

MACAPANTON B. BATUGAN, PETITIONER, VS. HON. RASAD G. BALINDONG, AS ACTING PRESIDING JUDGE OF THE SHARI'A DISTRICT COURT, FOURTH SHARI'A JUDICIAL DISTRICT, MARAWI CITY, BAULAN B....

G.R. No. 181384. March 13, 2009

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition[1] for certiorari and mandamus with prayer for issuance of a writ of preliminary injunction assails the September 26, 2007 Order[2] of the Shari'a District Court, Fourth Judicial Region, Marawi City in Civil Case No. 02-99 which denied petitioner Macapanton B. Batugan's motion to fully implement the Writ of Execution dated March 7, 2007. Also assailed is the November 12, 2007 Order[3] denying the motion for reconsideration.

During his lifetime, Hadji Abubakar Pandapatan Batugan (Hadji) contracted two marriages. His first marriage was with Enmong Basiron out of which were born five children, namely: petitioner Macapanton and respondents Guibonsalam B. Acraman, Baulan B. Canacan, Rangcalbe B. Magarang, and Tominoray Batugan.[4]

After the death of his first wife in 1945, Hadji married Kilaman Mocsi who bore him eight children, namely: Ali, Mahdi, Portre, Monazaman, Nasser, Idres, Minombao, and Usudan.

On September 6, 1990, Hadji died intestate leaving the following properties acquired during his first marriage:

a)

Three (3) hectares of land located at Balagunun, Batangan, Saguairan, Lanao del Sur with an estimated value of Php75,000.00;

b)

One and one-half (1 ½) hectares of land located at Coba O Hadji, Mipaga, Marawi City, valued at Php50,000.00;

c)

One and one-half (1 ½) hectares of land located at Soioik, Mipaga, Marawi City, valued at Php50,000.00; and

d)

Three (3) hectares of land located at Coloi, Mipaga, Marawi City with an estimated value of Php750,000.00 (Coloi Farmland).

The instant case involves the Coloi Farmland, a portion of which was subject of expropriation proceedings in Civil Case No. 154 instituted by the National Power Corporation (NPC) in 1981 before the Regional Trial Court of Lanao del Sur, Branch 9, Marawi City. On July 29, 1991, the trial court rendered a decision finding that Hadji

is entitled to just compensation thus ordering the NPC to pay him the amount of Php766,580.00. The NPC filed an appeal to the Court of Appeals which was dismissed in a decision dated February 26, 2001.[5] Sometime in March 2003, respondent Tominoray allegedly received payment from the NPC in the amount of Php600,580.00.

On May 19, 1999, petitioner filed a special civil action for partition of real properties[6] before the Shari'a District Court, Marawi City. The case was docketed as Civil Case No. 02-99 and entitled, Macapanton Batugan v. Baulan B. Canacan, Tominoray Batugan, Ali M. Batugan, Monazaman M. Batugan, Nasser M. Batugan, Minombao M. Batugan, Usudan M. Batugan, Kilaman M. Batugan, Heirs of Rangcalbe B. Magarang, represented by Palawan Batugan, and Heirs of Guibonsalam B. Acraman, represented by Faridah A. Macabando.

On July 2, 2003, the Shari'a Court approved the petition for partition applying Article 123(b)[7] of Presidential Decree No. 1083, otherwise known as the Code of Muslim Personal Laws of the Philippines.[8] It ordered that the properties of Hadji which were acquired during his first marriage be partitioned among petitioner and his full brothers and sisters. Further, it required the parties to submit the necessary instruments effecting the partition.[9]

On August 27, 2003, petitioner submitted a project plan of partition but respondent Tominoray and his co-respondents found the plan unacceptable. Thus, on January 6, 2004, petitioner submitted a second project plan of partition[10] which included the partition of the Coloi Farmland, as follows:

- x x x

- Hadji Macapanton Batugan will get Coloi Farmland three has. at Mipaga, Marawi City and give half hectare to our three sisters; provided Sultan Tominoray Batugan will give me the amount of money the National Power Corporation (NPC) payment of the part of Coloi Farmland.

