohibiting Any Person to Occupy/Stay/Use Real Estate Properties Involved in the Intestate Estate of the Late Beatriz Silverio, Without Authority from this Honorable Court.[3]

Then, on May 31, 2005, the RTC issued an Omnibus Order[4] affirming its Order dated January 3, 2005 and

denying private respondent's motion for reconsideration. In the Omnibus Order, the RTC also authorized Ricardo Silverio, Jr. to, upon receipt of the order, immediately exercise his duties as administrator of the subject estate. The Omnibus Order also directed Nelia S. Silverio-Dee to vacate the property at No. 3, Intsia, Forbes Park, Makati City within fifteen (15) days from receipt of the order.

Nelia Silverio-Dee received a copy of the Omnibus Order dated May 31, 2005 on June 8, 2005.

On June 16, 2005, private respondent filed a Motion for Reconsideration dated June 15, 2005[5] of the Omnibus Order. This was later denied by the RTC in an Order dated December 12, 2005, which was received by private respondent on December 22, 2005.

Notably, the RTC in its Order dated December 12, 2005[6] also recalled its previous order granting Ricardo Silverio, Jr. with letters of administration over the intestate estate of Beatriz Silverio and reinstating Ricardo Silverio, Sr. as the administrator.

From the Order dated December 12, 2005, Ricardo Silverio, Jr. filed a motion for reconsideration which was denied by the RTC in an Order dated October 31, 2006. In the same order, the RTC also allowed the sale of various properties of the intestate estate of the late Beatriz Silverio to partially settle estate taxes, penalties, interests and other charges due thereon. Among the properties authorized to be sold was the one located at No. 3 Intsia Road, Forbes Park, Makati City.[7]

Meanwhile, on January 6, 2006, Nelia Silverio-Dee filed a Notice of Appeal dated January 5, 2006[8] from the Order dated December 12, 2005 while the Record on Appeal dated January 20, 2006[9] was filed on January 23, 2006.

Thereafter, on October 23, 2006, Ricardo Silverio, Jr. filed a Motion to Dismiss Appeal and for Issuance of a Writ of Execution[10] against the appeal of Nelia Silverio-Dee on the ground that the Record on Appeal was filed ten (10) days beyond the reglementary period pursuant to Section 3, Rule 41 of the Rules of Court.

Thus, on April 2, 2007, the RTC issued an Order[11] denying the appeal on the ground that it was not perfected within the reglementary period. The RTC further issued a writ of execution for the enforcement of the Order dated May 31, 2005 against private respondent to vacate the premises of the property located at No. 3, Intsia, Forbes Park, Makati City. The writ of execution was later issued on April 17, 2007[12] and a Notice to Vacate[13] was issued on April 19, 2007 ordering private respondent to leave the premises of the subject property within ten (10) days.

Consequently, private respondent filed a Petition for Certiorari and Prohibition (With Prayer for TRO and Writ of Preliminary Injunction) dated May 2, 2007[14] with the CA.

On May 4, 2007, the CA issued the assailed Resolution granting the prayer for the issuance of a TRO. In issuing the TRO, the CA ruled that the Notice of Appeal was filed within the reglementary period provided by the Rules of Court applying the "fresh rule period" enunciated by this Court in *Neypes v. Court of Appeals*[15] as reiterated in *Sumaway v. Union Bank*.[16]

Afterwards, on July 6, 2007, the CA issued the assailed decision granting the petition of private respondent. The dispositive portion reads:

WHEREFORE, in view of the foregoing, the instant petition is GRANTED and GIVEN DUE COURSE. Accordingly, the Order, dated April 2, 2007, the writ of execution, dated April 17, 2007, and the Notice to Vacate, dated April 19, 2007, are ANNULLED AND SET ASIDE. Further, the court a quo is hereby directed to give due course to the appeal of Nelia S. Silverio-Dee.

SO ORDERED.

Hence, the instant petition.

The Issues

-A-

The Omnibus Order dated May 31, 2005 (Annex G of Annex C) and the Order dated December 12, 2005 are Interlocutory Orders which are not subject to appeal under Sec. 1 of Rule 41;

-B-

The respondent Court seriously erred and/or committed grave abuse of discretion amounting to lack of or excess of jurisdiction, in deliberately failing to decide that the basis of the occupancy of Nelia S. Silverio-Dee are fraudulent documents, without any authority from the Intestate Court;

-C-

The respondent Court seriously erred and/or committed grave abuse of discretion amounting to lack of or excess of jurisdiction, in issuing precipitately the temporary restraining order (TRO) in its Resolution dated May 4, 2007 (Annex A-1);

-D-

The respondent Court seriously erred and/or committed grave abuse of discretion amounting to lack of or excess of jurisdiction in annulling the Order dated April 2, 2007, the Writ of Execution dated April 17, 2007, and the Notice to Vacate dated April 19, 2007 because the respondent Silverio-Dee's occupancy of the Intestate property located at No. 3 Intsia Road, Forbes Park, Makati City (Annex N of Annex C) will prevent the sale authorized by the Order dated October 31, 2006 to secure funds for the payment of taxes due which are now high and rapidly increasing payment of which must not be enjoined.[17]

The Court's Ruling

This petition is meritorious.

The May 31, 2005 Order of the RTC Is
an Interlocutory Order, Not Subject to an Appeal

To recapitulate, the relevant facts to the instant issue are as follows:

On May 31, 2005, the RTC issued an Omnibus Order ordering Nelia Silverio-Dee to vacate the premises of the property located at No. 3, Intsia Road, Forbes Park, Makati City. She received a copy of the said Order on June 8, 2005. Instead of filing a Notice of Appeal and Record on Appeal, private respondent filed a motion for reconsideration of the Order. This motion for reconsideration was denied in an Order dated December 12, 2005. This Order was received by private respondent on December 22, 2005. On January 6, 2006, private respondent filed her Notice of Appeal while she filed her Record on Appeal on January 23, 2006.

Thus, in denying due course to the Notice/Record on Appeal, the RTC, in its Order dated April 2, 2007, ruled:

Verily, the appeal taken by the movant Nelia Silverio-Dee from the Order of this Court dated December 12, 2005 denying the Motion for Reconsideration is misplaced as no appeal may be taken from the order denying the motion for reconsideration (see Section 1, Rule 41 of the 1997 Rules of Civil Procedure in relation to Section 1(f), Rule 109 of the Rules of Court). Furthermore, assuming that what said movant had appealed is the final Order dated May 31, 2005, still, the appeal cannot be given due course as the Record on Appeal had been filed beyond the thirty-day period to appeal (see Section 3 Rule 41 of the Rules of Court)

WHEREFORE, the appeal filed by Nelia Silverio is hereby DENIED due course.

Let a writ of execution issue to enforce the Order dated May 31, 2005 against Nelia Silverio-Dee requiring her to vacate the premises at No. 3 Intsia, Forbes Park, Makati City.

SO ORDERED.

Thus, the denial of due course by the RTC was based on two (2) grounds: (1) that Nelia Silverio-Dee's appeal was against an order denying a motion for reconsideration which is disallowed under Sec. 1(a), Rule 41 of the Rules of Court; and (2) that Nelia Silverio-Dee's Record on Appeal was filed beyond the reglementary period to file an appeal provided under Sec. 3 of Rule 41.

Sec. 1(a), Rule 41 of the Rules of Court provides:

RULE 41

APPEAL FROM THE REGIONAL TRIAL COURTS

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 motion for new trial or reconsideration;

x x x x

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

Petitioner argues that because private respondent filed a Notice of Appeal from the Order dated December 12, 2005 which denied her motion for reconsideration of the Omnibus Order dated May 31, 2005, her appeal is of an order denying a motion for reconsideration. Thus, petitioner alleges that private respondent employed the wrong remedy in filing a notice of appeal and should have filed a petition for certiorari with the CA under Rule 65 of the Rules of Court instead.

The CA, however, ruled that the filing of the Notice of Appeal in this case was proper saying that the appeal pertained to the earlier Omnibus Order dated May 31, 2005. The CA, citing *Apuyan v. Haldeman*,^[18] argued that an order denying a motion for reconsideration may be appealed as such order is the "final order" which disposes of the case. In that case, we stated:

In the recent case of *Quelnan v. VHF Philippines, Inc.*, We held, thus:

... [T]his Court finds that the proscription against appealing from an order denying a motion for reconsideration refers to an interlocutory order, and not to a final order or judgment. That that was the intention of the above-quoted rules is gathered from *Pagtakhan v. CIR*, 39 SCRA 455 (1971), cited in above-quoted portion of the decision in *Republic*, in which this Court held that an order denying a motion to dismiss an action is interlocutory, hence, not appealable.

The rationale behind the rule proscribing the remedy of appeal from an interlocutory order is to prevent undue delay, useless appeals and undue inconvenience to the appealing party by having to assail orders as they are promulgated by the court, when they can be contested in a single appeal. The appropriate remedy is thus for the party to wait for the final judgment or order and assign such interlocutory order as an error of the court on appeal.

The denial of the motion for reconsideration of an order of dismissal of a complaint is not an interlocutory order, however, but a final order as it puts an end to the particular matter resolved, or settles definitely the matter therein disposed of, and nothing is left for the trial court to do other than to execute the order.