- x x x

The Shari'a Court directed the respondents to comment, stating that their failure to do so would be interpreted as their conformity with the second project plan of partition and that it shall issue an order affirming the same.[11] Respondents failed to comply with the directive and, consequently, the second project plan of partition was approved upon recommendation of the Committee of Commissioners in an Order dated May 6, 2005,[12] viz:

The project of partition embodied in the second one is as follows:

The Balagunun Farmland situated in Batangan, Saguarian, Lanao del Sur with an area of three (3) hectares shall be partitioned as follows: two and a half (2½) hectares shall go to Sultan Tominoray Batugan and their sisters: Gibonsalam, represented by the heirs, Baulan and Rangcalbe, represented by the heirs, shall get half (1/2) a hectare.

The Coloi Farmland located at Mipaga, Marawi City with an area of three (3) hectares shall be partitioned as follows: two and a half (2½) goes to petitioner and one half (1/2) goes to their sisters.

The Coba o Hadji and Soio estates, all situated at Mipaga, Marawi City and with areas of one and a half (1½) hectares each or a total of three (3) hectares shall pertain to respondents Gibonsalam, Baulan and Rangcalbe or their heirs.

In summation, petitioner Macapanton Batugan gets two and a half (2½) hectares; Sultan Tominoray Batugan, also two and a half (2½) hectares; and their sisters, four (4) hectares.

WHEREFORE, upon recommendation of the Committee of Commissioners, the second project-plan of partition above-indicated is hereby APPROVED.

SO ORDERED.[13] (Emphasis added)

On January 18, 2006, the Clerk of Court issued the corresponding writ of execution.[14]

Thereafter, on March 14, 2006, petitioner filed an Urgent Motion for Amendment and Full Implementation of the Writ of Execution[15] praying that an order be issued amending the writ to include the amount which was received by respondent Tominoray from the NPC for the Coloi Farmland. Meanwhile, respondents filed a Motion for Clarificatory Judgment on April 6, 2006.

The Shari'a Court granted petitioner's motion in its October 2, 2006 Order,[16] stating that:

On the motion to amend the May 6, 2005 order to include the purchase price of Coloi farmlot, the same has to be granted to have a full complete enforcement of the decision and the writ of execution.

WHEREFORE, the pertinent portions of the May 6, 2005 Order are hereby AMENDED as follows:

The Coloi Farmland located at Mipaga, Marawi City shall be partitioned as follows: two and a half (2½) or its purchase price goes to petitioners and one half (1/2) goes to their sisters.

In summation, petitioner Macapanton Batugan gets two and a half (2½) hectares or its purchase price; Sultan Tominoray Batugan, also two and a half (2½) hectares; and their sisters, four (4) hectares.

The dispositive portion is AMENDED as follows:

WHEREFORE, upon recommendation of the Committee of Commissioners, the second project-plan of partition above-indicated is hereby APPROVED. As respondent Sultan Tominoray Batugan has received the P600,000.00 purchase price of petitioner's share from the NPC, the former is DIRECTED to deliver the said amount to the latter through the Clerk of Court within one (1) month from service.

Petitioner's comments on the respondents' Motion for Clarificatory Judgment is ADOPTED in toto.

SO ORDERED.[17]

Respondents filed a motion for reconsideration with motion for new trial ad cautelam which was partially granted in an Order[18] dated December 20, 2006. The Shari'a Court noted that petitioner had already received Php150,000.00 from the proceeds of the Coloi Farmland and held:

WHEREFORE, motion for reconsideration of the order dated October 2, 2006 is partially granted. As respondent Sultan Tominoray Batugan has received the P450,580.00, a portion of the purchase price of petitioner's and sisters' share from the NPC, the former is DIRECTED to deliver the remaining unclaimed share of petitioner to the latter through the Clerk of Court within one (1) month from service hereof. The Motion for New Trial is DENIED for lack of merit.

SO ORDERED.[19]

On March 7, 2007, the Clerk of Court issued a writ of execution[20] to enforce the above order. On even date, respondents filed an Omnibus Motion for Modification of Judgment,[21] particularly the Orders dated May 6, 2005, October 2, 2006, and December 20, 2006.

In their Omnibus Motion, respondents argued that the Shari'a Court has no jurisdiction over the Coloi Farmland because it had already been adjudicated to the NPC pursuant to the July 29, 1991 Decision of the Regional Trial Court in Civil Case No. 154. Further, they claimed that the payment from NPC had already been partitioned extra-judicially among the heirs, including petitioner who received the amount of Php150,000.00 as his share.[22] Thus, respondents prayed that the Coloi Farmland be excluded from the list of properties to be partitioned and that the extra-judicial partition of the NPC payment be recognized.

The Shari'a Court granted respondents' motion in an Order[23] dated June 18, 2007, as follows:

WHEREFORE, in view of the foregoing facts and jurisprudence, the above-enumerated orders are RECONSIDERED and SET ASIDE. The extra-judicial partition of the Coloi Farmland among the decedent's heirs is hereby RECOGNIZED. Accordingly, the controversy involving the Coloi Farmland is CLOSED, hence, this case is considered CLOSED and TERMINATED.

SO ORDERED.[24]

Petitioner filed a motion for reconsideration which was denied in an Order dated July 19, 2007.[25] No appeal was taken therefrom.

Subsequently, on September 17, 2007, petitioner filed a Motion to Fully Implement and Enforce the Writ of Execution dated March 7, 2007.[26] The Shari'a Court denied the motion in its September 26, 2007 Order, stating that the controversy involving the Coloi Farmland was closed and terminated by virtue of its Order dated June 18, 2007. It held:

The Motion to fully implement and enforce the writ of execution dated March 7, 2007 should be denied.

The controversy involving the Coloi Farmland (which is the subject of the writ of execution) has been considered CLOSED and TERMINATED in an order dated June 18, 2007. A motion to reconsider this June 18, 2007 order was denied on July 19, 2007.

WHEREFORE, the motion to enforce the writ of execution is DENIED.

SO ORDERED.[27]

Petitioner's motion for reconsideration was denied,[28] hence, this petition.

While it appears that only the September 26, 2007 and November 12, 2007 Orders are being assailed, a reading of the body and prayer of the petition will show that the June 18, 2007 and July 19, 2007 Orders are sought to be annulled as well.

Petitioner contends that the Shari'a Court gravely abused its discretion in setting aside the May 6, 2005, October 2, 2006, and December 20, 2006 Orders which have already attained finality; that the March 7, 2007 Writ of Execution remains outstanding since it has not been quashed; and that the Shari'a Court left the action for partition unresolved.

The issues for resolution are as follows: 1) whether the Shari'a Court committed grave abuse of discretion when it issued the June 18, 2007 and July 19, 2007 Orders recognizing the extra-judicial partition of the proceeds from the Coloi Farmland; and 2) whether the Shari'a Court committed grave abuse of discretion when it issued the September 26, 2007 and November 12, 2007 Orders denying petitioner's motion to fully implement and enforce the March 7, 2007 Writ of Execution.

The petition lacks merit.

It must be stressed that certiorari, being an extraordinary remedy, the party who seeks to avail of the same must strictly observe the rules laid down by law.[29] A petition for certiorari under Rule 65 must be filed not later than 60 days from notice of judgment, order, or resolution. In case a motion for reconsideration is filed, the 60-day period shall be counted from notice of denial of said motion.[30] Further, the petition must be accompanied by a certified true copy of the judgment, order or resolution.[31]

In Santos v. Court of Appeals,[32] we held that there are three (3) essential dates that must be stated in a petition for certiorari brought under Rule 65. First, the date when notice of the judgment or final order or Resolution was received; second, when a motion for new trial or reconsideration was filed; and third, when notice of the denial

thereof was received.[33]

In this case, petitioner failed to indicate all the three material dates, namely, the date of receipt of the June 18, 2007 Order, the date of filing of the motion for reconsideration, as well as the date of receipt of the denial thereof, which is the reckoning date of the 60-day period. Moreover, the certified true copies of the assailed orders were not attached to the petition. Thus, the petition must be dismissed.