Not being an interlocutory order, an order denying a motion for reconsideration of an order of dismissal of a complaint is effectively an appeal of the order of dismissal itself.

The reference by petitioner, in his notice of appeal, to the March 12, 1999 Order denying his Omnibus Motion--Motion for Reconsideration should thus be deemed to refer to the January 17, 1999 Order which declared him non-suited and accordingly dismissed his complaint.

If the proscription against appealing an order denying a motion for reconsideration is applied to any order, then there would have been no need to specifically mention in both above-quoted sections of the Rules "final orders or judgments" as subject to appeal. In other words, from the entire provisions of Rule 39 and 41, there can be no mistaking that what is proscribed is to appeal from a denial of a motion for reconsideration of an interlocutory order. (Emphasis supplied.)

Thus, the question posed is whether the Omnibus Order dated May 31, 2005 is an interlocutory order.

On this aspect, the CA ruled that the Omnibus Order dated May 31, 2005 was a final order, to wit:

We note that the Order, dated December 12, 2005, is an offshoot of the Omnibus Order, dated May 31, 2005. In the Omnibus Order, the court a quo ruled that the petitioner, as an heir of the late Beatriz S. Silverio, had no right to use and occupy the property in question despite authority given to her by Ricardo Silverio, Sr. when it said, thus:

x x x In the first place, Nelia S. Silverio-Dee cannot occupy the property in Intsia, Forbes Park, admittedly belonging to the conjugal estate and subject to their proceedings without authority of the Court. Based on the pretenses of Nelia Silverio-Dee in her memorandum, it is clear that she would use and maintain the premises in the concept of a distributee. Under her perception, Section 1 Rule 90 of the Revised Rules of Court is violated.
x x x

x x x x

For the property at Intsia, Forbes Park cannot be occupied or appropriated by, nor distributed to Nelia S. Silverio-Dee, since no distribution shall be allowed until the payment of the obligations mentioned in the aforestated Rule is made. In fact, the said property may still be sold to pay the taxes and/or other obligations owned by the estate, which will be difficult to do if she is allowed to stay in the property.

Moreover, the alleged authority given by SILVERIO, SR. for Nelia S. Silverio-Dee to occupy the property dated May 4, 2004, assuming it is not even antedated as alleged by SILVERIO, JR., is null and void since the possession of estate property can only be given to a purported heir by virtue of an Order from this Court (see Sec. 1 Rule 90, supra; and Sec. 2 Rule 84, Revised Rules of Court). In fact, the Executor or Administrator shall have the right to the possession and management of the real as well as the personal estate of the deceased only when it is necessary for the payment of the debts and expenses of administration (See Sec. 3 Rule 84, Revised Rules of Court). With this in mind, it is without an iota of doubt that the possession by Nelia S. Silverio-Dee of the property in question has absolutely no legal basis considering that her occupancy cannot pay the debts and expenses of administration, not to mention the fact that it will also disturb the right of the new Administrator to possess and manage the property for the purpose of settling the estate's legitimate obligations.

In the belated Memorandum of Nelia Silverio-Dee, she enclosed a statement of the expenses she incurred pertaining to the house renovation covering the period from May 26, 2004 to February 28, 2005 in the total amount of Php12,434,749.55, which supports this Court's conclusion that she is already the final distributee of the property. Repairs of such magnitude require notice, hearing of the parties and approval of the Court under the Rules. Without following this process, the acts of Nelia Silverio-Dee are absolutely without legal sanction.

To our mind, the court a quo's ruling clearly constitutes a final determination of the rights of the petitioner as the appealing party. As such, the Omnibus Order, dated May 31, 2002 (the predecessor of the Order dated December

12, 2002) is a final order; hence, the same may be appealed, for the said matter is clearly declared by the rules as appealable and the proscription does not apply.[19] (Emphasis supplied.)

An interlocutory order, as opposed to a final order, was defined in *Tan v. Republic*:[20]

A final order is one that disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court, while an interlocutory order is one which does not dispose of the case completely but leaves something to be decided upon. (Emphasis supplied.)