As to the September 26, 2007 and November 12, 2007 Orders, we find that while the petition was seasonably filed, the same must nevertheless fail on the merits. The Shari'a Court did not commit grave abuse of discretion in denying petitioner's motion to fully implement the March 7, 2007 Writ of Execution.

Grave abuse of discretion exists where an act is performed in a capricious or whimsical exercise of judgment equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or to 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 or personal hostility.[34] None of the foregoing circumstances are present in this case.

The March 7, 2007 Writ of Execution was issued to enforce the December 20, 2006 Order requiring respondent Tominoray to deliver petitioner's alleged share in the Coloi Farmland in the amount of Php450,580.00. However, this was later superseded by the June 18, 2007 and July 19, 2007 Orders of the Shari'a Court which recognized the extra-judicial partition of the proceeds of the subject property, ordered its exclusion from the partition, and declared the controversy closed and terminated.

As such, the writ of execution had become functus officio as there was nothing to enforce insofar as the Coloi Farmland is concerned. Indeed, the proceeds from the subject property had already been distributed among the heirs of Hadji. This was established during the proceedings[35] and acknowledged by petitioner himself who admitted to having received the amount of Php150,000.00 from respondent Tominoray.[36]

At this point, we reiterate that the orders excluding the Coloi Farmland from the partition have attained finality and can no longer be assailed. Petitioner failed to timely appeal therefrom, whether in the form of an ordinary appeal or an appeal by certiorari. Instead, he filed a motion to fully implement and enforce the March 7, 2007 Writ of Execution which is actually a substitute for lost appeal. This is not allowed. While procedural irregularities are on occasion set aside in the interest of justice, it must be stressed that liberality of construction of the rules should not be a panacea for all procedural maladies.[37]

Finally, there is no merit to petitioner's contention that the Shari'a Court rendered the action for partition unresolved. It bears stressing that the court did not modify its May 6, 2005 Order with regard to the other properties mentioned in the second project plan of partition submitted by petitioner. The subsequent orders assailed by petitioner pertained only to the Coloi Farmland and to no other property. The partition of the Balagunun Farmland, Coba o Hadji, and Soik estates was never at issue and, thus, the May 6, 2005 Order of the Shari'a Court with regard to these properties remains unchanged.

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and Peralta, JJ., concur.

[1] Rollo, pp. 3-35.

[2] Id. at 36; penned by Judge Rasad G. Balindong.

[3] Id. at 37.

[4] Guibonsalam B. Acraman and Rangcalbe B. Magarang are now deceased.

[5] Records, pp. 196-201.

[6] Rollo, pp. 38-42.

[7] Article 123. Exclusion among heirs. The exclusion of heirs from the inheritance shall be governed by the following rules:

x x x x

(b) Full-blood relatives exclude the consanguine and the uterine.

x x x x

[8] Rollo, pp. 43-46.

[9] Id. at 45-46.

[10] Id. at 47.

[11] Id. at 48.

[12] Id. at 49-51.

[13] Id. at 50-51.

[14] Id. at 53.

[15] Id. at 57-59.

[16] Id. at 60-62.

[17] Id. at 61-62.

[18] Id. at 63-64.

[19] Id. at 64.

[20] Id. at 66.

[21] Id. at 67-72.

[22] Records, p. 173.

[23] Rollo, pp. 73-74.

[24] Id. at 74.

[25] Id. at 75.

[26] Id. at 76-83.

[27] Id. at 36.

[28] Id. at 37.

[29] *Seastar Marine Services, Inc. v. Lucio A. Bul-an, Jr.*, G.R. No. 142609, November 25, 2004, 444 SCRA 140,

153.

[30] Section 4, Rule 65.

[31] Section 1, Rule 65.

[32] 413 Phil. 41 (2001).

[33] Id. at 53.

[34] Casent Realty & Development Corporation v. Premiere Development Bank, G.R. No. 163902, January 27, 2006, 480 SCRA 426, 434.

[35] Rollo, p. 63.

[36] Id. at 87.

[37] Mercado v. Court of Appeals, G.R. No. 150241, November 4, 2004, 441 SCRA 463, 470.

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