Additionally, it is only after a judgment has been rendered in the case that the ground for the appeal of the interlocutory order may be included in the appeal of the judgment itself. The interlocutory order generally cannot be appealed separately from the judgment. It is only when such interlocutory order was rendered without or in excess of jurisdiction or with grave abuse of discretion that certiorari under Rule 65 may be resorted to.[21]

In the instant case, Nelia Silverio-Dee appealed the May 31, 2005 Order of the RTC on the ground that it ordered her to vacate the premises of the property located at No. 3 Intsia Road, Forbes Park, Makati City. On that aspect the order is not a final determination of the case or of the issue of distribution of the shares of the heirs in the estate or their rights therein. It must be borne in mind that until the estate is partitioned, each heir only has an inchoate right to the properties of the estate, such that no heir may lay claim on a particular property. In *Alejandrino v. Court of Appeals*, we succinctly ruled:

Art. 1078 of the Civil Code provides that where there are two or more heirs, the whole estate of the decedent is, before partition, owned in common by such heirs, subject to the payment of the debts of the deceased. Under a co-ownership, the ownership of an undivided thing or right belongs to different persons. Each co-owner of property which is held pro indiviso exercises his rights over the whole property and may use and enjoy the same with no other limitation than that he shall not injure the interests of his co-owners. The underlying rationale is that until a division is made, the respective share of each cannot be determined and every co-owner exercises, together with his co-participants, joint ownership over the pro indiviso property, in addition to his use and enjoyment of the same.

Although the right of an heir over the property of the decedent is inchoate as long as the estate has not been fully settled and partitioned, the law allows a co-owner to exercise rights of ownership over such inchoate right. Thus, the Civil Code provides:

Art. 493. Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.[22] (Emphasis supplied.)

Additionally, the above provision must be viewed in the context that the subject property is part of an estate and subject to intestate proceedings before the courts. It is, thus, relevant to note that in Rule 84, Sec. 2 of the Rules of Court, the administrator may only deliver properties of the estate to the heirs upon order of the Court. Similarly, under Rule 90, Sec. 1 of the Rules of Court, the properties of the estate shall only be distributed after the payment of the debts, funeral charges, and other expenses against the estate, except when authorized by the Court.

Verily, once an action for the settlement of an estate is filed with the court, the properties included therein are under the control of the intestate court. And not even the administrator may take possession of any property that is part of the estate without the prior authority of the Court.

In the instant case, the purported authority of Nelia Silverio-Dee, which she allegedly secured from Ricardo

Silverio, Sr., was never approved by the probate court. She, therefore, never had any real interest in the specific property located at No. 3 Intsia Road, Forbes Park, Makati City. As such, the May 31, 2005 Order of the RTC must be considered as interlocutory and, therefore, not subject to an appeal.

Thus, private respondent employed the wrong mode of appeal by filing a Notice of Appeal with the RTC. Hence, for employing the improper mode of appeal, the case should have been dismissed.[23]

The implication of such improper appeal is that the notice of appeal did not toll the reglementary period for the filing of a petition for certiorari under Rule 65, the proper remedy in the instant case. This means that private respondent has now lost her remedy of appeal from the May 31, 2005 Order of the RTC.

Therefore, there is no longer any need to consider the other issues raised in the petition.

WHEREFORE, the May 4, 2007 Resolution and July 6, 2007 Decision of the CA in CA-G.R. SP No. 98764 are REVERSED and SET ASIDE. Thus, the Decision dated April 2, 2007 of the RTC denying due course to the appeal of Nelia Silverio-Dee; the Writ of Execution dated April 17, 2007; and the Notice to Vacate dated April 19, 2007 are hereby REINSTATED.

No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Nachura, Leonardo-Castro, and Peralta, JJ., concur.

[*] Additional member as per August 3, 2009 raffle.

[1] Rollo, pp. 59-67. Penned by Associate Justice Arturo G. Tayag and concurred in by Associate Justices Martin S. Villarama, Jr. and Hakim S. Abdulwahid.

[2] Id. at 69-84. Penned by Associate Justice Arturo G. Tayag and concurred in by Associate Justices Rodrigo V. Cosico and Hakim S. Abdulwahid.

[3] Id. at 121-125.

[4] Id. at 133-157.

[5] Id. at 158-163.

[6] Id. at 166-171.

[7] Id. at 35.

[8] Id. at 172-174.

[9] Id. at 175-262.

[10] Id. at 263-266.

[11] Id. at 114-115.

[12] Id. at 116-117.

[13] Id. at 118.

[14] Id. at 85-276.

- [15] G.R. No. 141524, September 14, 2005, 469 SCRA 633.
- [16] G.R. No. 142534, June 27, 2006, 493 SCRA 99.
- [17] Rollo, p. 38.
- [18] G.R. No. 129980, September 20, 2004, 438 SCRA 402, 418-419.
- [19] Rollo, pp. 77-80.
- [20] G.R. No. 170740, May 25, 2007, 523 SCRA 203, 210-211.
- [21] 1 F. Regalado, Remedial Law Compendium 540 (8th revised ed.).
- [22] G.R. No. 114151, September 17, 1998, 295 SCRA 536, 548-549.
- [23] Rules of Court, Rule 50, Sec. 2.

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